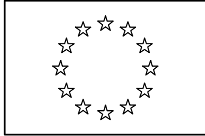

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IMPACT ASSESSMENT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market

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1. INTRODUCTION, POLICY CONTEXT, PROCEDURAL ISSUES AND CONSULTATION

1.1. Introduction

The protection provided by copyright and related rights aims at ensuring that authors, performers, record and film producers, etc., i.e. those who have created or invested in the creation of works or other protected subject matter (literature, music, films, etc.) can determine how these works and other protected subject matter can be used and be remunerated by it. These rights therefore aim at providing an incentive to create, to invest into creative activities and to disseminate works and other protected subject matter to the public. Copyright protection in the EU needs to be seen within the context of the Single Market and the underlying principles of free movement of goods and services. Copyright protection in the Digital Single Market needs to work so that more content and more services become accessible to European citizens, including across borders.

Copyright is also a factor for growth with significant economic and social importance.[1] In 2008 the creative industries[2] accounted for 3% of EU-27 employment (i.e. 6.7 million people). The employment rate increased by an average of 3.5% a year in the period 2000-2007 compared to 1% a year for the total EU economy.[3] On a global scale, the contribution of these industries to the GDP and national employment varies significantly in different countries but reaches 5.4% and 5.9% on average.[4] In Europe, the value of the EU recorded music market is around € 6 billion (representing around a fifth of the total music market which is worth approx. € 30 billion),[5] book publishers in the EU and the EEA have annual sales revenues of some € 23 billion,[6] and the audiovisual industry was worth some € 96 billion in 2008.[7] Copyright is also an important factor in so-called non-core copyright industries, which include architecture, toys, games, production of computer equipment, TV sets or DVD players. It is estimated that non-core industries contribute to 2.34% of GDP and 2.53% of employment in developed countries.[8]

The distribution of goods and services protected by copyright or related rights (e.g. books, audiovisual productions, recorded music) requires the licensing of rights by different rightholders (e.g. authors, performers, producers). Individual licensing of these rights is not always practical or effective hence collecting societies ("**CS**") were created to manage copyright and related rights on a collective basis for some rightholders and in some sectors.

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1 Copyright + Creativity = Jobs and Economic Growth, WIPO studies on the economic contribution of copyright industries, WIPO 2012, http://www.ip-watch.org/weblog/wp-content/uploads/2012/02/WIPO-Copyright-Economic-Contribution-Analysis-2012-FINAL-230-2.pdf

2 Creative industries include information services such as publishing activities (books, periodicals and software), motion pictures, video and television programme production, sound recording and music publishing activities, programming and broadcasting activities, computer programming, architectural and engineering services, advertising, design activities, photographic activities, translation and interpretation activities, creative, arts and entertainment activities.

3 European Competitiveness Report 2010, Commission Staff Working Document, SEC(2010) 1276 final.

4 As regards the contribution to GDP, three quarters of the 30 countries participating in the WIPO show a contribution between 4% and 6.5%. With respect to employment, the contribution is between 4% and 7% in three quarters of the countries. (see WIPO study 2012)

5 IFPI, Recording industry in numbers 2011.

6 Federation of European Publishers' statistics for 2010.

7 PWC Global Entertainment and Media Outlook 2009-2013, June 2009.

8 Copyright + Creativity = Jobs and Economic Growth (WIPO 2012).

CS allow commercial users to clear rights for a large number of works, in circumstances where individual negotiations with individual creators would be impractical and entail prohibitive transaction costs._From the viewpoint of many commercial users, whether active in traditional (e.g. broadcasting, cable retransmission) or new forms of exploitation (e.g. download, streaming services), the role of collecting societies is therefore essential. Moreover, CS play a key role in the protection and promotion of the diversity of cultural expressions by enabling the smallest and less popular repertoires to access the market.

Rights management exercised by CS practically always has a Single Market dimension. This is because even when CS grant licences in their own territory only, they generally license the rights of both domestic and foreign rightholders. Therefore, in order to ensure that rights from all over the EU are licensed in all Member States ("**MS**"), it is crucial that CS function efficiently and transparently, taking due account of the interest they represent. There is evidence that this is not always the case – recent regulatory failures in some MS indicate that there is a need for action in this area.[9] Moreover, the ability of CS to efficiently deliver their services is increasingly being questioned, leading to a loss of trust and confidence in their services. The issue is often raised by national parliaments,[10] the European Parliament[11] and national competition authorities.[12] It is the subject of complaints from rightholders and users.[13]

In addition, specific problems have been identified regarding the collective management of the rights of authors' in musical works (i.e. composers of music and authors of lyrics) for online uses. Online service providers often need to obtain multi-territory ("**MT**") licences in the aggregated EU repertoire. Securing such licences proves to be a very difficult and costly exercise.[14] This complexity is specific to authors' rights in musical works.[15] This has led, in a number of instances, to a fragmentation of the European market for online music services and other online services needing to license rights in music (e.g. audiovisual services). Addressing this situation is one of the pre-conditions to stimulating the legal offer of online music across the EU, giving consumers greater choice and allowing creators of musical works, and those that invest in their creation, the possibility to reap the full benefits of the Single Market. This was underlined in the "**Single Market Act**"[16] which states that, in the internet age, collective

9 See details in Section 3.1.

10 E.g. in France, *Assemblée Nationale*, *Commission des affaires culturelles et de l'éducation*, 24 November 2010, http://www.assemblee-nationale.fr/13/cr-cedu/10-11/c1011016.asp; in Spain, Motion 173/000229 of *Congreso* (house of representatives) enquiring on planned government measures on the control collecting societies, 19 July 2011 http://www.congreso.es/docu/tramit/173.229.pdf.

11 E.g. Report on collective cross-border management of copyright and related rights for legitimate online music services (05.03.2007) (Final A6-0053/2007).

12 E.g. in Spain, Comisión Nacional de la Competencia (CNC), *Report on the collective management of intellectual property rights*, December 2009; in Slovenia, *Decision 200 of 8 April 2011 of the Slovenian Competition Protection Office against the Slovenian Society of Composers, Authors and Publishers for Copyright Protection (SAZAS)*; in Greece, Elliniki Epitropi Antagonismou, 14 July 2003, *AEPI*, Decision 245/III/2003; in Poland, Decision n° RWA-6/2009 of 10 June 2009 of the President of the Office for Competition and Consumer Protection, *Polish Musical Performing Artists' Association (SAWP)*; and Decision n° RWA 19/2008 of 24 June 2008 of the President of the Office of Competition and Consumer Protection (*Authors' Association ZAIKS*).

13 See Annex B.

14 See details in Section 3.2.

15 See details in Chapter 2.

16 Commission Communication "Single Market Act: Twelve levers to boost growth and strengthen confidence "Working together to create new growth", COM(2011) 206 final, adopted on 13 April 2011, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DC0206:EN:NOT.

management must be able to evolve towards European models which facilitate licences covering several territories.

At the same time it needs to be emphasised that **complex copyright licensing processes are not the only reason for the fragmentation of the online market**. Other reasons include technological barriers (limited access to high-speed networks), lack of legal certainty for service providers (differences in legislation in areas such as consumer protection or content rating), payment methods (access to credit cards), consumer trust in online transactions, illegal downloading of files (piracy) and cultural and linguistic differences. Finally, service providers sometimes take decisions to segment shops territorially and/or launch only in the more mature markets (e.g. with higher consumer online spend) due to purely commercial reasons such as, in the case of advertisement-funded services, the differences between national advertising markets.[17] Nonetheless, the relative importance of the complex licensing processes in fragmenting the market is high.

The described inefficiencies of collective rights management including the complexities related to collective licensing of authors' rights for online music services do not only hamper the exercise of copyright and related rights (which are rights of property, intrinsically individual in nature, largely harmonised at EU level and which, as such, must be protected) by their holders depriving them of due benefits and taking away incentives for creation but also limit the free movement of goods and services and prevent consumers from enjoying access to a wide diversity of content.

1.2. Policy context

The creation of a Single Market for intellectual property rights has been high on the political agenda in the last few years. This Impact Assessment ("**IA**") is presented within the context of the Europe 2020 Strategy,[18] which aims to boost smart, sustainable and inclusive growth in Europe, the Commission's Communication "A Digital Agenda for Europe" which includes a number of actions to address the barriers to the development of Europe's online markets,[19] the "Single Market Act" which identifies Intellectual Property as one of the key areas in which action is required and the Commission Communication "A Single Market for Intellectual Property Rights" (the "**IPR Communication**").[20] In addition, this Impact Assessment is presented in the context of the ambition to achieve the Digital Single Market[21] by creating conditions for thriving e-commerce and online services as set out in the Commission's Communication "A coherent framework for building trust in the Digital Single Market for e-commerce and online services" which also identifies the implementation of the IPR

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17 Advertisements are targeted at local and national audiences. Service providers cannot raise revenue in e.g. Greece on the basis of advertisements destined e.g. for the Swedish market.

18 EUROPE 2020 - A strategy for smart, sustainable and inclusive growth - COM(2010) 2020.

19 Adopted on 19 May 2010, http://ec.europa.eu/information_society/digital-agenda/documents/digital-agenda-communication-en.pdf

20 A Single Market for Intellectual Property Rights - Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe: COM(2011) 287 final of 24.05.2011.

21 The Digital Single Market is far from achieving its full potential; the cost of the failure to complete it is expected to be at least 4.1% GDP between 2010 and 2020 i.e. EUR 500 billion or EUR 1000 per citizen (Copenhagen Economics, The Economic Impact of a European Digital Single Market, March 2010).

Communication as one of the main actions to develop the legal and cross-border offer of online products and services.[22]

In the IPR Communication the Commission, *inter alia*, announced its intention to create a legal framework for the collective management of copyright, including common rules on governance and transparency ("**G&T**") of the entities carrying out such collective management as well as specific measures to foster the development of new online services in the music sector.[23]

Against this background, this IA analyses the nature and magnitude of two specific but interlinked problems: inefficiencies associated with collective management of copyright and related rights in general and the specific complexities of the collective licensing of authors' rights in musical works for online uses. It has the objective of setting out an approach to meet two related policy objectives: improving the governance and transparency of collecting societies at large and facilitating multi-territory licensing of musical works for online services.

Whilst the IPR Communication envisages the "[c]reation of a comprehensive framework for copyright in the digital Single Market"[24], the other proposed initiatives within this IPR framework, including any measures to fight piracy as well as other measures required to remove other barriers to the Digital Single Market as mentioned in the Introduction, do not form part of this exercise.

This IA analyses the functioning of CS as such. It does not discuss the nature of rights (e.g. exclusive rights or remuneration rights) or whether certain rights should be collectively managed (e.g. compulsory collective management) as this would go beyond the functioning of CS and enter rather into the definition of rights as such (i.e. the subject matter of existing Directives). It does not analyse, for instance, the issue of compensation for acts of private copying. Discussions on this topic run in parallel as announced in the IPR Communication.[25]

1.3. Procedural issues and consultation of interested parties

In preparation of this IA DG MARKT organised wide-ranging consultations the results of which have been integrated in the IA. All interested parties - including authors, publishers, performers, producers, CS, commercial users, consumers and public bodies - were involved. The formal consultation process began in October 2009, when DG INFSO and DG MARKT undertook an online public consultation on "Content Online"[26] in order to promote a reflection and broad debate about possible European responses to the challenges of the digital "dematerialisation" of content, including easier and quicker rights clearance structures while ensuring that rightholders are remunerated fairly and adequately when their works are used on digital platforms. This online consultation was open for comments from 22 October 2009 to 5 January 2010. In response to the consultation, several stakeholders considered that the aggregation of different music repertoires would simplify rights clearance and licensing. Also,

[22] COM(2011) 942, adopted on 12 January 2012, http://ec.europa.eu/internal_market/e-commerce/docs/communication2012/COM2011_942_en.pdf .

[23] Section 3.3.1 of the IPR Communication.

[24] Section 3.3 of the IPR Communication.

[25] Section 3.3.4 of the IPR Communication. See also Statement by Commissioner Barnier of 23 November 2011,http://ec.europa.eu/commission_2010-2014/barnier/headlines/speeches/2011/11/20111123_en.htm

[26] Creative Content in a European Digital Single Market: Challenges for the Future. A Reflection Document of DG INFSO and DG MARKT (22 October 2009). http://ec.europa.eu/avpolicy/docs/other_actions/col_2009/reflection_paper.pdf

a number of authors' associations, publishers and commercial users pointed out that further reflection on measures focusing on the governance and transparency of CS would be useful. Consumers' associations deemed that regulatory intervention, for instance by means of a framework directive, was required.

On 23 April 2010, the Commission organised a public hearing on the governance of collective rights management in the EU,[27] attended by almost 300 stakeholders. The aim of the hearing was to explore how the relationships between copyright owners, CS and commercial users of copyright had evolved over time. In December 2010 the European Commission launched a closed consultation, targeted at the European CS, in order to collect further data for this IA. Numerous bilateral meetings with different stakeholders were organised between March 2010 and December 2011.[28] These consultations confirmed the need to improve the G&T of CS and to set a framework that facilitates the online licensing of musical works.

DG MARKT has closely cooperated with other DGs: between May 2010 and February 2012 DG MARKT organised seven inter-service steering group meetings, with the participation of the following DGs: COMP, EAC, ENTR, INFSO, LS, SANCO, SG and TRADE.

The Impact Assessment Board examined the IA and in its opinion of 16 March 2012 asked for the submission of a revised version of the report. Further to the Board's opinion, the following main changes have been made to this IA: the context of the addressed problems and the scope of the initiative were clarified (including the link between the two problem areas), the assessment of the need for EU action was improved (incl. by an improved Annex L on the evaluation of the 2005 Recommendation and self-regulatory approaches), the baseline scenario and the presentation of options were clarified and the analysis of their impacts strengthened, stakeholders' views have been presented more extensively throughout the IA and a glossary was added. On 22 May 2012 the Board issued a positive opinion. On the basis of the opinion, the IA report has been further improved. In particular, the IA now better explains the relative importance of the discussed issues in addressing the fragmentation of the market; it further clarifies the option on the European Licensing Passport and its impacts, adds more details on stakeholder views and MS experience.

2. BACKGROUND

2.1. Collective rights management

The holder of a copyright or a related right (the rightholder) is generally in a position to choose how to exploit his or her right (see Box 1). In particular, the rightholder may opt for **collective management** or for **individual management**. The choice varies depending on the category of rightholder and the nature of the use.[29]

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27 See http://ec.europa.eu/internal_market/copyright/management/management_en.htm#hearing and Annex A.

28 See Annex B for a summary of the main stakeholders' views.

29 **Authors** of musical works (composers, lyricists) have traditionally relied on the management of their rights by collecting societies. The picture is different for authors in other sectors (e.g. authors of literary works or of audiovisual works) where direct licensing (by the publisher, by the film producer) is predominant. This is partly because of high cost of monitoring uses of musical works (e.g. public performance in restaurants, discos, etc.). The situation also varies amongst **holders of related rights**. For instance, performers and phonogram producers tend to rely on collective management as far as their remuneration rights (notably for broadcasting and other forms of communication to the public) are

Box 1 - Economic rights of copyright and related rights

Copyright is vested in authors whereas **related rights** are vested in performers, phonogram (i.e. record) and film producers as well as broadcasting organisations. Copyright and related rights include so-called "**economic rights**" which enable rightholders to control (license) the use of their works and other protected subject matter (i.e. performances, phonograms, audiovisual productions and broadcasts) and to be remunerated for their use. These rights normally take the form of **exclusive rights** (e.g. the right to authorise the distribution of copies of a book). They can be managed directly by the original rightholder (e.g. the author of a book) or by those to whom the rights have been transferred (e.g. a book publisher). They can also be managed collectively by a CS if the society is entrusted to do so by the rightholder. For certain forms of exploitation (normally secondary forms of exploitation), rights can be subject to a "**compulsory licence**"[30] or simply take the form of a "**remuneration right**".[31]

Economic rights[32] include rights to reproduce and distribute works and other protected subject matter (e.g. in the form of books, DVDs, etc.), and rights to publicly perform/communicate to the public works and other protected subject matter (e.g. the public performance of a musical work in a concert or of a record in a bar, the broadcast of a film, etc.). With the advent of digital networks and forms of distribution, rightholders have also been accorded the "making available" right to cover internet uses such as downloads, streams, etc.

Collective management is generally carried out by **collecting societies**, which are organisations traditionally set up by rightholders at national level to collectively manage their rights (see Box 2).[33] Collecting societies play a valuable role in facilitating licensing of copyright and related rights and lowering transaction costs. Notably, they allow commercial users to clear rights for a large number of works,[34] in circumstances where individual negotiations with individual creators would be impractical and entail prohibitive transaction costs.[35] They allow rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.

Collective management has traditionally been regulated to a greater or lesser extent under the national law of each MS. There are significant differences in how MS address the activities of CS.[36] In some MS, the recent failures in the activities of some CS[37] have triggered renewed attention, in particular as regards their transparency, governance and the handling of

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concerned, but less so for their exclusive rights where direct licensing by the producer, including of the performers' rights transferred to the producer, is predominant. Audiovisual producers resort to collective management even less (mostly for the licensing of cable retransmission rights). Broadcasters hardly use it (as far as the management of their own rights is concerned).

30 Under a compulsory licence, the owner of the rights cannot oppose the granting of a licence.

31 A remuneration right entitles the owner only to collect remuneration from certain uses.

32 The content of these rights is defined Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p.10 and in Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 376, 27.12.2006, p. 28.

33 Each CS traditionally operates in its own national territory and licenses national users. Its members (those who directly entrust their rights to the CS) are predominantly national rightholders. Generally, a CS can only license the rights for which it has been given the authority (or mandate) to do so.

34 E.g. the music streaming service Spotify has a catalogue of 16 million songs; a single song can have 4-10 rightholders.

35 One example would be the management of rights related to the public performance of musical works and phonograms. Another would be the management of the compensation for acts of reprography (e.g. photocopies) and private copies. Other rights which are often collectively managed include the rental right, the public lending right, the artists' resale right as well as the cable retransmission right.

36 Some MS only set out very general principles and leave significant freedom to CS and their members to set out their detailed conditions of operation. Other MS prescribe more detailed rules e.g. regarding the legal form of CS, their accounting policies, the supervision they are subject to, etc. See Annex L.

37 See Chapter 3.

remuneration collected on behalf of rightholders.[38] The existing EU legal framework is showing its limitations in addressing these issues: various Directives[39] contain references to management by CS but do not address the conditions of functioning of CS as such, principles stemming from Commission competition decisions are not uniformly applied,[40] the take up of the Commission Recommendation on collective cross-border management of copyright and related rights for legitimate online music services (the "**2005 Recommendation**")[41] has been unsatisfactory[42] and the impact of the 2006 Directive on services in the internal market (the "**Services Directive**")[43] on CS, though positive, has so far been limited.

Box 2 – Collecting societies

CS **aggregate one or more of the rights of one or more categories of rightholders notably for licensing purposes**, i.e. to grant licences to commercial users on behalf of rightholders. They also provide services such as auditing and monitoring the use of rights and collecting and distributing royalties. They provide services to rightholders, to users and to other CS. CS are historically established on a national basis: in most EU MS there are several CS representing different rightholders and, sometimes, different rights. The sum of the rights of all rightholders it represents directly constitutes the society's own **repertoire**, which is often limited to domestic works. However, CS in different countries traditionally grant each other the right to license their respective repertoires through a network of **"reciprocal representation agreements"**. This way a CS can license its own repertoire and the repertoire of other CS.[44]

They are formed under different **legal forms**: some are limited liability companies (e.g. PRS in the UK), limited liability collective companies (SABAM in BE) or *société civile à capital variable* (e.g. SACEM in FR) but others may be not-for-profit associations (e.g. SGAE in ES, BUMA in the NL) or foundations (e.g. STEMRA in the NL) or even *ad hoc* legal forms explicitly created under national law (e.g. SIAE in IT is an *ente pubblico economico a base associativa*). In some MS CS are under the supervision of ministries or other authorities.[45] There are also important differences between CS as to the amount of funds they manage and the number of employees they employ.[46]

In general (but not always), there is only one CS representing all or some of the rights of a category of rightholders in a given territory. As a result, CS have often been considered by competition authorities, whether the Commission or national competition authorities, as holding a dominant position within their respective product and geographical markets.[47]

[38] Some MS adopted new legislation addressing G&T of CS. For details see Annex L.

[39] See Glossary.

[40] See Annex C and Section 3.1.

[41] Commission Recommendation 2005/737/EC on collective cross-border management of copyright and related rights for legitimate online music services (OJ L 276/54, 21.10.2005).

[42] See Annex L.

[43] Directive 2006/123/EC of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36. The implementation of the Services Directive, and in particular of articles 9 to 15, has led to improvements to the legal framework applied to CS in a number of MS. Some MS that required authorisation for the establishment of collective rights managers have amended the criteria for authorisation and related procedures in order to comply with the Services Directive. Discriminatory requirements have been eliminated, criteria have been clarified and procedures have been simplified. As for MS' requirements with respect to the cross-border provision of collective rights management services (to comply with Article 16 of the Services Directive, MS may no longer impose a prior authorisation, let alone an establishment requirement, on collective rights managers legally established in other MS and wanting to provide services into their territory) there is still room for improvement.

[44] In particular, as regards off-line uses, this licence is usually limited to uses in its own territory ("**territorial licensing**") although there are important exceptions to this principle, e.g. as regards the licensing of so-called mechanical rights (see Box 3) by authors' CS to record producers.

[45] See Annex L.

[46] See Annex F.

[47] E.g. Case 395/87, *Ministère public v Jean-Louis Tournier*; Joined cases 110/88, 241/88 and 242/88, *François Lucazeau and others v SACEM and others*.

In terms of the **contestability of markets**, in the **offline** environment there is no real prospect of competition for services in a particular territory due to the need to monitor and enforce rights in physical premises (e.g. discos, bars). This creates high entry barriers (sufficient number of represented rightholders is required to spread costs). On the contrary, in the **online** world the contestability of the market is realistic. CS can compete as they can license they own repertoire in their territory of another CS and carry out monitoring by electronic means. Consequently, rightholders can exercise their right to choose the better performing CS.

Economic dimension of collective management[48]: collecting societies collected around € 6.1 billion in the EU in 2009.[49] The vast majority of this income fell to the 101 European CS managing authors' rights (for over one million authors) and most of this income is derived from musical creations (83% in the case of authors societies).

2.2. Collective rights management of rights in musical works for online use

The **online environment** has brought changes to copyright licensing. One change is that online services are not limited by national borders and can reach over to consumers in other MS. Licences for online services can also be granted and monitored at a distance. In many sectors, MT licensing of online rights is carried out directly by rightholders, or those to which the rights have been transferred, without the intervention of CS (direct MT licensing).[50] In other sectors, the MT licensing of online rights is done collectively.[51]

Box 3 – The rights required for online use of musical works: mechanical and performing rights

The online exploitation of recorded music, films and other audiovisual works, video games, catch-up TV and radio, etc. requires normally the licensing of the authors' rights in musical works. This involves a combination of two exclusive rights:

(1) the right to authorise the reproduction of the musical work (as such work must be stored prior to its communication in a computer memory and, in the case of services such as "download services", a "copy" is kept by the end user) – the so called **mechanical rights** and

(2) the right to authorise making available to the public of the musical work (as such work is made available on the website and accessed by end users) – part of the so called **performing rights**.

In the case of physical distribution of music (e.g. CDs) rights are centralised in the record producers.[52] The situation is different as regards online exploitation of recorded music (e.g. downloads) where authors do not license the rights to the record producer any longer but

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48 See Annex F.

49 *Ibid*. table F.8.1; the overall value of European copyright industries is estimated at €400 billion (cf. European Competitiveness Report 2010 and Eurostat).

50 For instance, record producers licence their rights directly for most online services. The same applies in the case of film producers, book publishers, journal and magazine publishers or games publishers.

51 For instance, societies active in visual art and photography have pooled or combined their repertoire and each local society has the authority to license the repertoire on a multi-territorial basis to any user. Record producers' societies have also organised the licensing of simulcasting (unaltered and simultaneous online retransmission of a TV or radio broadcast) and webcasting (certain types of non-interactive online streaming) services, as well as the rights for certain forms of on-demand streaming of phonograms (namely catch-up TV and radio) in a similar manner. Multi-territory licensing has also developed successfully in the reprography sector and in respect of access to educational material in so-called "virtual learning environments" which extend to foreign-based students.

52 The producer obtains the required mechanical reproduction right directly from the performers and via a EU based CS from the authors and publishers. This is done through a "central licensing agreement" (CLA) between a record producer and a EU CS. Under this type of agreements the producer obtains an EEA-wide multi-territory licence from a EU society of its choice. Note that, of course, there is no need to clear the performing right for physical distribution.

directly to the online service provider (e.g. iTunes). This is largely done by the CS representing the authors of musical works. Thus, authors **CSs have become key players in the licensing of online services**.

The development of MT licensing of online music rights by authors' societies is still on-going and seems to be evolving in a different manner than the MT licensing of online rights for other rightholders or in other sectors. This is partly because other sectors and rightholders rely far less on collective management for the licensing of online rights and partly because of the manner in which the management of rights in musical works has evolved in Europe.

The emergence of online music services created a challenge to CS which had traditionally granted only territorial licences for their own/domestic repertoire and for the repertoire managed on the basis of reciprocal representation agreements.[53] Adapting to the new market requirements has proven to be difficult for CS in terms of the required data identification, management capability and the aggregation of repertoire. The necessary improvements are often hindered by rightholders' insufficient influence over the decisions (costs, stakes and investments) taken by the CS (problems with G&T) and the lack of technological means.[54]

This was one of the reasons for the specific development which occurred since the mid-2000's whereby a number of music publishers withdrew from CS the management of those parts of the rights for online use of musical works that they control and began to license them directly through designated agents or selected CS. As a result, a number of **new licensing platforms** (collecting societies and publisher agents) have been created to provide MT licences.[55] Some CS also started to grant MT licences in their own repertoire to online users. While this has improved the possibilities for users to obtain MT licences, it has also led to a fragmentation of the repertoire (parts now in the hands of the CS and parts in the hands of the music publishers or their agents).

Box 4 – Anglo-American repertoire and Continental repertoire / Split copyrights

There are important differences in how rights in musical works (whether offline or online) are managed between the UK and Ireland (as well as in the US - the so-called **Anglo-American repertoire**) and the rest of the EU (the so-called **Continental repertoire**):

In the UK, Ireland (and the US), generally authors of musical works assign their mechanical rights to music publishers[56] and their performing rights to performing rights CS. This means that publishers have the

[53] These mono-territory, multi-repertoire licences are sufficient for "offline" uses (by broadcasters, cinemas, discotheques, bars, etc.). It should be also noted that the Commission Decision of 16 July 2008 (COMP/C2/38.698) in the CISAC case ordered the collecting societies being parties to the case to withdraw the provisions conferring territorial exclusivity from their reciprocal representation agreements.

[54] See Chapter 3.

[55] Such as CELAS for the licensing of rights in the EMI publishing catalogue, or PAECOL for the licensing of rights in the SONY ATV catalogue; see Annex K, table K.2. and Annex L.

[56] A music publisher markets musical works and provides authors with a number of other services. Publishers usually track various royalty payments, monitor uses and licence certain uses on behalf of authors. They often pay the author an advance on royalties and promote the work, e.g. by creating "demo" recordings or finding performers and record producers which might be interested in the work. In return, publishers obtain a share of royalties from certain rights e.g. from the right of communication to the public, and/or a transfer of certain rights e.g. mechanical rights (see Annex J, table J.3, for an illustration of the revenue streams of publishers).

mechanical rights in the Anglo-American repertoire.[57] Performing rights are managed by CS who enter into reciprocal representation agreements with CS in other MS.

In the rest of the EU, generally authors assign both mechanical and performing rights to CS while providing publishers with the right to a part of the royalties due to them.[58] CS enter into reciprocal representation agreements, on the basis of which their repertoire is represented in other national markets by other CS.

Additional complexity is added by the issue of **split-copyrights:** many musical works are co-written, meaning that in many cases there will be more than one author, each of whom has rights; these authors may have transferred their rights to different publishers and/or mandated the administration of their rights to different CS. Thus, clearing the rights to use one work may require several licences.

As a result, for the online exploitation of musical works, service providers need to obtain licences from a number of different licensors:

(1) Some CS which grant licences for their own repertoire on a multi-territory basis;

(2) Music publishers or their licensing agents which grant licences for the publisher's Anglo-American repertoire on a multi-territory basis;

(3) CS which grant multi-repertoire licences for their own territory (these are needed to acquire all the remaining rights that have not been licensed via the MT licences described in (1) and (2)).

Besides the licensing of rights in musical works, service providers also need to get licences from producers (record producers, audiovisual producers) who typically license their rights directly[59] (normally along with the rights of performers that have been transferred to the producer) without relying on CS and often on a multi-territory basis.

3. PROBLEM DEFINITION

The IA identifies two layers of problems related to the collective management of rights: problems as regards the functioning of collecting societies (first layer) in general (whatever the category of rightholders they represent or the category of rights they manage) and problems specific to the supply of multi-territory licences for the online exploitation of musical works (second layer).

The two problems are **interlinked**. It is explained in this Chapter that in many cases rightholders do not have efficient means to control the management of their CS, including the decisions taken as regards licensing or the distribution of royalties. As indicated in Box 2, in the online environment, in theory, the possibility of rightholders to choose the best CS could lead to competition between CS. This choice however can only be effective if a) rightholders have a real choice (i.e. there is no barrier created by law or the societies' practices), b) they have access to sufficient information on the key performance indicators of the CS and c) they

[57] In the case of the Anglo repertoire these rights are licensed through an exclusive agent MCPS owned by the Music Publishers' Association. MCPS could enter into reciprocal representation agreements with other CS in order to entrust the management of publishers' mechanical rights but normally this does not happen and publishers appoint local sub-publishers which become members of local CS and authorise the management of mechanical rights to them directly.

[58] Since publishers are often members of CS the share of the royalty is often directly allocated to them by CS. Some publishers appoint local sub-publishers to collect the share of the royalty for them locally directly from the distributing collecting society.

[59] Though see above in Chapter 2 for examples of collective management of rights of record producers.

can exercise control over the management's strategic decisions, in particular whether they engage in multi-territory licensing and whether this is done in a cost-effective manner. Therefore, the problems related to MT licensing (subject to the restrictions explained in the Introduction) derive, to a large extent, from the inability of rightholders to access information and exercise real control over the CS. G&T layer is required for addressing these problems of MT licensing. But MT licensing is also affected by problems of a different nature such as invoicing and data processing. These require measures going beyond G&T. Whilst the problems related to the G&T of CS have a broader scope, the second layer of problems cannot be solved without addressing the first one. The identified problems are summarised in the following **problem tree**.

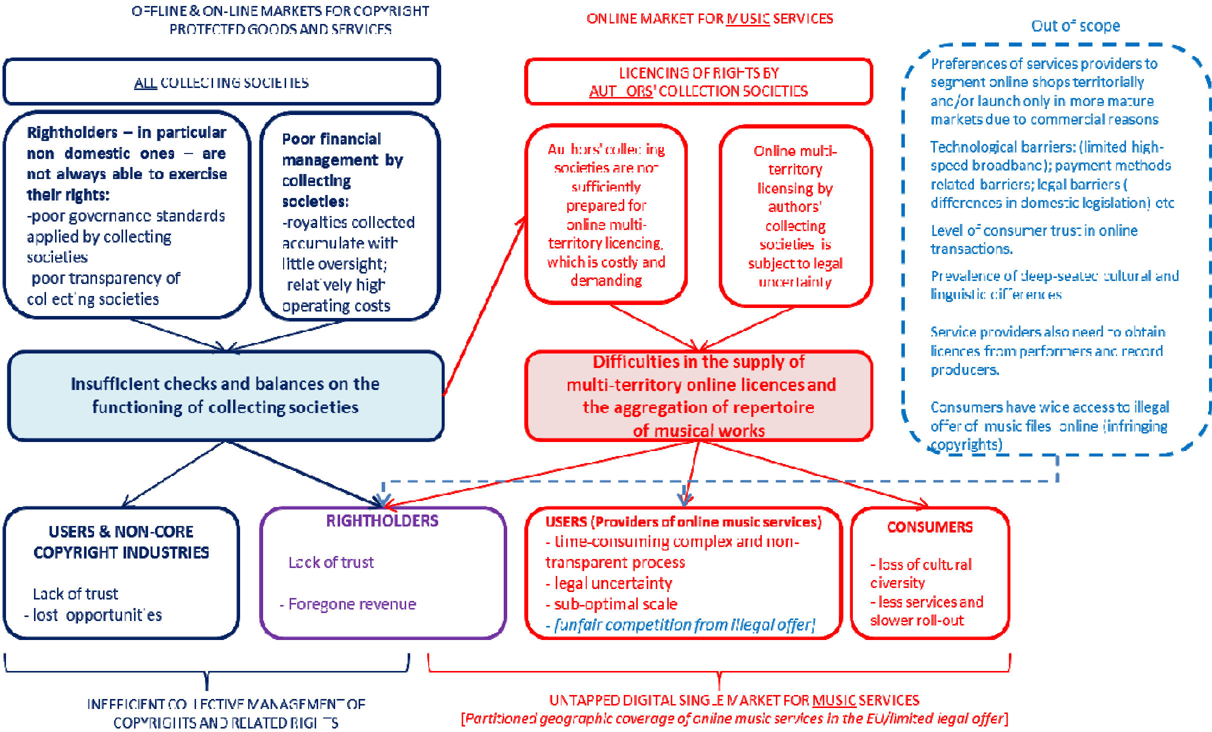

Table 1: Problem tree

3.1. Insufficient checks and balances on the functioning of collecting societies

3.1.1. __Problem 1:__ Rightholders – in particular non-domestic ones – are not always able to exercise their rights, notably because of poor governance and transparency standards applied by collecting societies

Collecting societies are often composed of several thousand members, able to exercise voting rights[60] in general meetings to which managers and boards governing the operations of the societies are accountable. Membership of CS, to date, remains largely national. Foreign direct membership accounts for approximately 10% of the membership of CS.[61]

60 Except as regards CS whose members are other CS or associations representing rightholders, rather than individual rightholders. For instance, this is the case with regard to some reprography rights societies.

61 For instance, in societies such as PRS for Music, SACEM, SIAE, STIM or SABAM, members which are not nationals of or domiciled in the same MS as their collecting society amount to 7%, 11%, 10%, 10% and 10% of membership respectively.

At the same time, **a significant share of collecting societies' turnover derives from non-domestic works.** A sample of 10 major authors' CS in the EU shows[62] that out of € 2.5 billion collected, € 210 million were paid to other societies: roughly 8% of all collections. If the picture is taken at the level of one country, 6.1% of the royalties received by the eight active Spanish CS in 2007 (€ 518.9 million) was collected abroad and 12.3% total revenue distributed amongst rightholders (€ 413.7 million) was assigned to members of CS from other countries.[63] These flows between CS do not take into account the entirety of the cross-border dimension, as some important foreign rightholders collect income directly from domestic societies (e.g. music publishers via sub-publishers, major record companies via their local affiliates).[64] The cross-border dimension is particularly important in the music sector; a recent study shows that the share of local repertoires in music downloads is 15% in DE, 17% in PL, 23% in NL, 28% in FR, 30% in ES and 45% in SE.[65]

The G&T of each CS is paramount not only to its members but also to foreign rightholders whose rights are, directly or indirectly, managed by that CS. Accordingly, and similarly to the situation for any legal entity with large membership, the rules on G&T could (and should) play a role in safeguarding the interests of all rightholders whose rights a CS manages as well as in alleviating the asymmetry of information of commercial partners who are facing the important market (quasi-monopoly) power that most CS enjoy within their domestic markets.

However, this is not happening in all cases. Currently, there are no EU G&T rules which apply to CS as such; although some of them, if incorporated as limited liability companies, will be subject to EU harmonised company law rules on certain transparency requirements,[66] on capital formation[67] and on disclosure of financial statements.[68] As a result, the G&T rules applied from CS result from (different) national rules,[69] self-regulation either by the society itself (e.g. statutes)[70] or through associations,[71] decisions of competition authorities (including

62 See Annex G. Data of 2010 and for 3 societies of 2008.

63 The difference between the royalties collected and the revenue distributed was assigned to administration costs (€ 73.3 million) and to expenditures on assistance, promotion and training for societies members (€ 35.2 million). See Comisión Nacional de la Competencia (CNC), *Report on the collective management of intellectual property rights*, December 2009, http://www.cncompetencia.es/Default.aspx?TabId=228, §§56, 59 and 60.

64 E.g. in the case of GEMA, approx. € 101 million non-domestic income was paid to sub-publishers compared to € 105 million paid to non-domestic societies (2009). The figures are € 100 million vs. € 99 million in 2010. See in Annex G.

65 See E. Legrand, Monitoring the cross-border circulation of European music repertoire within the European Union, Report commissioned by EMO & Eurosonic Noordeslag, in partnership with Nielsen, January 2012.

66 Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent, OJ L 258, 1.10.2009, p. 11.

67 Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent, OJ L 26, 31.1.1977, p. 1.

68 Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978, p. 11; and Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts, OJ L 193, 18.7.1983, p. 1.

69 See in Annex L.

70 Statutes of many CS have transparency rules.

the European Commission), case-law (including from the Court of Justice of the EU) or soft-law (e.g. 2005 Recommendation)[72]. A number of MS have intervened in recent years via legislation to address problems relating to the functioning of collective management.[73] **There is however evidence that national rules and/or self-regulatory efforts are not effective in securing that important principles of governance and transparency are uniformly or properly applied across the EU.**[74]

Box 5 – Cases of insufficient governance and transparency standards

Firstly, certain rightholders are unable to properly exercise their rights:

- the principle of rightholder choice[75] is not always available from some collecting societies,[76] or is difficult to exercise;[77]
- there are still occurrences of discrimination between voting members of societies and other rightholders;[78]
- some music and book publishers claim that they cannot become members of some CS which administer their rights,[79] or that their role in the decision-making of some societies is curtailed.[80] In the case

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71 There are several initiatives regarding the CS managing music rights. See for instance: Common Declaration of 7 July 2006 on Governance in collective Management Societies and on Management of Online Rights in Music Works, issued by the International Confederation of Music Publishers (ICMP) and the European Grouping of Societies of Authors and Composers (GESAC), (http://www.gesac.org/eng/positions/download/ICMPGESACDeclaration_final_EN_070706.pdf); CISAC professional rules for musical societies (http://www.cisac.org/CisacPortal/cisacDownloadFile.do?docId=18258); IMPALA code of conduct for record company collecting societies (http://www.impalamusic.org/FINAL%20IMPALA%20Code%20of%20Conduct%20for%20Collecting%20Societies.pdf); IFPI Code of Conduct for music industry Music Licensing Companies; PRS for Music Code of practice (http://www.prsformusic.com/users/businessesandliveevents/codeofpractice/Pages/default.aspx). Another initiative concerns the reprography societies: IFRRO code of conduct (http://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations). At the national level, in the UK, work on a code of conduct for collecting societies is carried out under the auspices of the British Copyright Council. Internationally, a voluntary code of conduct for CS is also in operation in Australia (http://www.copyright.com.au/assets/documents/CodeFinal2008.pdf).

72 See Annex C for a description of general principles of G&T applicable to CS which stem from Commission decisions in the anti-trust field, judgments of the ECJ and the 2005 Recommendation.

73 In France, Law n°2006-961 of 1 August 2006; in Belgium, Law of 10 December 2009, amending, to the extent the status and the control of collecting societies is concerned, Law of 30 June 1994 (MB 23/12/09); in Poland, Law of 8 July 2010, Amending the law on copyright and related rights OJ 152 (2010) item 1016. In Hungary, Act 173 of 2011 amending certain laws relating to intellectual property (adopted on 5th December 2011). In Italy, Article 39 of Law-decree 24.1.2012, n. 1 on "Urgent provisions for competition, the development of infrastructures and competitiveness" (OJ n.19 of 24 January 2012). There are also forthcoming initiatives: in the Netherlands, proposed amendments to the Dutch Act of 6 March 2003 on the supervision of collective management organisations administering copyrights and related rights; in Germany, the Ministry of Justice has held hearings on the transparency of CS in the context of the preparation of the so-called "third basket" of copyright reforms.

74 See Annex L on the evaluation of the Recommendation & MS experience.

75 Members should be free to decide which category of rights to entrust to a CS, for which territories and to which CS. Cf. Commission Recommendation 2005/737 and Commission antitrust decisions, *cit.* in Annex C.

76 See Commission Decision of 22 May 2007 in Case No COMP/M4404 – Universal/BMG Music Publishing, §§172 and seq.

77 E.g. in Spain, see the national competition authority's Report (December 2009), §§148 and seq, also noting the excessive length of mandates and notice periods for withdrawing rights, §§141 and seq.

78 E.g. see decision 200 of 8 April 2011 of the Slovenian Competition Protection Office against the Slovenian Society of Composers, Authors and Publishers for Copyright Protection (SAZAS). Also, it seems that, at least until recently, there were still cases where some societies did not accept foreign rightholders as members.

of music publishers, this happens despite the fact that self-regulation[81] foresaw that membership in CS should be open to all music publishers, that publishers would be appropriately represented in the general meetings of the societies and that they would eligible to seat in the boards of the societies, where one third of the seats would be reserved for them;[82]

- some reciprocal agreements between CS seem to contain exclusivity clauses, despite the fact that the Commission's CISAC decision stated that antitrust rules prevent CS from doing so.[83]

Secondly, rightholders do not have access to basic financial information on CS:

- out of 27 major national CS, six do not make annual reports available online; eight do not have any financial statements available online and five only have incomplete or simplified financial statements online. In practice, this means that rightholders cannot obtain a verifiable indication of the income that 13 out of 27 CS have distributed in a year;[84]
- furthermore, essential benchmarks for the performance of societies (other than administration costs) are often not available from annual reporting documents: for several major societies information on how royalties are collected, the amount of royalties distributed in the year, the time taken to distribute royalties or the proportion of royalties which remain undistributed after a number of years, is not available;
- matters are often more complex when looking for and finding information on cross-border royalty flows. Very few collecting societies provide an indication of how much is collected abroad, from which societies, and how much is remitted abroad.[85]

Thirdly, some practices have the effect of discriminating foreign rightholders (non-members):

- some societies apply additional deductions (the so-called social and cultural "CISAC deductions") only with respect to distributions to foreign CS and not to their own members;[86]
- other societies place additional burdens on non-domestic rightholders or apply distribution rules which are not favourable to non-domestic rightholders.[87]

A majority of stakeholders (creators, music publishers, commercial users, consumers) share the belief that "no action" is not a solution and calls for improved G&T standards for CS. CS, however, generally argue that self-regulation would be enough to implement high standards of G&T.

The effective governance of CS should guarantee that rightholders are in a position to ensure that the society is effectively acting in their interests and, as some consulted rightholders' representatives have stressed, to control and improve their CS. However, if rightholders are not able to exercise their rights and/or are not fully informed of the activities and state of a CS, they cannot exercise meaningful control over the activities of that CS. This control is even harder to exercise for foreign rightholders, in particular where there is little clarity on cross-border flows and deductions.[88] It could be argued that rightholders have little incentives to incur the costs of monitoring and controlling management of CS anyway, given the wide

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79 It is reported that in some authors CS (e.g. in EL, PL), music publishers are not allowed to be members of the societies.

80 It is reported that in some authors CS (e.g. in LT, RO, SI), there are no representation of music publishers in the boards.

81 See ICMP/GESAC Common Declaration of 7 July 2006, *cit. supra*.

82 A number of authors CS are reported as failing to comply with the one third rule (e.g. in BG, IT, LV).

83 E.g. in Spain, see the national competition authority's Report (December 2009), §135.

84 See in Annex H.

85 See Annex G.

86 E.g. see the 4th Annual Report of the Commission Permanente de Contrôle des SPRD(2007), p. 193.

87 I.e. some societies' distribution processes put foreign rightholders at a disadvantage to claim their rights. For instance there have been cases where the distribution was based on the salaries received by the rightholders in the country of the collecting society in the previous year.

88 E.g. see 4th Annual Report of the Commission Permanente de Contrôle des SPRD (2007), p. 189.

dispersed membership of those CS, in particular the largest ones.[89] From this perspective, the situation would be similar to the agency problem in listed companies with dispersed ownership,[90] where there may be shareholders with particular strength who have the capacity and interest to monitor the activities of societies.[91] Also, **CS having entrusted other societies the representation of their repertoire are likely to have incentives to monitor such societies, in particular when their repertoire has an important value cross-border.**

*3.1.2. **Problem 2:** Poor financial management: royalties collected by societies on behalf of rightholders accumulate, pending distribution, with little oversight*

Poor governance standards and little transparency necessarily have knock-on effects on the operation of CS. This is notably shown by the poor financial management of some CS.

CS collect money on behalf of rightholders before they distribute it, generating a positive cash flow. Thus, royalties collective management implies the collection and handling of large sums of money on behalf of rightholders. However, **in some cases, these sums accumulate, pending distribution, with little oversight and their handling can be poor**.

Box 6 – Poor handling of collected royalties

It often takes a significant amount of time to distribute collected income to rightholders, so funds accumulate within the societies. For those societies that provide such information,[92] from 27% to 45% of collections are distributed in the year of collection. Overall, between 5 and 10% of collections are not distributed to rightholders for as many as three years after they were collected – a delay which is significant.[93] This leads to a gap between what societies collect in a given year and how much they can distribute from those amounts in the same year. This means that substantial amounts of money are kept by societies pending distribution. Thus, e.g. in 2010 major societies had accumulated € 3.6 billions worth of liabilities to rightholders and were managing € 3.7 billions' worth of available funds.[94]

Also, funds pending distribution are not always appropriately managed:

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89 19 of the 21 largest collecting societies in the EU, managing income in excess of €50 million/year each in 2010, had between 18559 members (for AKM, in AT) and 431362 members (for VG Wort in DE), with many of them having over 50000 members.

90 It should be noted that EU legislation has largely relied on transparency obligations, rather than structural measures, in order to address the agency problem in listed companies. See for instance, Commission Staff Working Document, Impact Assessment on the Proportionality between Capital and Control in Listed Companies, 12.12.2007, SEC(2007)1705.

91 As stated by the Spanish competition authority, "*the growing degree of concentration of rights reduces [...] also affords holders a greater capacity to manage their rights. There are societies in which the degree of atomisation of the number of rightholders represented is low, such as, for example, musical works, where there are few rightholders, namely the major music publishers, that pool together large numbers of rights*." Cf. Comisión Nacional de la Competencia (CNC), *Report on the collective management of intellectual property rights*, December 2009, §76.

92 E.g. GEMA and SABAM.

93 For instance, citing data from another Spanish public agency, the Spanish competition authority explains that of the average annual income of the Spanish eight collecting societies for 2005-2007, 65.8 million euros (13.6%) was not assigned in the initial distribution. This percentage declines over time, as some rightholders are eventually found. Thus, the sums that wind up undistributed would approximately be 4% of the total sums collected. According to the Spanish competition authority, "*in any event, royalties paid by users and not distributed to any rightholder accumulate over time in very considerable sums*". See Comisión Nacional de la Competencia (CNC), *Report on the collective management of intellectual property rights*, December 2009, §61.

94 For authors' CS, on the basis of information available in published annual reports and annual accounts.

- often amounts accumulated by societies are invested pending distribution, generating significant revenues in interest, however, occasionally they may cause significant losses (which will ultimately be borne by rightholders);[95]
- the use of non-distributed income (and interest) is often not clear and varies from one society to another: for instance some societies use this income to fund their functioning[96] (a practice which could be seen as reducing the incentive to improve the efficient distribution of income to rightholders), thus giving an impression of low operating expenses,[97] while in others the money is re-distributed to rightholders. In some cases, it would seem that part of the income collected is never distributed.[98]

Members of CS are not necessarily aware of these activities or alerted to their risks. The handling of money collected but still owed to rightholders thus raises important issues regarding how and on what such funds should be used, who decides on their use and how they should be accounted for. The rules currently applicable to CS do not deal satisfactorily with these issues[99] and, as shown by Problem 1, managers of CS have no incentives to improve the situation.[100] This situation has led some creators' representatives to call for non-discriminatory distribution rules. Some rightholders' representatives and commercial users have asked for common and transparent accounting standards for CS in order to ensure the adequate flow and distribution of revenues. Finally, some commercial users have stressed that the rules on non-distributable income should be more tightly regulated.

3.1.3. Consequences

Collecting societies are service providers - they provide services to their members (and indirectly to non-member rightholders), to users and to other CS.[101] The insufficient checks and balances in the functioning of CS are, however, likely to result in underperforming CS. This impacts on rightholders in the first place. As showed above, these insufficient checks and balances may result in lower/late distribution of income. Thus it is particularly important that rightholders are now in a position to entrust the CS of their choice for the management of their rights and to influence the key decisions in the running of the CS.

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95 SIAE, *Rapporto annuale sulla gestione*, Esercizio 2008, p.74. - the Italian collecting society SIAE reported to have lost € 35.2 millions in 2008 following an investment into a debt instrument issued by Lehman Brothers.

96 See for instance the claims as regards SIAE, in Billboard, 28 November 2009, p.13: "*'Most collecting societies redistribute royalties rapidly,' says delegate Toni Verona, GM of Modena-based indie publisher/laber Alabianca. 'But SIAE often keeps the money for as long as 16 months. The interest the money gathers by sitting in the bank is used to finance the society's considerable running costs.*'"

97 E.g. see 7th Annual Report of the Commission Permanente de Contrôle des SPRD (2010), p. 29.

98 E.g. for Spain, see the national competition authority's Report (December 2009), §61.

99 See Annex L; few MS have rules in place, see e.g. art. 65 ter, § 3, and 65quater, § 3, of the Belgian law of 30 June 1994 on copyright and related rights (separation of accounts, rules on financial placements, information on income not distributed); article R. 321-6-1 of the French Intellectual Property Code (right of information of members on financial placements); proposed amendments to the Dutch Act of 6 March 2003 on the supervision of collective management organisations administering copyrights and related rights (no risk bearing placements).

100 For instance, a recent report from the French supervisor of collecting societies shows that in the period 2000 to 2010 management performance in the distribution of royalties has not improved, on the contrary. Non-allocated income ("*restes à affecter au 31.12*") increases over time in a similar fashion as revenues from the primary exploitation of rights ("*perceptions primaires*"). See *Synthèse du rapport annuel 2011*, Commission permanente de contrôle des sociétés de perception et de répartition des droits, Avril 2012, p. 8.

101 Usually to foreign CS but also to domestic ones: e.g. a CS may provide royalty collection services to other domestic CS.

Additionally, the insufficient checks and balances in the functioning of CS may result in lost (licensing) opportunities,[102] whether online or offline, for rightholders, users, and ultimately consumers. The effective governance of CS should also result in a large repertoire of EU rights being made available, by EU rightholders and through CS, for use to commercial users in all MS. Users, however, point out that insufficient transparency and accountability to rightholders leads to licensing processes which are slow, unpredictable and too costly[103]. Difficulties in licensing result in fewer or more expensive products and services reaching consumers. The existence of performing and efficient CS is of particular relevance as regards the licencing of rights for the use of musical works in the online environment, as shown in the next section. In the online environment – contrary to the offline world where markets are less contestable – CS may more easily be competing against each other in order to attract repertoire (i.e. provided that rightholders can effectively choose their CS, can make an informed choice and can effectively exercise control over the CS) and in the licencing market. This situation also leads to lost opportunities in so-called non-core copyright industries.[104]

3.2. Difficulties in the supply of multi-territory licences and the aggregation of the repertoire of the musical works

The online environment offers a wide range of opportunities to develop new and innovative services. In the music sector, on-line music services to consumers range from à la carte download to streaming services or cloud-based matching services; and from pay-per-download to subscription or advertising-funded services. These services often have a multi-territory reach or are launched in several territories at the same time. Another important feature of these services is that the current prevailing business model lies in being able to provide access to the widest possible repertoire of recorded music.

On-line distribution of music is becoming widespread. IFPI, the international federation of the recorded music industry estimates[105] that digital music revenues to record companies grew by 8% globally in 2011 to an estimated US$5.2 billion; that 3.6 billion downloads were purchased globally in 2011 (an increase of 17%); and that digital channels now account for an estimated 32% of record company revenues globally.[106] Some markets see now more than half of their revenues derive from digital channels: e.g. US (52%), South Korea (53%). But developments in the EU are slower: access to a wide range and types of music services on

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[102] This is not the only factor affecting lost licensing opportunities. But insufficient checks and balances in the functioning of CS imply that managers of CS have little incentives to improve the performance of the CS as long as the revenues of CS remain relatively stable.

[103] The Spanish competition authority points at the general problems affecting the negotiations mechanisms between users and collecting societies. Inter alia, it underlines that the Spanish intellectual property law "*fails to include transparency obligations regarding the repertoires or the ranges of rights actually managed by collecting societies, the administration costs, the sums not distributed to rightholders and the contracts they reach with individual users. This provokes problems of information that affect the equilibrium of the negotiation process. It also increases the cost of negotiating and, in short, the cost of obtaining licences, boosting aggregate costs for users and/or lengthening the business maturation periods, and introduces uncertainty, which can be especially harmful to the development of new markets and slow the pace of innovation.*" See Comisión Nacional de la Competencia (CNC), *Report on the collective management of intellectual property rights*, December 2009, §§179 and seq., in particular §183-184.

[104] See in the Introduction.

[105] IFPI, Digital Music Report 2012.

[106] Compared to 5% for newspapers, 4% for books and 1% for films. Only the gaming industry (42%) does it better. Cf. PWC Global Entertainment & Media Outlook, IFPI.

offer is unevenly spread across the EU.[107] There are more than 300 different online services in Europe, offering a digitised catalogue of more than 13 million tracks.[108] However, only one mainstream music service is available in 27 MS. In some MS, the vast majority of mainstream services are available while other MS (e.g. in Eastern Europe) are served by only a few major providers.

107 See also Annex D.

108 See the list in the IFPI report: the Online Music Market in Europe— New Business Models and Consumer Choicehttp://www.ifpi.org/content/library/The_Online_Music_Market_in_Europe.pdf

	iTunes	7 digital	eMusic	Deezer	Nokia Music	Vodafone	YouTube	Last FM	Sony Music Unlimited	Spotify	Orange	Jamba	MySpace	Zune	Amazon MP3	WimP	Napster	Total
MT	■	■	■															3
LU	■	■	■															3
CY	■	■	■															3
SI	■	■	■															3
HU	■	■				■												3
EE	■	■	■	■														4
LV	■	■	■	■														4
LT	■	■	■	■														4
BG	■	■	■						■									4
EL	■	■	■			■												4
RO	■	■				■					■							4
DK	■		■	■					■	■						■		6
SK	■	■	■		■		■				■							6
CZ	■	■	■		■	■	■											6
FI	■	■	■	■	■				■	■								7
PT	■	■	■	■	■	■						■						7
BE	■	■	■	■	■		■			■		■						8
PL	■	■	■		■		■	■			■		■					8
SE	■	■	■	■	■			■	■	■			■			■		10
IE	■	■	■	■	■	■	■	■	■				■					10
NL	■	■	■	■	■	■	■	■		■		■						10
IT	■	■	■	■	■	■	■	■	■			■						10
FR	■	■	■	■	■		■	■	■	■	■	■			■			12
DE	■	■	■	■	■	■		■	■	■		■		■	■		■	13
AT	■	■	■	■	■		■	■		■	■	■	■	■	■			13
ES	■	■	■	■	■	■	■	■	■	■	■	■	■	■				14
UK	■	■	■	■	■	■	■	■	■	■	■		■	■	■		■	15
Total	27	26	25	16	15	11	11	10	10	10	7	8	6	4	4	2	2	

Table 2. Availability of online services in EU MS (January 2012, source: pro-music.org).

A number of factors contribute to the territorial fragmentation of online music offerings. Complex copyright licensing processes are not the only reason for the fragmentation of the online market,but they play a part in it. Other reasons include technological barriers (limited access to high-speed networks), lack of legal certainty for service providers (differences in legislation in areas such as consumer protection or content rating), payment methods (access to credit cards), consumer trust in online transactions, illegal downloading of files (piracy) and cultural and linguistic differences. Finally, service providers sometimes take decisions to segment shops territorially and/or launch only in the more mature markets (e.g. with higher consumer online spend) due to purely commercial reasons such as, in the case of advertisement-funded services, the differences between national advertising markets.[109] Whilst it appears difficult to quantify the relative importance of each of the different factors for such fragmentation, there is evidence (see for instance section 3.2.3) suggesting that complex copyright licensing processes are an important factor contributing to such fragmentation, not least because without securing a licence it is illegal to provide a service.[110]

[109] Advertisements are targeted at local and national audiences. Service providers cannot raise revenue in e.g. Greece on the basis of advertisements destined e.g. for the Swedish market.

[110] One could argue that the limited cross-border demand for certain repertoires could be a factor contributing to the fragmentation of markets. However, this factor seems to be of a lesser importance. Major operators try to secure the possibility of providing as wide as repertoire as possible to their online

As explained before, users usually need to secure MT licences in the aggregate repertoire, in order to launch online music services. Obtaining licenses from individual rightholders (e.g. record producers) does not seem to pose particular problems, and neither does licensing practices by publishers as these rightholders usually hold rights for all concerned territories and thus they are easily able to provide MT licenses. This is however not the case for authors' rights where, as explained above, the rights managed by the CS show a more complex picture. Currently, **the licensing of author's rights for the online use of musical works, notably obtaining coverage for the entire repertoire ("aggregation"), is proving difficult, cumbersome and costly** for commercial users, as it was also highlighted in stakeholder consultations. Even though the offer of online services involving the use of musical works has become wider in the recent years (as is shown by Table 2 above) the costs of the process of clearing authors' rights for the online use of musical works remain relatively high for the majority of users (in particular small ones and new entrants). Only few major providers can afford multiple, parallel and legally challenging negotiations. There seems to be no immediate perspective for a spontaneous, market-driven resolution of this problem.

It is also important to highlight the relation between this problem and the problems on G&T in CS, in particular the difficulties rightholders have to face in exercising their rights in a CS. Table 3 illustrates that the lack of efficient online MT licensing results in an important loss of income for rightholders. One may well assume that if they had better ability to improve the conditions of online MT licensing in their CS, they would do so.

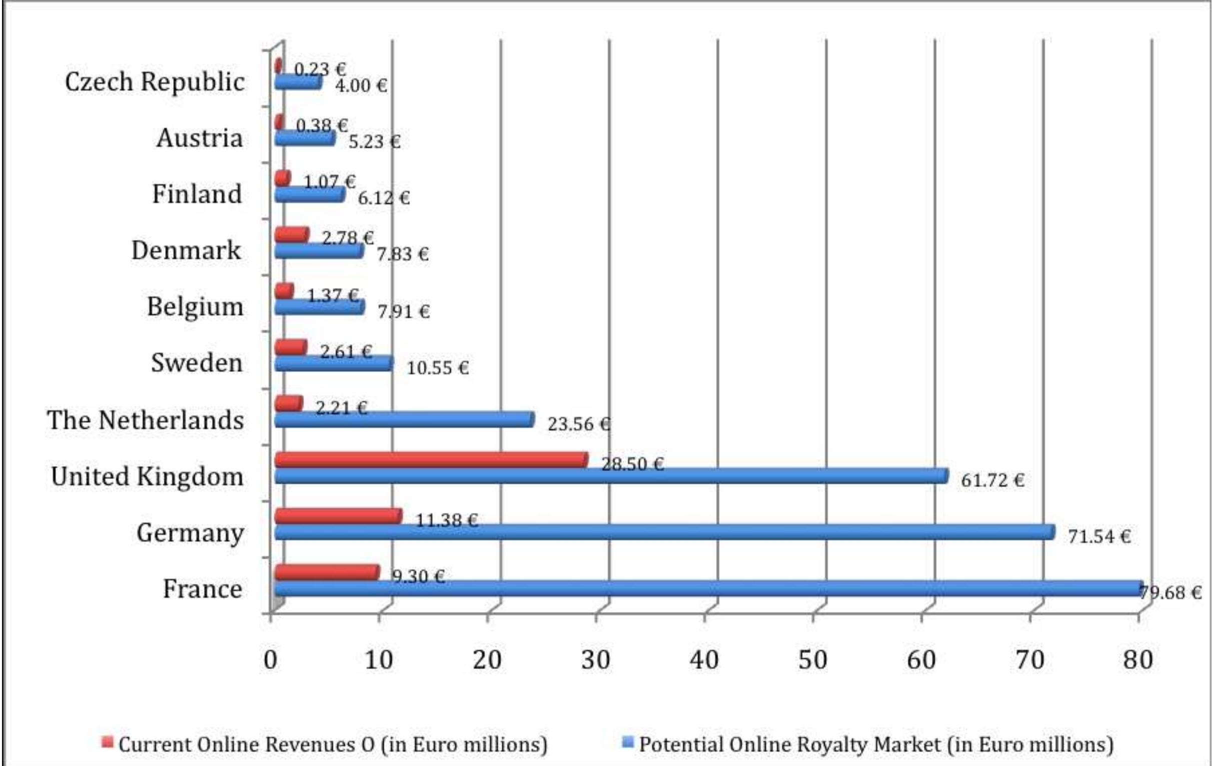

Table 3. Potential and Actual CS digital royalty revenue (in EUR millions)

consumers and have therefore an interest in obtaining licences allowing them to present a large repertoire to the consumers, wherever they are located.

The Commission services have not collected any information suggesting that any price discrimination applied by CS could be contributing to the fragmentation of the market.

Source: MPRA: Counting the costs of Collective Rights Management of Music Copyright in Europe, Ghafele, Roya and Gibert, Benjamin, 2011, http://mpra.ub.uni-muenchen.de/34646 , p.17

3.2.1. ***Problem 1:*** *Authors' collecting societies are not sufficiently prepared for online multi-territory licensing which is demanding and costly*

The demands of online licensing are high. Licences are normally "transactional" (meaning that the user reports and the CS invoices on a per-use/per-work - or share of work - basis). The licensing of musical works on a MT basis for online services requires the extensive use of data processing capabilities as **the scale of reported uses** of music is considerable. Without adequate automated processes, the processing of those uses would not be economically viable.[111]

Box 7 – Examples of the scale of reported online uses
• one CS processed 20 million lines of data for a single online service;[112]
• another CS reported 3 million downloads from a single major service provider in 2010, and that it processed the equivalent of three billion acts (downloads or streams);[113]
• in 2008, a CS was required to process 20 million transactions (i.e. a single download or stream) per month for an active repertoire of 8.5 million tracks; in 2010, this had increased to 62 million transactions a month covering 13 million tracks;[114]
• for a major download service, 94% of downloads concerned tracks which had been downloaded less than 50 times.[115]

The **qualitative nature of the data** required has also changed, as licensors who previously operated on a purely national basis must now hold data on rights ownership in all the territories covered by their licences.[116] In the offline environment, the risks of conflicts as regards the ownership of the rights in a given territory were minimal. Inaccurate data was only relevant to the distribution of income to rightholders and other CS; it was largely invisible to users. In the online world, if two CS claim to own the same work, a user will be invoiced twice. The industry generally acknowledges that the data on works ownership is not sufficiently accurate – some users arguing that they receive double invoices, data on excel spreadsheets, and some CS arguing that their rights are not always clearly excluded from licences from other CS. A number of industry initiatives have been put forward (ICE, GRD)[117] to address the issue and improve the identification of the works, rightholders or even to create a comprehensive database.

At present**, many CS do not have the ability to accurately identify works and work-shares licensed and to organise fully electronic data exchange with online music service providers** pertaining to usages of works and subsequent invoices. Entering the market without the ability to meet these requirements can cause damage. Firstly, as explained above,

[111] According to one estimate, an automated match would cost on average €0.02, while a match requiring a manual intervention would cost €14. It is estimated that for 100% share of a work, a collecting society collects in the region of €0.08 per work downloaded, see e.g. "Two steps closer to a global copyright database", in Summary of CISAC's World Copyright Summit #3, Brussels, June 7 & 8, 2011, http://www.cisac.org/CisacPortal/initConsultDoc.do?idDoc=22436, p. 37.

[112] Spotify, STIM Annual Report 2010, p. 17

[113] SACEM Annual report 2010, p. 12 and 27.

[114] FX Nutall, "Understanding Metadata", MidemNet (2010). See also Annex I.

[115] SACEM Annual report 2010.

[116] To which the issue of "split copyright", as described in Box 4, adds further complexity.

[117] See in Annex I.

it may result in inaccurate, or "double" invoicing[118] for users. Secondly, licensors' lack of accurate ownership data encourages service providers to meet the repertoire gap with a national licence which is tailored as an insurance against any claims in works not already licensed (see Problem 2). Furthermore, as a consequence of deficient electronic data exchange, some users are receiving invoices from some licensors with significant delays, and some rightholders are experiencing even longer delays in receiving their payments.

3.2.2. ***Problem 2:*** *Online multi-territory licensing by authors' collecting societies is subject to legal uncertainty*

National legal frameworks applicable to CS[119] are designed for licensing activities which take place on a national basis. In this regard, some large CS argued that national regulation hinders their multi-territorial licensing activities. At the same time, CS are service providers which benefit from the free movement of services and the EU *acquis* relating to this principle, notably the Services Directive. While the application of the existing *acquis* should address some of the uncertainties faced by CS wanting to provide MT licences,[120] **considerable uncertainty remains as regards the application of the *acquis*** and the possibility for CS to provide licences covering several EU countries and/or to licensees established in other MS. Doubts also arise as to whether existing rules applicable to CS apply to new licensing entities.[121] This means that the entities or societies which carry out MT licensing do not necessarily know if or to what extent a particular legal framework is applicable to the MT licences they grant. This uncertainty acts as a deterrent to entering the MT licensing market in the EU. It also deters the local CS from entrusting their rights to an existing multi-territory licensor as they would be venturing into unknown territory.

Another symptom of the existing legal uncertainty is that in certain cases, commercial users who want to provide online services in several MS seem to be obtaining MT licences from CS representing major repertoires; but they also obtain multi-repertoire licences limited to the national territories of each of the countries they want to cover. Such mono-territory multi-repertoire licences are offered by local CS under existing reciprocal agreements with other societies. They are essentially used to cover repertoire which is not already licensed on a multi-territory basis by a CS.

As a result, **online services are often licensed through a combination of MT licences and national licences**. This not only brings up the number of licences required but may also limit the territorial reach of the service to the lowest common denominator, i.e. those territories which are covered by both MT licences and national licences. In the stakeholder consultations, online music service providers highlighted the additional costs deriving from legal uncertainty.

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118 Data submitted in confidence to the European Commission suggests that this concerns between 10% and 30% of royalties invoiced to users. According to some estimates, the costs of an automated match from an invoice per work amount to € 0.02, and to € 15 if the automated match fails.

119 See Annex L.

120 See Section 2.1 on the Services Directive.

121 For instance, the status of CELAS and whether it should be subject to supervision by the German Patent Office has recently been in dispute, see *MyVideo Broadband SRL v CELAS GmbH*, LG München, Az. 7 O 4139/08 (25 June 2009).

3.2.3. Consequences

For providers of on-line music services, when launching new services (especially where the innovative nature of the service requires new licence structures and rates), **the large number of licensors - and variations as to the repertoire and rights they can licence - can be a major handicap**. The numerous parallel negotiations are also time-consuming in a very fast moving market and are costly.[122] Consulted online music service providers have reported that other factors such as repertoire fragmentation, the handling and reconciliation of invoices, and the administration of a considerable number of licences, do affect costs. Such services are accordingly likely to opt to launch only in one or a few MS,[123] thus depriving themselves of the larger consumer base that the Digital Single Market has to offer.[124] Alternatively, some services might choose to launch on the basis of major repertoire only, which can be secured with a smaller number of licences. This would be detrimental to niche and local repertoire. Furthermore, legitimate service providers face the unfair competition from providers of illegal content online which provide their illegal services everywhere. Consumers ultimately have less choice and there is a loss of cultural diversity.

For rightholders (authors and publishers), the increased income that could be generated by expanding consumers' access to their works via new services throughout the Single Market, is lost. This is leading to less trust on the ability of CS to manage their rights.

3.3. Baseline scenario

In the absence of action at EU level, it is likely that the checks and balances on the **functioning of collecting societies** would remain insufficient (see section 3.1). As seen recently in the case of Belgium, France or Poland, MS could introduce various rules on G&T. However, it is unclear whether all MS would have an incentive to do so in the absence of harmonisation at EU level, as the current practice shows that few MS have recently taken such measures. Moreover the standards and the supervisory approach would vary from MS to MS, and so would the level of protection of rightholders.

It could be envisaged that CS could try and agree on common codes of conduct which would be applicable to all CS or to certain categories of CS and which would go beyond the existing codes to cover issues such as: participation in the decision-making process, financial reporting standards, rules on handling of funds, etc. However, additional self-regulation by CS would not necessarily lead to the improvement in G&T standards for all CS. This improvement would depend on the willingness of CS to abide by these standards. So far, the self-regulatory experience concerns essentially the societies managing music rights, partially because of the pressure made by important rightholders. Beyond this pressure, managers of CS have limited incentives to increase the efficiency of the societies' operations and, as shown in section 3.1, peer pressure (by other CS) is also limited. In any case, experience shows that the current codes are not fully respected anyway. As a result, self-regulation would only address

[122] See MPRA: Counting the costs of Collective Rights Management of Music Copyright in Europe, 2011

[123] See Table 2 above.

[124] One of the most commented cases is the significant delay taken by Spotify to launch its services in Germany which, according to the music industry, is the biggest music market in the EU. Spotify only launched its service in Germany in March 2012 although it was serving other major EU MS since 2010 and the German-speaking Austria since 2011. The press has reported the difficulties encountered by Spotify to agree on licensing terms with GEMA, the German authors' collecting society, and the length of the negotiations.

governance inefficiencies to a limited extent and consequently rightholders' control over CS would not be significantly improved. Moreover, due to the lack of appropriate incentives, it is unlikely that solutions implemented by MS or CS themselves will take sufficient account of the specific problems raised by the cross-border dimension of collective rights management. A number of organisations representing CS however deem that rules on G&T have already been sufficiently addressed in other EU instruments.

The value of the 2005 Recommendation is somewhat limited because its scope is limited (it only covers the online music sector and it only contains a limited number of recommendations) and its principles have only been partially respected by CS. This is not surprising since the persuasion value of the Recommendation is limited[125] and there are no incentives for CS to respect it.

If insufficient access to information and little oversight over collected royalties continue, rightholders' mistrust and lack of confidence would most likely persist. This may cause major rightholders to seek to withdraw their rights from the CS when a credible alternative exists.[126] Users would also continue to suffer from the lack of transparency and the related problems in the licensing process. Moreover, some societies would continue to operate under significantly lower G&T standards than others. This would not create the trust needed in the cooperation between societies when a society represents the repertoire of another one.

Lack of improvements in the G&T rules would also have knock-on effects on **the licensing of musical works to online services**. The problems identified in the licensing of musical works need to be addressed by those parties who licence their works online, including all CS which control repertoire which is required for online services. Without appropriate G&T rules, improvements in licensing would only be achieved by a small number of CS, while others stay behind. For these societies, their members would have neither access to enough information to assess how this market should be addressed, nor means to clearly influence the decision of their CS as to how to meet demand.

Improved G&T rules would not be enough, however, to improve the situation with respect to the problems identified as they do not all derive from the insufficient check and balances in CS but have a different nature. E.g. the problem of double/incorrect invoicing derives from the incorrect or lack of identification of the repertoires.[127] Without intervention, it is unlikely that the market would address this problem. Some societies will continue to grant territorial licences which "absorb" all the repertoire which has not been properly identified by others and would have limited incentives to licence themselves on a MT basis or to allow another entity to aggregate their rights. Consulted user organisations have stressed that it is important that CS are fully transparent as regards repertoires they represent and the rights they are mandated to manage for those repertoires.

The IM would remain fragmented: rights licensing for online services would remain complex and the roll out of online services across MS would remain patchy. New emerging online services (and commercial users in general) would continue to struggle with multiple licensing

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125 The European Parliament issued Resolutions in 2007 and 2008 criticising the Recommendation.

126 This is happening as regards the management of online rights in the music sector. New agents who manage the online rights of music shareholders without having recourse to CS are increasingly appearing.

127 See in Section 3.2.

practices,[128] operating on a different geographic scale (national or multi-territory) and at a different level of aggregation (repertoire specific or multi-repertoire). In this context, a number of music publishers pointed out that the traditional mass usage model of CS fails vis-à-vis new business models. MS may try and address the issue but they are unlikely to be able to do so due to the inherently cross-border nature of multi-territory licensing. Users would continue to run the risk of receiving overlapping invoices from their various licensors.

Societies would, in some cases, continue to lack the technical ability to process multi-territory, multi-repertoire licences. Their repertoire would be cut off from the market for multi-territory services, or would be licensed without adequate technical support.[129] In both cases, this would lead to lost revenues for rightholders (lost opportunity, or inaccurate and delayed payments).[130] Other societies would invest heavily in "upgrading" their systems[131] even though the value of their repertoire makes such an investment unsustainable,[132] without sufficient rightholder control resulting in significant costs for them.

A good number of small and medium sized CS would continue to experience difficulties in licensing their rights on a MT basis. To some extent, they would continue to grant multi-repertoire licences limited to their domestic territories on the basis of remaining reciprocal agreements with other societies. Larger CS would continue their efforts to licence their rights directly on a multi-territory basis. All CS would continue to be active in the administration of rights other than online rights (e.g. licensing broadcasts, public performances, etc.).

3.4. Does the EU have the right to act?

3.4.1. Legal basis

The EU's right to take action to facilitate the functioning of collective rights management in the internal market (IM) follows from Article 50(2)(g) of the Treaty on the Functioning of the European Union (TFEU) which constitutes the specific IM legal basis for freedom of

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128 According to a report prepared for the European Parliament, Apple (leader in the market for online music sales) refused to pay licensing fees for 2007 and 2008 to SABAM, the Belgian authors' society and required financial guarantees from SABAM to cover the risk of being accused of copyright infringement by rightholders The argument advanced by Apple was the legal uncertainty about the repertoire that SABAM was entitled to grant digital license for. See the Study "Collecting Societies and Cultural Diversity in the Music Sector", prepared in 2009 by the Hellenic Foundation for European and Foreign Policy for the European Parliament (Ref. IP/B/CULT/IC/2008_136, p. 49).

129 The capacity of matching the recording information (which is often the one reported in the usage reports by the online service providers) to the information on the authors is essential to claim the revenues from the rights at stake. This is particularly important considering the question of split copyrights. Should CS be incapable of processing the information in an accurate manner, they would most likely lose important sources of revenue. This would be to the detriment of rightholders.

130 It has been reported to the Commission services that some major music service providers that some CS are not issuing any invoice to them on the basis of the licences granted for online uses due to lack of capacity to process the usage reports. This directly impacts on the ability of those CS to subsequently distribute royalties to the rightholders. In other instances, service providers would be subject to frequent cases of double invoicing.

131 The 2010 consultation attempted to analyse the state of all the existing databases and the financial requirements for their updating and modernisation. The information received was minimal. However, according to a session at the 2011 World Copyright Summit, SACEM (FR) indicated that it had already invested €71 million in IT systems over eight years to ensure that it could deliver pan-EU licensing.

132 In 2009, the total collections for EU societies for online uses amounted to approximately 80€m. The vast majority of societies in the EU collected less than €10m in 2009 from online uses of musical works, see Annex F, Table F.2.5.

establishment, and Articles 53 and 62 of the TFEU which constitute the specific IM legal basis for services.[133] Firstly, the coordination of key governance and transparency standards in CS could make safeguards equivalent throughout the Union and protect the interests of members of CS, rightholders and users. These safeguards could facilitate and encourage the provision of collective management services across borders, in particular as CS usually manage the rights of foreign rightholders and cross-border royalty flows.

Secondly, the proposed action is instrumental to achieving a better functioning IM and facilitating the free movement of services. CS are service providers who often provide their services to rightholders and other societies on a cross-border basis. Rights are also increasingly licensed to users on a cross-border basis. In a broader perspective, addressing the fragmentation of rules applicable to collective management of rights across Europe will facilitate the free movement of all those services which rely upon copyright and related right-protected content. In particular, taking action to facilitate the granting of MT licences to online service providers is expected to substantially ease the distribution of and the access to music content online.

Further, CS administer rights which are protected as property rights under the Charter of Fundamental Rights of the European Union[134] and which are largely harmonised under secondary EU legislation.[135]

Finally, Article 167(4) of the TFEU provides that the EU shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. All proposed options take into account the implications of EU action for cultural diversity.

3.4.2. Subsidiarity and proportionality

The **subsidiarity** principle (Article 5(3) of the Treaty on the European Union (TEU)) requires the assessment of the necessity and the added value of the EU action.

As regards the necessity of the EU action in this area, Chapter 3 explains that the existing legal framework (at national and EU level) is insufficient to address the identified problems. National laws regulate CS in divergent ways and clearly have not been able to solve the identified problems. Due to the different national regimes CS are subject to, it is unlikely that in the future MS would uniformly ensure the transparency necessary for rightholders to exercise their rights. As regards EU law, competition decisions and the case law is binding only in a given case and have a limited scope. The 2005 Recommendation does not only have a limited scope (cross-border licensing of rights for online music services) but it is also neither binding nor uniformly applied.[136]

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133 Article 62, in the freedom of establishment chapter, refers to Article 53 making it applicable to the free movement of services. A wide range of EU instruments in the area of copyright have been adopted pursuant to these legal bases. See Annex T.

134 Other relevant fundamental rights, as laid down in the Charter of Fundamental Rights of the European Union, are the right to respect of private and family life, protection of personal data, the right to an effective remedy and to a fair trial. Any possible restriction of the freedom to conduct business that the initiative might entail is necessary to protect the interests of the members of CS, rightholders and users in the internal market. Moreover, any possible restriction contribute to the protection of intellectual property, which is also a fundamental right recognised in the Charter.

135 See Annex T.

136 See section 3.3 (baseline scenario) and Annex L.

The objectives of the proposed action could not be achieved sufficiently by MS and could be better achieved at Union level due to the trans-national nature of both problems. With respect to **G&T**, as it was explained in Chapter 2, all CS represent and license the repertoire of other CS through reciprocal representation agreements, in their own territory. Therefore the scale of licensing of the works of foreign rightholders depends on the efficiencies of these other CS. As the problems related to the discrimination of foreign rightholders show, the general "principal-agent" problem in CS is intensified with respect to foreign rightholders. As they are not the members of the relevant CS, they have little insight in and even less influence on the decision-making process of the CS. As a consequence of the reciprocal representation agreements, a significant share of collections derives from non-domestic repertoire. These cross-border royalty flows are relatively varied, reflecting demand for cultural diversity and some regional cultural affinities. On average, close to 17% of the collections of authors' societies are either distributed to or received from other EU societies.[137] The protection of the interests of EU rightholders requires that all royalty flows, and in particular cross-border flows, are transparent and accounted for. EU intervention is the only way to ensure the exercise of rights and in particular, the collection and distribution of royalties in a consistent manner across the EU.

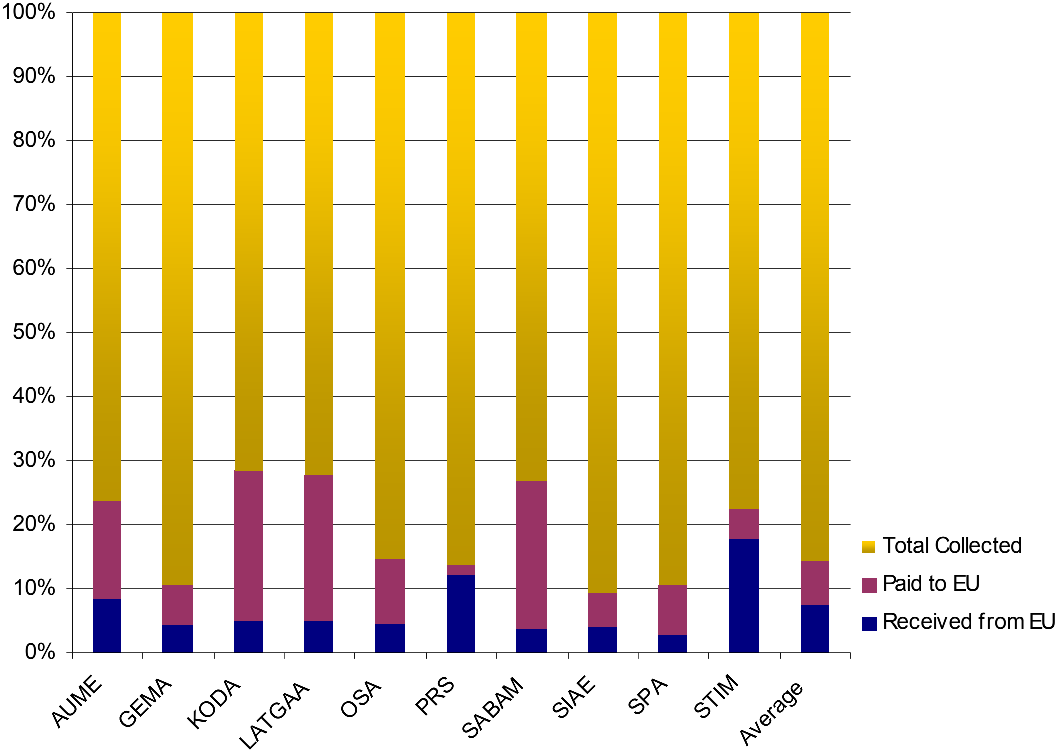

Table 4: Share of EU trade in royalty turnover of EU societies (source: Annex G).

Multi-territory licensing for online uses of musical works is, by definition, a cross-border situation. As explained in section 3.2, commercial users often need to secure a number of MT licenses from CS established in different MS and CS established in different MS also need to conclude agreements between themselves to aggregate repertoire. Rules intended to ensure the smooth functioning of multi-territory licensing are accordingly better achieved at EU level

137 See Table 4 and Annex G.

if they are to meet their objective. In particular, sections 3.2 and 3.3 showed the need for action in order to enhance the technical capability of collecting societies as regards the licensing of online rights. Action at EU level would secure a minimum capacity is ensured across the EU, thus facilitating the dealings with commercial users across borders. It may also facilitate the emergence of consolidated back-office solutions (e.g. multi-territorial multi-repertoire databases) for CS, thus avoiding duplication of investments and therefore achieving savings. MS could not, by themselves, draw up rules which consistently address these cross-border situations, nor could they sufficiently encourage the development of multi-territory databases. E.g. none of the proposed options could be achieved by MS alone, unless MS were to simultaneously adopt identical rules.

Under the principle of **proportionality** (Article 5(4) TEU), the content and the form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties. The proportionality of the different policy options has been assessed and the result of this assessment is described in the relevant part of this IA.

4. OBJECTIVES

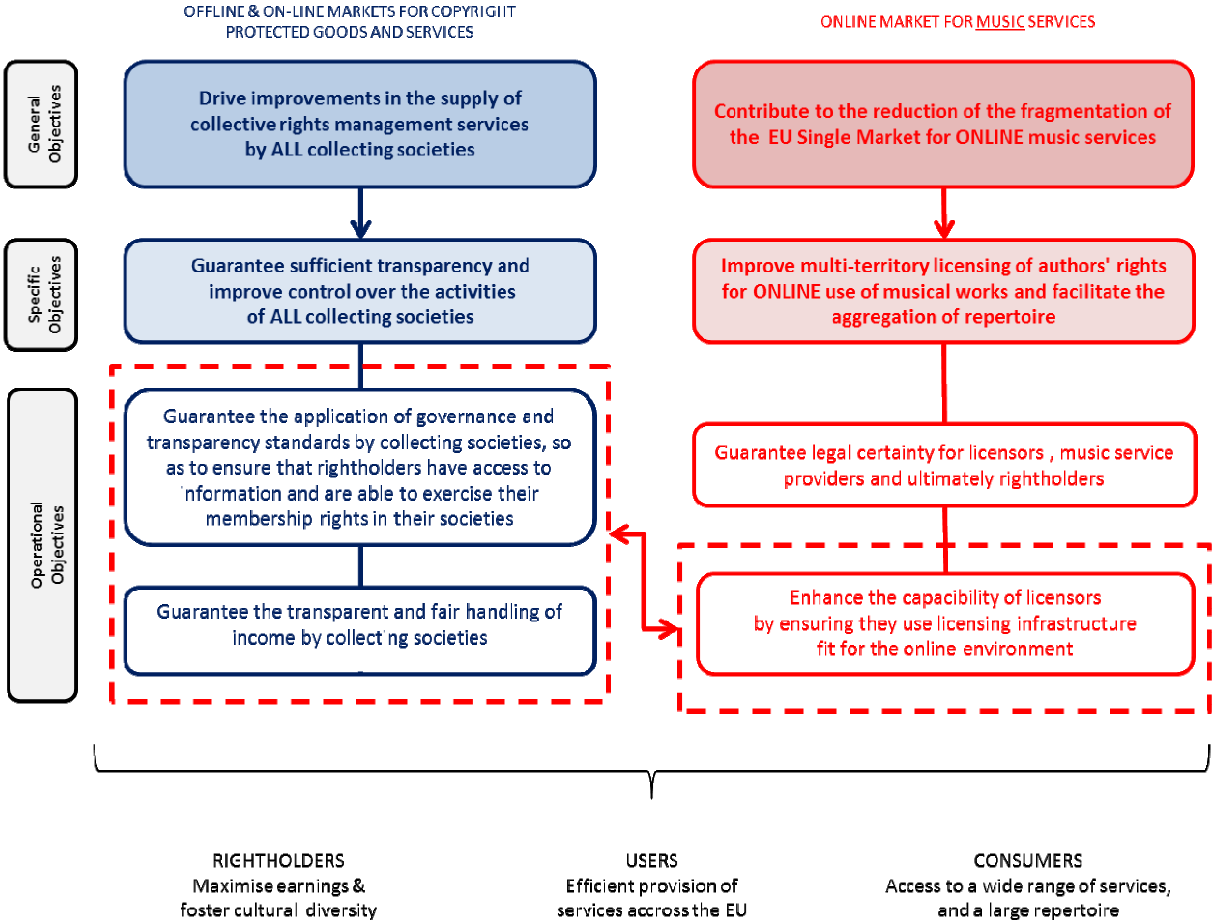

Table 5: Objective tree

This initiative deals with **two distinct but interrelated problem areas**, and reflected in the objectives (see above). The first area deals with the problems affecting collective management of rights in general by any collecting society. The general objective is therefore to drive

improvements in the supply of collective rights management services by all CS. The related specific objective is to guarantee sufficient transparency and improve control over the activities of CS in relation to all revenue streams, online and offline, national and cross-border. The corresponding operational objectives are as follows: guarantee that recognised G&T standards are applied by CS so as to ensure that rightholders have access to information and are able to exercise their membership rights in their societies; and guarantee the transparent and fair handling of income by CS.

The second area deals with the specific issue of the online market for music services. The general objective is to contribute to the reduction of the fragmentation of the EU Single Market for online music services. The related specific objective is to improve and broaden MT licensing of authors' rights for online use of musical works as well as to facilitate the aggregation of repertoire, with a view to include as broad an offering of music repertoire as possible. Such licensing should be done in full respect of EU law, including competition law. It should be considered in this regard that the management of copyright and related rights is not the only factor that affects the development of the digital Single Market (see sections 1.1 and 3.2). However, other factors are outside the scope of this initiative. As regards the corresponding operational objectives, they guarantee legal certainty for licensors, music service providers and ultimately rightholders; and enhance the capability of licensors by ensuring they use licensing infrastructure (and provide licensing services) adapted to the online environment. In this connection, the operational objectives that aim, in the first area, at improving the functioning of CS (i.e. enhanced G&T standards, improved financial management) will also contribute to the enhancing of the capacity of licensors of authors' rights for online uses – as an important number of those better functioning collecting societies (the authors CS) are key players in the licensing of music rights.

A more coherent and efficient general framework for the collective management of rights in the EU as well as a specific framework for the licensing of authors' rights for online use of musical works should help to improve consumers' access to a wider variety of cultural goods and services, and in particular (but not only) in the music sector. Commercial users will gain from better functioning and more transparent CS and, in the online environment, from a framework facilitating the acquisition of licences for the provision of music services throughout the EU. Rightholders would maximise their earnings by widely promoting their works while receiving remuneration. At the same time, cultural diversity would be fostered by the availability of a large and diverse repertoire.

5. POLICY OPTIONS ON TRANSPARENCY AND CONTROL IN COLLECTING SOCIETIES

This chapter examines and compares different policy options to solve the problems presented in section 3.1. The policy options are discussed and measured on the basis of their effectiveness (i.e. the extent to which the measures fulfil the objectives), their impact on the Internal Market, on rightholders, commercial users, the collecting societies as well as cultural diversity and their compliance costs.

5.1. Option A1 – Status quo

Description: In the absence of policy intervention, this option would rely on the market and peer pressure, including industry self-regulation, to address the problems defined in section 3.1. Such initiatives have already taken place or been advocated by industry. This is the option preferred by some organisations representing CS. Existing rules however are not

comprehensive and there are problems with their implementation. Also, individual MS could introduce rules on G&T, as seen recently in some MS in some cases in reaction to certain failures of governance in CS.[138]

The summary and analysis of the impacts of Option A1 are in Annex N. Comparison of the impacts of Option A1 to the baseline scenario:

Criteria ► Policy option ▼	Effectiveness	Impact on the IM	Impact on rightholders	Impact on CS	Impact on users	Cultural diversity	Compliance costs
Option A1	0	0	0	0	0	0	0

"0" – no change "+" – positive impact "-" – negative impact

5.2. Option A2 – Better enforcement

Description: This option would rely in the first place on the enforcement of existing rules of EU law (e.g. Treaty provisions on freedom to provide services, concerted practices and on the abuse of a dominant position)[139] and on ensuring consistency at national level in the application of the principles (e.g. non-discrimination principle, rightholders choice)[140] emerging from the case law of the Court and the Commission's decisions. However, secondary EU legislation does not contain G&T standards for CS (the 2005 Recommendation is of voluntary application). Thus this option could mainly concern the existing national legislative framework.

In practice, the Commission would raise awareness amongst authorities supervising CS (including ministries of culture, ad hoc national bodies and national competition authorities) as to the existing case law and Commission decisions.[141]. The Commission and relevant national authorities would cooperate with each other by: (i) holding awareness meetings on the application of existing principles, (ii) informing each other of new cases and envisaged enforcement decisions, (iii) coordinating investigations, where necessary, (iv) helping each other with investigations and (v) exchanging evidence and other information.

The summary and analysis of the impacts of Option A2 are in Annex N. Comparison of the impacts of Option A2 to the baseline scenario:

Criteria ► Policy option ▼	Effectiveness	Impact on the IM	Impact on rightholders	Impact on CS	Impact on users	Cultural diversity	Compliance costs
Option A2	+	+ [*]	+ [*]	+	+ [*]	0	-

"0" – no change "+" – positive impact "-" – negative impact [*] [if enforced in all MS]

5.3. Option A3 – Codification of existing principles

Description: This option would consist in the codification of the principles[142] that have emerged from the case law of the Court and from the Commission's decisions together with the implementation of the 2005 Recommendation into binding legislation. In this option the applicable principles are binding, clearly established and visible for all. This would create a

[138] See Section 3.1 and Annex L.

[139] Articles 56, 101 and 102 TFEU.

[140] See Annex C.

[141] Moreover, the Commission would need to encourage better regulatory oversight of CS at national level, e.g. through the existing European Competition Network (a forum for discussion and cooperation of European competition authorities in cases where Articles 101 and 102 TFEU are applied) in so far as national competition authorities are concerned.

[142] See Annex C.

stable basis for their enforcement. MS would also be required to provide appropriate sanctions (administrative and/or civil) for breaches of G&T obligations. Therefore, the conditions of the effective enforcement would be established by legislation. The result of this option would be the following set of measures:

	ISSUES	MEASURES	
RELATIONS WITH RIGHTHOLDERS AND WITH OTHER CS	Membership and representation	- Non-discriminatory treatment of rightholders with regard to membership rules, and representation in the governing bodies. - Fair and balanced representation of rightholders in the internal decision-making process.	
	Rightholder choice / flexibility of mandates	- The right of rightholders to decide to entrust the rights of their choice to the CS of their choice and for the territory of their choice. - The right of rightholders to withdraw their rights from CS at reasonable notice.	
	Distribution of revenues / handling rightholders' income	- Non-discriminatory treatment of rightholders (also those represented on the basis of reciprocal agreements) with regard to the collection, distribution of income, administrative fees, etc. - The right of rightholders to be informed of administration fees and all other deductions made from the royalties.	
	Transparency / access to information	- The right of rightholders to be regularly informed by CS of licences granted and royalties collected and distributed. - The right of rightholders and users to access information on CS' repertoire, existing reciprocal representation agreements, the territorial scope of their mandates for that repertoire and the applicable tariffs (if set in advance).	RELATIONS WITH USERS
	Dispute resolution	- Dispute resolution mechanism. The type of mechanism would be left to discretion of MS on the basis of principles set out by the Commission.	
	Criteria for licensing	- Fair treatment of users including as regards granting of licences.	

The summary and analysis of the impacts of Option A3 are in Annex N. Comparison of the impacts of Option A3 to the baseline scenario:

Criteria ► **Policy option ▼**	Effectiveness	Impact on the IM	Impact on rightholders	Impact on CS	Impact on users	Cultural diversity	Compliance costs
Option A3	++/+	++	++	++	++	+	--

"0" – no change "+" – positive impact "-" – negative impact

5.4. Option A4 – Beyond codification: a governance & transparency framework for collecting societies

Description: This option would build on Option A3 but provide more elaborate framework rules on G&T to address the problems described in Section 3.1.[143] The codification of existing principles would be complemented by a set of targeted but principle-based rules which would 'fill in the gaps' of Option A3, with regard to financial management and rightholders' control over the operations of the CS, adapted to the nature of collective rights management. Under this option all rules would be set out in one instrument providing for their visibility, understanding and enforceability. MS would also be required to provide appropriate sanctions (administrative and/or civil) for breaches of G&T obligations. This option would meet the expectations of a number of creators, music publishers, record producers, commercial users and consumers, who have been asking for the establishment of common and minimum G&T standards. The result of this option would be the following set of measures:

ISSUES	MEASURES

[143] Also, as identified by some representatives of authors, CS, publishers, users and consumers.

RELATIONS WITH RIGHTHOLDERS AND WITH OTHER CS	Membership and representation	AS IN OPTION A3 **PLUS** Additional rules on the participation of rightholders in the decision-making process and collective rights managers' accountability such as the powers of the general meeting, representation of rightholders in the decision-making bodies, control of the management and their key obligations, obligation on managers to declare interests in the society they manage, etc.	
	Rightholder choice / flexibility of mandates	AS IN OPTION A3	
	Distribution of revenues / handling rightholders' income	AS IN OPTION A3 **PLUS** CS, as entities which bear responsibility for the assets of other persons, would be subject to rules which would guarantee the appropriate degree of security of rightholders' income such as rules on the separation of rightholders' and societies' assets, the obligation to account for revenues and costs separately for various revenue streams, rules on prudential investment and involvement of rightholders in decisions on distribution of revenue (including the allocation of funds for deductions). Rights of non-member rightholders would be strengthened by rules concerning the application of costs and deductions to royalties owed to non-member rightholders.	
	Transparency / access to information	AS IN OPTION A3 **PLUS** CS would have to draw up and publish an annual report that should include a financial statement and certain specific information such as information on royalties collected (per revenue stream), operating costs (per revenue stream), the amount of royalties distributed, the sums dedicated to social or cultural activities, the amount of non-distributed royalties, the amount of royalties paid to other CS, the amount of royalties received from other CS and information on the financial investments of the CS, as well as other important operational and financial data for a given year. The annual report would be subject to audit by an independent auditor. **PLUS** Obligation to publish key documents such as articles of association, membership terms, standard contracts etc. **PLUS** Enhanced (at least annual) information for individual rightholders on royalties and deductions made.	RELATIONS WITH USERS
	Dispute resolution	AS IN OPTION A3	
	Criteria for licensing	AS IN OPTION A3	

These measures correspond to a great extent to the most recent reforms introduced by some MS.[144] Recent amendments to the legislation applicable to CS, e.g. in Belgium or Poland aim at ensuring better participation and control by the members of the society, better handling of income and more transparency on the collection and distribution of royalties.[145]

Option A4 has two possible sub-options:

Sub-option A4a: Combination of legislation with industry self-regulation

The rationale behind this sub-option would be to guarantee the codification of key G&T standards (the existing principles, rules pertaining to the annual report, the handling of funds) while leaving the more detailed standard setting - specifically with regard to matters such as the internal governance structure of the CS, the decision-making process, procedural rules for holding the general meeting (GM) and meetings of other governing bodies of CS, members rights (such as the right of inquiry), accountability of managers, rules on handling of complaints, etc. - to self-regulation. These additional rules would be elaborated in a

[144] See details in Chapter 3 and Annex L.

[145] It should be noted that national legal regimes differ as regards their level of details. It is apparent however that recent legislative changes, for instance in Belgium or France, provide for very detailed requirements, e.g. with respect to transparency or financial management.

stakeholder driven process based on a number of core issues and requirements set by the Commission. The process would result in a European code of conduct which would be binding on the societies adhering to it. The code would also have to provide for its enforceability, review and monitoring. It should provide, in particular, that: (i) CS which voluntarily join the code are bound by its terms; (ii) periodical monitoring and reporting on the code is carried out by an independent third party and made public, and (iii) a periodical review process is carried out, by an independent third party and in consultation with the Commission and all interested parties, to amend the code. Should the operation of the code not bring sufficient results, or should certain societies not adhere to the code, the Commission could envisage legislation.

Sub-option A4b: Laying down a detailed legislative framework for governance and transparency in collecting societies

Sub-option A4b would establish more extensive legislation in the G&T area than the principle-based Option A4. In terms of governance, this option would entail a detailed set of provisions on the convocation of the general meeting (GM), the rights members can exercise before or at the GM (e.g. putting items on the agenda), the internal governance structure of the CS, the relation between the management and the supervisory board, procedural rules on complaints and the right of inquiry, publication of voting results, managers' liability, etc. As regards financial management and transparency requirements are concerned, this sub-option would prescribe special requirements on the structure and content of annual accounts, extensive publication and transparency requirements, a detailed set of rules on the management of royalties, the investment policy of the CS, etc. This sub-option would aim to create a level playing field for CS all over Europe by ensuring that all CS comply with the same set of legal requirements.

The summary and analysis of the impacts of Option A4 are in Annex N. Comparison of the impacts of Option A4 to the baseline scenario:

Criteria ▶ Policy option ▼	Effectiveness	Impact on the IM	Impact on rightholders	Impact on CS	Impact on users	Cultural diversity	Compliance costs
Option A4	+++	+++	+++	+++	++	++	--
Sub-option A4a	++	++	++	++	++	++	--
Sub-option A4b	++	+++	+++	++	++	++	---

"0" – no change "+" – positive impact "-" – negative impact

5.5. Comparison of policy options

Comparison of the options:

Objectives: ▶ Policy options ▼	Effective-ness	Impact on the IM	Impact on rightholders	Impact on CS	Impact on users	Cultural diversity	Compliance costs
Option A1 – Status quo	0	0	0	0	0	0	0
Option A2 – Better enforcement	+	+ *[*]*	+ *[*]*	+	+ *[*]*	0	-
Option A3 – Codification	++/+	++	++	++	++	+	--
Option A4 - Framework of G&T rules	+++	+++	+++	+++	++	++	--
Sub-option A4a –legislation & self-regulation	++	++	++	++	++	++	--
Sub-option A4b – comprehensive G&T framework	++	+++	+++	+++	++	++	---

"0" – no change "+" – positive impact "-" – negative impact [*] [if enforced in all MS]

5.5.1. Impacts on the Internal Market

Option A1 would not change the current fragmented regulation in the EU. Whilst right management in some MS could be improved through national legislation the lack of coherence would not allow solving the cross-border issues (control of royalty flows, exercise of membership rights, etc.) identified in Section 3.1. Option A2 could have a more positive impact as it would facilitate the enforcement of existing principles but significant differences in the operation conditions of CS would persist (unless enforcement is equally efficient in all MS) and issues outside the scope of existing principles would remain unresolved. The codification option would ensure that certain rights of rightholders are harmonised and that they are enforceable but it would not solve the issues related to the lack of transparency of financial management of CS, thus cannot deliver on the cross-border issues. Option A4 would create a framework of clear and comparable G&T rules that would increase the possibilities of control in CS. Common framework rules could lead to convergence of practices all over Europe, thus it would have the most positive impact on the Internal Market.

5.5.2. Impacts on the degree of competition

As both under Option A1 and Option A2, rightholders would, to different degrees, continue to lack sufficient information and control over CS, they would not be able to make informed choices about CS and the competition among CS for rightholders would suffer. The situation would not be substantially different under Option A3 as despite better access to information and increased control over CS, rightholders would continue to lack comparable information on financial management of CS allowing them to compare CS on the basis of their efficiency. It is under Option A4 (and its sub-options) that rightholders would have sufficient benchmarking information on the basis of which they could exercise informed choice of CS. The harmonised transparency requirements would make it much easier both for rightholders

and users to compare the level of services offered by CS and would put competitive pressure on CS.

5.5.3. Impacts on stakeholders: in general

As regards **rightholders**, if there were no policy change (Option A1), they would, to different degrees, continue to lack sufficient information and control over the CS and their financial management unless individual MS would decide to develop their relevant national legislation. Option A2 could have a more positive impact (but not to the extent required), provided that the limited number of existing provisions would be equally enforced in all MS. Binding legislation under Option A3 would significantly improve the position of rightholders in the CS (see e.g. non-discrimination) but it would not address the issues related to the lack of transparency and financial management. Option A4 would best address the problems that have been identified in the problem definition. Sub-option A4b would probably ensure even more benefits to rightholders but it would put too much administrative burden on CS. Sub-option A4a would be less efficient (based on previous experience with self-regulation).[146]

As regards **commercial users**, the status quo (Option A1) and better enforcement (Option A2) are unlikely to have any impact on their situation. The codification of existing principles would improve their situation as they would obtain access to the most important information and would have the right to bring disputes before the dispute resolution body. In addition, the codification would have indirect impact on users, i.e. if the improvement of the rightholders' situation has a positive impact on the practices (esp. licensing, transparency) of the CS. Option A4 would ensure the necessary transparency on all information that is essential for commercial users but does not damage the interest of rightholders.

Options A1 and A2 would maintain the diversity of standards applicable to **collecting societies**, in some countries management standards may improve more than in others. Option A3 is likely to have some positive impact on the functioning of CS through enforcing the rights of members and setting some transparency requirements. The implementation of the rules and the dispute resolution would also entail costs. Option A4 would require the biggest improvement in the operations of the CS and would entail the highest compliance costs, in particular if Sub-option A4b is chosen and CS will become subject to detailed organisational requirements.

Cultural diversity (i.e. niche/local repertoires) is best preserved if the exploitation of rights is maximised and the costs related to collective rights management are kept low. Whilst too detailed regulation (Sub-option A4b) is likely to increase the costs of CS more than increased exploitation of rights could compensate, targeted provisions could have a positive impact (in longer term) on both aspects and consequently on cultural diversity.

The improved services provided by CS to rightholders and users should have an indirect positive impact on **consumers** as the licensing process should be improved resulting in a wider and diverse offer of cultural goods to consumers.

[146] See explanation in Sections 3.1, 3.3 and Annex L.

5.5.4. *Impacts on stakeholders: SMEs[147], micro-enterprises*

Existing national legislation and industry self-regulation do not differentiate between CS on the basis of their size, turnover or balance sheet total as enhanced transparency, governance and financial management rules are justified by the specific activity of these societies i.e. representing rightholders and handling of funds for rightholders. Notwithstanding the size of the CS, its members should have the necessary control over the activities of the society and access to key documents. The exemption of the CS from these rules would restrict or make it impossible for rightholders e.g. to exercise their right of choice or to control the handling of their income with respect to these CS. Also from users' point of view, it is key that all CS meet certain minimum standards in this respect. In addition, as presented in Annex P, the bulk of the compliance cost stemming from the preparation of the annual accounts, annual report and audit of the accounts (as per Option A4) has been estimated at the relatively low level of €5,300 per small CS[148] per year (which corresponds to 0.4% of turnover of an EU average small CS). Accordingly, no general exemption for **micro-enterprises**[149] is proposed.

As pre-existing rules in Community and national law do not take into account the size of CS (Option A1), Options A2 and A3 would not bring about any change in this respect. In the case of no policy change, new national legislation or codes of conducts may take into account the size of CS when designing the rules. In new legislation under Option A4 (and sub-option A4a), in order to minimise the regulatory burden on very small CS, it is considered to provide MS with a possibility of exempting such very small CS from specific obligations such as the obligation of organising a supervisory function within the society as well as from obligations of drawing up special reports on financial flows and on the use of social, cultural and educational funds. This would be an optional exemption and the decision would be taken by MS having regard to the particularities of national systems. As regards the annual report, the provisions would take into account the existing and future simplified requirements for SMEs. On the other hand, the detailed nature of the regulation under the sub-option A4b would put unnecessary administrative burden on smaller CS and would deprive them of any flexibility. More efficient CS would have a positive impact on SMEs as commercial users which usually have an important role in launching innovative services and business models.

5.5.5. *Effectiveness and proportionality*

Enforcement under Option A2 would improve the regulatory oversight of CS but governance inefficiencies would be addressed only to a limited extent and consequently rightholders' control over CS would not be significantly improved. Option A3 would be more **effective** as it would ensure the introduction of a minimum G&T framework. It would also have the advantage of 'charted territory' for CS. Option A3 would not, however, improve the G&T of the financial operations of CS. Both elements are regulated in Option A4 and its sub-options. Option A4 and its sub-options would provide rightholders with access to relevant, detailed and accurate information on the operations of CS, including benchmarks on the performance of CS, and would ensure effective rightholders participation in the decision-making process.

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[147] Due to the nature of the identified problems and the proposed solutions, the micro and SME thresholds applied by the proposal for the Directive of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (Commission proposal CM(2011)684) replacing the thresholds included in the Fourth Council Directive on annual accounts (78/660/EEC) are more adequate than the ones in the Commission Recommendation concerning the definition of micro small and medium-sized enterprises (2003/361/EC).

[148] According to the thresholds included in the Fourth Council Directive on annual accounts (78/660/EEC).

[149] As per Commission's Report "Minimizing regulatory burden for SMEs. Adapting EU regulation to the needs of micro-enterprises" COM(2011)803.

As regards sub-option A4a the benefits of industry self-regulation lie in its flexibility, sensitivity to market circumstances, internalising responsibility for compliance and usually lower costs. On the other hand, the main drawbacks of self-regulation are its frequent weakness (not binding) and often difficult enforcement. The code of conduct would be at most an agreement between CS and hence it would not grant any rights to rightholders or commercial users. Only other CS that are parties to the code (and not rightholders or users) could enforce the transposition. The main challenge of this approach would consist in attracting a critical mass of CS to participate in the dialogue and finding common ground despite the varied interests of different categories of CS conducting activities on various scales.

Sub-option A4b would go beyond targeted G&T rules. It would provide for an extensive set of provisions applicable to CS all over Europe. The effectiveness of this solution could be close to that of Option A4, in particular as the respect of the legal provisions could be more easily monitored and its enforcement easier. But too stringent legislation could not take into account the specificities of different CS in different sectors and would deprive them of any flexibility in their operation and could eventually block efficient right management.

As regards the **proportionality** of the EU intervention, promoting better enforcement (Option A2) does not raise questions. Options A3 would limit EU action to the codification of existing principles. This option would only impose some fragmented principles on the rights of rightholders and transparency of royalty flows that need to be implemented. Option A4 would address all objectives but would include some more precise, targeted rules where the comparability of applicable provisions across borders is essential. Whilst Sub-option A4a would imply less EU intervention, the effectiveness of industry self-regulation raises doubts based on past experience. At the other end of the scale, Sub-option A4b would be suitable to achieve all objectives but leave practically no freedom for MS to implement the provisions. Therefore, this sub-option would not comply with the proportionality requirement. Option A4 would contain the minimum set of provisions that is necessary to achieve the objectives.

5.5.6. Efficiency

Option A2 would not involve compliance costs for CS as it would not entail any legislative intervention. The burden would be on the Commission and on the relevant national authorities responsible for regulatory oversight and enforcement. At the same time the effectiveness of this option would also be limited: it has the potential to improve the situation of rightholders depending on the uniformity of enforcement in the MS. Therefore the efficiency of this option is low. The most significant compliance cost of Option A3 could be the setting up of dispute resolution mechanisms for rightholders and users (the costs of such mechanisms would vary according to the precise nature of the dispute resolution mechanism chosen – see in Annex P). This would facilitate enforcement but would not create an overall efficient system since the codification of the existing principles is not able to address all the problems that have been identified (the ones related to financial management, in particular). The costs of Option A4 would be relatively higher, as this option combines Option A3 and additional elements. Most of the costs of Option A4 would be related to the application of new rules for the handling of funds (no data is available for the estimation of these costs), financial reporting and audit (the overall cost is estimated at approximately €4.1 million on average for all EU CS per year and, depending on the size of CS, on average €5,300 per small, €14,100 per medium-sized and

€46,700 per large CS per year[150]) and the setting up of dispute resolution mechanisms for rightholders and users (as in Option A3). However, the cost of Option A4 must be seen on the one hand in relation to some indicators of the CS activities (around 1% of total operating expenses and no more than 0.4% of turnover for financial reporting and audit) and on the other hand in relation to the efficiency gains, especially in the area of enhanced transparency of financial operations, to be achieved by this option. Compliance costs of Option A4 and its sub-option A4a would be comparable although, as far as the sub-option is concerned, it would depend on the extent of rules agreed in the stakeholder dialogue. Whilst sub-option A4b would be effective, the detailed set of G&T rules would result in higher compliance costs for CS stemming from specific procedural provisions on the convocation and organisation of the GM, detailed rules on the internal governance structure of the CS, the relation between the management and the supervisory board, procedural rules on the right of inquiry, publication of voting results, special requirements on the structure and content of annual accounts, etc. Thus they would reduce the overall efficiency. Therefore, Option A4 is the most efficient.

6. POLICY OPTIONS ON MULTI-TERRITORY LICENSING FOR ONLINE USE OF MUSICAL WORKS

This chapter examines and compares different policy options to solve the problems presented in section 3.2. These options are discussed and measured on the basis of their effectiveness (i.e. the extent to which the measures fulfil the objectives), their impact on the Internal Market, rightholders, commercial users, the collecting societies (including the impact on reciprocal representation agreements) as well as cultural diversity and their compliance costs.

6.1. Option B1 - Status quo

Description: Without policy intervention, this option would rely on the market to solve the problems identified in section 3.2. As explained in the background, in the music sector a number of market developments took place in the last few years (publishers withdrawing their rights, some authors' CS offering MT licences, new licensing platform being set up). On the basis of this experience, multiple licensing practices would continue to exist with different levels of geographical scale (national or multi-territory) and at a different level of aggregation (repertoire specific or multi-repertoire).

The summary and analysis of the impacts of Option B1 are in Annex O. Comparison of the impacts of Option B1 to the baseline scenario:

Criteria ► **Policy option▼**	Effective-ness	Impact on the IM	Impact on users	Impact on consumers	Impact on CS	Impact on rightholders	Cultural diversity	Compliance costs
Option B1	0	0	0	0	0	0	0	0

"0" – no change "+" – positive impact "-" – negative impact

6.2. Option B2 – The European Licensing Passport

Description: This option would encourage the aggregation of repertoire for online uses of musical works at EU level and the licensing of rights through effective and responsive MT

[150] See calculations in Annex P.

licensing infrastructures.[151] It would do so by requiring that CS wanting to license the online rights of musical works on a MT basis comply with a set of conditions defined by legislation, which would aim at ensuring that CS engaging in MT licensing have sufficient data handling and invoicing capabilities[152], comply with certain transparency standards towards rightholders and users and allow for the use of a dispute resolution mechanism. As regards transparency standards, various consulted authors' associations considered that accessible ownership and licence information would facilitate multi-territory and multi-repertoire licensing and overcome the current market fragmentation.

The legal requirements listed in the table below would equally apply to CS granting MT licences only for their own repertoire or for an aggregated repertoire (a "passport entity"). This is required due to the interdependency of MT licensing activities - different CS are often involved in the licensing of shares of rights in one single work and therefore it is important that all CS granting MT licences, whether in their own repertoire or in aggregated repertoire, comply with these legal requirements. CS that comply with the requirements could grant licences for the online use of the musical works on a MT basis. There would be no requirements to provide for specific *ex ante* authorisation for MT licensing but MS would have to ensure that compliance with the legal requirements can be effectively reviewed by the competent authorities with respect to CS established in their territory.[153]

<table>
<tr><td rowspan="2">Licensing scope</td><td colspan="2">– MT licensing of musical works, on the basis of mandates from rightholders and/or from CS.</td></tr>
<tr><td colspan="2">– Exemption for MT licences for the online rights in musical works for services ancillary to TV and radio programmes (e.g. catch-up TV, simultaneous retransmission) provided by broadcasters.</td></tr>
<tr><td rowspan="3">Enhance the capabilities of licensors</td><td>Data handling capability</td><td>– Precise identification of licensed repertoire by means of a continually updated and authoritative ownership database;
– Capability for fully electronic data exchange on works and usage of works with users, on the basis of accurate information provided by users in the appropriate format;
– Ability to process electronically registration of works, registration of mandates and/or changes to mandates.
– Ability to process data of rightholders switching from one passport entity to another.</td></tr>
<tr><td>Invoicing</td><td>– Timely invoicing: no more than e.g. three months from the accurate reporting of the relevant usage (download, stream, etc.). The user may agree otherwise.
– Accurate invoicing: claims on a share per work basis.
– Avoidance of overlapping invoices: the "passport entity" should have effective procedures in place to resolve conflicting ownership claims with other licensors and to clear back-claims procedures (when changes in ownership are not reflected in the system at the time of invoicing).</td></tr>
<tr><td>Rightholder services</td><td>– Payments to rightholders no later than e.g. six months from actual use of the work/three months from receipt of payment from users.
– Accurate reporting on (minimum): licences issued, applicable distribution rules, revenue per works/shares and per territory, deductions for administrative costs and other deductions.</td></tr>
<tr><td>Legal certainty</td><td colspan="2">– Availability of a dispute resolution mechanism linked to MT licences.</td></tr>
</table>

CS complying with the legal requirements could also aggregate rights and repertoire on the basis of mandates from rightholders and from other CS for the purposes of MT licensing for

[151] Distinctly from Option B4 (extended collective licensing & country-of-origin principle), this option would not create a legal presumption that CS have the right to grant MT licenses for their repertoire but would rely on voluntary licensing and voluntary aggregation of repertoire on a contractual basis.

[152] See current problems in section 3.2.

[153] E.g. through complaint mechanisms.

online uses. This could put them in a position to achieve economies of scale and a breadth of repertoire that is attractive to users.

Those CS which do not want to undertake the efforts and investments needed to comply with the legal requirements would be entitled to entrust their repertoire to the "passport entity" (i.e. a CS that already aggregates repertoires) of their choice[154] (right to "tag on" their repertoire). A "passport entity" would be obliged to take on the repertoire on reasonable terms[155] and to license it on a non-discriminatory basis. This aggregation of repertoire is supported by some organisations representing creators. The decision of a CS to become a "passport entity" or to entrust their repertoire to another CS for the purposes of MT licensing is a strategic decision that has to be taken by the members of a CS; hence the need to ensure, as a precondition to efficient MT licensing, the good G&T of the CS. The objective is to ensure that all rightholders have the possibility of joining a "passport entity" and that the entire EU repertoire can be licenced on a MT basis.[156]

In relation to new, innovative services CS would have the flexibility to grant licences without having to take into account previous licensing terms for similar services as precedents.

The summary and analysis of the impacts of Option B2 are in Annex O. Comparison of the impacts of Option B2 to the baseline scenario:

Criteria ► **Policy option ▼**	Effecti-veness	Impact on the IM	Impact on users	Impact on consumers	Impact on CS	Impact on rightholders	Cultural diversity	Compliance costs
Option B2	++	++	++	+	+	++	+	-

"0" – no change "+" – positive impact "-" – negative impact

6.3. Option B3 – Parallel direct licensing

Description: This option would require CS to manage the rights of rightholders on a non-exclusive basis ("non-exclusive mandates" from rightholders to CS) and it would give rightholders the ability to conclude direct licences with users, without having to withdraw their rights from their CS. Currently, this is not possible because CS in Europe[157] generally require exclusive mandates from their members.

Such "parallel direct licences", negotiated directly between users and rightholders, could in certain cases[158] be more responsive, flexible and adapted to the needs of users. CS could still grant licences covering rights which are not directly licensed. In this case, the CS would have

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154 Some CS already entrust their rights to other CS for the purpose of MT licensing of online services: e.g. the Irish society's (IMRO) rights are licensed by the UK society (PRS) and the Portuguese society's (PTA) rights are licensed by the Spanish society (SGAE). Similar trends can be seen in the Nordic countries.

155 E.g. should there be a need to upgrade the information on the repertoire of a CS that wants to tag on its repertoire, the passport entity and the CS should agree on reasonable terms on how to perform this upgrade (e.g. how information on the repertoire of the CS wishing to tag on would be provided) and how to apportion its costs.

156 Therefore, if a CS does not engage in either method of MT licensing, after a transitional period, its rightholders could also grant MT licences themselves (directly or indirectly) in their online music rights.

157 In the U.S. performing rights societies ASCAP and BMI are required (anti-trust rules) to only accept non-exclusive mandates from their members. The third and smaller of the performing rights societies (SESAM) is allowed to require exclusive mandates.

158 E.g. for new forms of services where licensing terms and conditions have not yet been tested.

to adjust the licence tariff to take into account ("carve out") the rights which have already been licensed in parallel by rightholders.[159]

<table>
<tr><td rowspan="1">Licensing scope</td><td colspan="2">– Rightholders can grant parallel direct licences which are MT mono-repertoire (limited to the rights they control).
– No specific obligations imposed on societies for MT licences
– A more competitive market place (between societies and rightholders) would be expected to improve the licensing by CS overtime. However, the position of rightholders could deteriorate, depending on the value of their rights. Societies are likely to stay granting multi-repertoire licences (minus the rights licence directly in parallel) for their territory.</td></tr>
<tr><td rowspan="3">Enhance the capabilities of licensors</td><td>Data handling capability</td><td>– In the case of direct licences, rightholders identify directly licensed works and users report on their use. They may use third party services and databases to do so, choosing the best technology the best service provider on the market.
– No measures improving the capability of societies.</td></tr>
<tr><td>Invoicing</td><td>– Direct invoicing from rightholders to users for parallel direct licences. Procedures to be negotiated between rightholders and users.
– CS must "carve-out" from its licence the rights under direct parallel licences by rightholders.</td></tr>
<tr><td>Rightholder services</td><td>– Rightholders may grant direct parallel licences without having to withdraw their rights from their society;
– Societies are under an obligation not to take any action impeding the grant of such licences.</td></tr>
<tr><td>Legal certainty</td><td colspan="2">– CS are obliged to adjust their licences to exclude rights which have been directly licensed.
– Parallel direct licences are not subject to any regulatory constraints.
– Increased uncertainty over the repertoire represented by CS.</td></tr>
</table>

A possible sub-option would consist in allowing rightholders the choice of non-exclusive mandates as a mechanism to facilitate the aggregation of repertoire. E.g. a rightholder could be entitled to renegotiate his rights management contract and entrust his rights to a CS on a non-exclusive basis, should that society not offer MT licences, either itself or by means of a consortium with other societies or rights managers. The rightholder could then grant, in parallel, a non-exclusive mandate to another licensing agent or a licence to a user.

The summary and analysis of the impacts of Option B3 are in Annex O. Comparison of the impacts of Option B3 to the baseline scenario:

Criteria ► Policy option ▼	Effecti-veness	Impact on the IM	Impact on users	Impact on consumers	Impact on CS	Impact on rightholders	Cultural diversity	Compliance costs
Option B3	+	+	+(+)	+	-	+/- *[*]*	-	-

"0" – no change "+" – positive impact "-" – negative impact [*] [*depending on value of the rights]*

6.4. Option B4 – Extended collective licensing combined with a country of origin principle

Description: This option would establish the presumption that each author CS has the authority to grant "blanket" licences for online uses covering the entire repertoire ("extension effect of the licence") provided that the society is "representative"[160]. Such presumption would aim to aggregate rights within each local CS, each being presumed to represent the

[159] See e.g. Australian Competition and Consumer Commission, Application for revocation and substitution of authorisations A30082, A30083, A30084, A30085, A30086 and A30087 lodged by the Phonographic Performance Company of Australia Ltd in respect of collective licensing arrangements, 27 September 2007, section 6.33 and 7.5 (3) to (4); *USA v BMI*, US Court of Appeals (2nd Cir.), 12 December 2001 (concerning a "carve out" in BMI's blanket licences, adjusting the fee of the blanket licence to take into account repertoire licensed directly).

[160] i.e. it is mandated, directly by rightholders and indirectly via agreements with other societies, to represent a significant share of rights in works used in the market.

entire repertoire. This option does not solve but simply shifts data processing problems (such as repertoire identification) to the "back office" of collective management. The CS would have to attribute those works to the rightholder to distribute the income collected, but this option will not necessarily require CS to improve key elements for the licensing of online users (such as accurate identification and data processing). Individual rightholders and publishers could still exercise their exclusive rights individually or through another licensing entity but first they would have to actively "opt out" of the extension effect, by notifying each local CS thereof. The licences granted by local CS would have to be adjusted to reflect these "opt-outs".

This would be combined with the establishment of a country of origin principle applicable to the rights required for online exploitation of musical works so that a single licence with a CS would suffice to cover the EU territory. An online service considered to be "originating" from one MS would only need to clear the rights for the territory of that MS, instead of clearing them in 27 MS. However, identifying the "country of origin" may prove particularly challenging for online services, notably when they operate exclusively online on a MT basis[161]. The introduction of the "country of origin" principle would affect the definition of existing rights rather than addressing the requirements for efficient licensing by CS. Some organisations representing broadcasters are in favour of such a "country of origin" licensing as a specific regime for their activities.

<table>
<tr><td>Licensing scope</td><td colspan="2">– Licence presumed to cover all works which are not opted-out by rightholders (extension effect).
– For multi-territory services, rights must only be cleared in the country of origin of the service.
– Aggregation depends on whether rightholders opt out from the extended licences.</td></tr>
<tr><td rowspan="3">Enhance the capabilities of licensors</td><td>Data handling capability</td><td>– The relevance of data processing is largely shifted to the task of distributing income to rightholders (back office).
– No requirements on data-processing and invoicing by collecting societies.</td></tr>
<tr><td>Invoicing</td><td>– Local societies must offer a "carve-out" from their licences with an adjustable fee taking into account the repertoire opted out by rightholders.</td></tr>
<tr><td>Rightholder services</td><td>– Extended licences require societies to establish an opt-out mechanism.</td></tr>
<tr><td>Legal Certainty</td><td colspan="2">– MT licences subject to the rules applicable in the country of origin of the service, but this in turn is subject to being able to determine the country.
– CS granting multi-territory licences are subject to national rules.</td></tr>
</table>

The summary and analysis of the impacts of Option B4 are in Annex O. Comparison of the impacts of Option B4 to the baseline scenario:

Criteria ► Policy option▼	Effecti-veness	Impact on the IM	Impact on users	Impact on consumers	Impact on CS	Impact on rightholders	Cultural diversity	Compliance costs
Option B4	+/0	+	+	0	0/-	0	0	--

"0" – no change "+" – positive impact "-" – negative impact

6.5. Option B5 – Centralised Portal

Description: This option, supported by some organisations representing CS, would allow CS to pool their repertoire for MT licensing in a single transaction, coordinated through a central portal. A commercial user could request a multi-repertoire MT licence from the portal. The participating CS would, through the portal, designate a licensing society from amongst its participants, and the licence would be concluded with that CS. The portal would set the costs

[161] No technical criteria could be used without risking a degree of arbitrariness: works available for download are stored and mirrored on a myriad of servers located in a variety of locations across the world.

of administering the licence, allocate the back-office tasks (data processing) amongst participant CS and ensure the distribution of royalties. Finally, the portal would require participating CS to comply with agreed minimum standards of service and make available the requisite IT tools to those CS requesting them. Participating societies would grant their rights to the portal on a non-exclusive basis.[162]

This option relies on a voluntary form of cooperation which would create a pan-European organization with a *de facto* monopoly power. This would exacerbate competition restrictions, notably customer allocation (because the portal rather than a commercial user would choose the licensing society) and price fixing (as administration fees would be decided by the portal rather than different CS). While rightholders and/or rights managers could theoretically continue using other means of licensing (direct licensing) and/or other platforms that may emerge (as the portal would be non-exclusive), in practice it is unlikely that a credible alternative would emerge that could coexist with the central portal (to be meaningful, it would require the involvement of the most significant CS). Customer allocation and price fixing are prohibited by the Treaty (Article 101(a) and Article 101(c) TFEU) and their negative consequences on the IM are well recognized by the ECJ.[163] Some consulted organisations representing CS insist however that the customer allocation would be essential as competition between CS could lead to "a race to the bottom". Negative consequences of customer allocation and price restrictions could only be accepted under the EU competition rules if they are outweighed by the creation of significant efficiencies for consumers. To date no such efficiencies have been demonstrated. Accordingly, **the impacts of this option will not be further assessed.**

6.6. Comparison of policy options on multi-territory licensing

Criteria ► Policy option▼	Effecti-veness	Impact on the IM	Impact on users	Impact on consumers	Impact on CS	Impact on rightholders	Cultural diversity	Compliance costs
Option B1 - Status quo	0	0	0	0	0	0	0	0
Option B2 - Passport	++	++	++	+	+	++	+	-
Option B3 - "Parallel direct licensing"	+	+	+(+)	+	-	+/- [*]	-	-
Option B4 - ECL with country-of origin	+/0	+	+	0	0/-	0	0	--

"0" – no change "+" – positive impact "-" – negative impact [*] [*depending on value of their rights*]

6.6.1. Impacts on the Internal Market

Under Option B1, the IM would remain fragmented: rights licensing for online services would remain complex, as described in the baseline scenario. Option B2 (passport) would enhance trust and confidence between CS and promote voluntary cooperation for the delivery of MT licences. It would also facilitate the smooth functioning of the market by alleviating legal uncertainty and ensure common rules – and a high level of performance- for all collective licensors across the EU. Option B3 (parallel direct licensing) has also positive impacts on the IM as it creates competitive pressure on CS to develop more efficient licensing practices in order to avoid that major rightholders directly grant licences to users. However, contrary to option B2, it would not create a minimum set of common rules for licensors and its initials effects on the market are likely to be quite unsettling. Option B4 provides, a priori, a degree

162 I.e. they would still have the right to grant MT licences to users, in their own repertoire, without using the portal.

163 See e.g. Case 41/69 etc *ACF Chemiefarma NV v Commission* [1970] ECR 661.

of legal certainty in the IM but it does not address the significant discrepancies in the efficiency of CS across the EU and it is not likely to simplify MT licensing in the IM because of the high likelihood of opt outs. It would also not lead to aggregation of repertoire.

6.6.2. Impacts on the degree of competition

Without policy intervention (Option B1), multiple licensing practices would continue to exist with a different geographical scope (national or MT) and a varied level of aggregation (repertoire specific or multi-repertoire). The level of competition for users among CS would not be high as online service providers wishing to launch a pan-EU service including the entire EU repertoire would need to enter into licence agreements with all CS and additionally with publishers for some of the mechanical rights. This option would be neutral as far as competition for rightholders among CS is concerned. Option B2 is designed to promote voluntary cooperation between CS for the delivery of MT licences. The market would determine how many licensing entities complying with Option B2 requirements would develop. It is expected that market would settle on a "reasonable number" of licensors and that this outcome would avoid monopolistic licensing conditions at EU or EEA level. These licensing entities which would be interested in aggregating the repertoire (as opposed to those that would only be interested in licensing their own repertoire on the MT basis) would be in competition (also with other licensing agents) to attract repertoire of rightholders, other CS and possibly also non-EEA repertoire. The level of competition among CS complying with the requirements under Option B2 with regard to users would depend on the extent of overlaps in the represented repertoire. Option B3 would create competition between the different licensing entities (CS and non-CS). The non-exclusive mandates from rightholders to CS would create a situation in which all market players would be, in principle, able to obtain rights to represent pan-EU repertoire. This would create competitive pressure on CS to develop more efficient licensing practices in order to avoid that rightholders directly (via non-CS licensing agents) grant licences to users. Publishers would obtain a possibility to aggregate the rights in their own catalogue. Currently they can only directly license the digital reproduction right in their Anglo-American catalogue. The authors' non-exclusive mandates with CS would allow publishers to obtain the right to license the rights they are currently missing from individual authors. New players, such as record labels, could enter the market and represent rightholders. Commercial users could obtain licences either: (1) directly from the owner of the relevant copyright ("direct licensing" via a licensing agent), (2) from individual collecting societies or (3) from a network of collecting societies that have decided to pool their repertoires. Option B4 would result in a certain level of competition between CS for users as they could obtain licences for the same repertoire from all CS. However, it is expected that this competition could concern only a limited part of the repertoire as the biggest rightholders including publishers and CS with the most commercial repertoire, would probably opt out from the extended collective licensing as this system would not put pressure on CS to increase their efficiency and to modernise their licensing models. For the same reason Option B4 would not increase competition between CS as regards rightholders.

6.6.3. Impacts on stakeholders and cultural diversity

As regards **rightholders**, the status quo (option B1) is likely to deprive them from revenue they could otherwise earn given the reticence or technical inability to monetise music online by certain CS, while revenue from "physical" sales will continue to decline. Improvements driven by competition between passport holders (Option B2) are likely to result in more choice for rightholders and consequently in the aggregation of their rights in the best

performing "passport entities", thus benefiting from the licensing and distributive efficiencies (e.g. faster and more accurate payments) that should be generated in well-managed passport entities. Option B3 would favour large rightholders (e.g. publishers): they would be in a position to negotiate deals faster and to choose the best solution for the technical administration of their rights (invoicing, data processing, payments). But most rightholders i.e. smaller rightholders will receive lower royalty payments if they remain attached to CS (because of the need to support the administrative costs of the CS while their income diminishes) or may be 'compelled' to assign their rights to publishers or record producers. Under option B4, rightholders would find it difficult to track their income as their rights would be licensed by local CS for use across the EU without their express consent and without them having a possibility to influence decisions. Given the lack of incentives on the improvement of the data-processing ability of CS, slow, inaccurate payment processing is likely to remain as quality standards would not be raised. This option would also require the redefinition of the rights as such; hence the intervention would affect the situation of rightholders more than it is necessary to achieve the objectives.

As regards **collecting societies,** under option B1, small and medium sized CS would continue to lack the technical ability to process MT, multi-repertoire licences. To some extent, they would continue to grant multi-repertoire licences limited to their domestic territories, on the basis of remaining reciprocal agreements with other societies. In the case of option B2, the risk of a two-tier licensing infrastructure emerging (i.e. commercially attractive repertoire being served by a better licensing infrastructure and obtaining more favourable licensing terms than small, local or niche repertoire) is avoided. Smaller societies can avoid undergoing significant investments by relying on the infrastructure of passport holders, while continuing to licence local services. Option B3 is likely to be detrimental to CS: the most valuable repertoire and the online music services which generate the most revenue could be licensed without using their services, thus immediately diminishing their turnover and proportionally increasing their costs. Option B4 provides short term reassurances to CS that they will have a role to play in their domestic market but does not provide any incentive for CS to improve their capability to deal with online service providers, or to raise data processing standards and does not ensure that they will have the rights required to play a role in the online markets (because of the opt outs).

As regards the **reciprocal representation agreements**, under Option B1, their role would remain the same as today. Similarly, Option B4 would have a relatively neutral effect, as CS which would want to benefit from the presumption (that they have the authority to grant extended licenses) would need to show that they represent a sufficient number of rightholders, either directly or through reciprocal agreements. However the opt-outs from the CS are likely to happen and would have a negative impact. The MT licensing scheme under Option B2 does not require reciprocal agreements. The agreement between a CS and the "passport entity" to represent its repertoire would not be reciprocal. Nonetheless, these agreements would continue to exist to a more limited extent. Similarly, in the case of "parallel direct licensing" (Option B3), the current practice of reciprocal agreements allowing CS to grant multi-repertoire licenses to their own territory would continue but with a more limited/less attractive repertoire.

The emergence of new **online music services** or the expansion of existing ones would continue to be hampered under the status quo (option B1): **commercial users** wanting to launch MT and multi-repertoire services will continue to face unnecessary levels of complexity and costs when clearing rights. On the contrary, option B2 would aim to stimulate

the voluntary aggregation of repertoire by creating licensing hubs, combined with a level of service in line with the demands of users: facilitating the task of users in securing licenses, and reducing their transaction costs. Option B3 is likely to accommodate a variety of online providers' needs. However, it may result in users facing the need to secure a higher number of licenses when their business model (which is the one prevailing today) is based on the offer of a large and varied repertoire which includes not only the international catalogue but also local catalogues. Option B4 will not simplify matters for users: they would still need to get a number of licences from rightholders and CS because of the opting out (as under the baseline scenario) as well as an extended licence from the CS granting an extended licence in their country of origin. This option would not lead to the aggregation of repertoire and would not raise technical standards. Also, it lacks the flexibility of other licensing process.

The status quo is not to the advantage of **consumers**: consumer access to online music services will continue to be patchy and unevenly spread, to the detriment of consumers in smaller countries. The emergence of passport holders (option B2) is expected to facilitate the scaling up of existing services to a multi-territory level, as well as the launching of new services, offering more choice of services to consumers and broad choice of music. Option B3 is also likely to have positive effect on consumers' access to new services, but it could be possible that the repertoire-specific nature of certain licensing platforms might lead to a reduction in breadth and scope of repertoire that is available from pan-European services. Option B4 would have a mixed impact on consumers: existing services or services which rely on a less innovative or risky business model may be accessible to consumers across the EU; however, due to the expected conservative licensing model, consumers are less likely to benefit from the launch of more innovative services.

Concerning **cultural diversity**, under the current scenario (B1), smaller CS might not succeed in cross-border licensing as their own repertoire – while culturally significant – has a lower commercial value than repertoire that is popular across cultural boundaries. Thus, a direct negative impact on the availability of culturally diverse repertoire outside national borders remains. Option B2 (passport) positively contributes to cultural diversity: online services would all be able to offer a large repertoire, including local or niche repertoire. Under option B3 (parallel licensing) the large majority of rightholders, i.e. smaller rightholders, would receive lower royalty payments. The operational costs of CS would have to be divided among a smaller number of righholders and this could hinder the capacity of the CS to promote its repertoire. The commercial opportunities for the repertoire held by smaller CS could be undermined. Local, niche and "less mainstream" repertoires would suffer. The disappearance of this less "mainstream" repertoire (e.g. niche or local repertoire) would be detrimental to cultural diversity in Europe. Option B4 has neutral effects: local and niche repertoire will continue to be licenced by local societies, however most likely in conditions which are less favourable than mainstream repertoire.

6.6.4. Impacts on stakeholders: SMEs, micro-enterprises

Option B2 (passport) is likely to have positive impacts on SMEs: it will favour the development of new and innovative services, thus providing market opportunities to new entrants, including SMEs; it will allow smaller CS to provide a good service to their members by cooperating with larger CS and in terms of licensing opportunities (and possible new revenue) and quality of service, small rightholders are likely to be better served under option B2 than under any of the other options. Other options are less positive for SMEs: they will result in more rigid market conditions for service providers, making life more difficult for

smaller players. Concerning smaller CS, option B3 has detrimental effects, while option B4 may be detrimental because of the opt-outs. For smaller rightholders, option B3 is likely to result in lower royalties while option B4 increases the monitoring difficulties for them. No exemption for **micro-enterprises** is proposed as there are no authors' societies licensing music rights[164] (even only on a national basis) that would fall under the exemption.

6.6.5. Effectiveness and proportionality

As regards the **effectiveness** of the options, both option B2 (passport) and B3 (parallel direct licensing) will, overall, achieve the desired objectives, and therefore improve the market situation. However, option B2 appears a more effective option to secure a vibrant internal market that will respect cultural diversity. Also, by building on the existing business model in which CS have an important role to play, it will create less uncertainties than the option B3 which breaks from the existing model. The effectiveness of option B4 (extended collective licence) is not better than the status quo: while some service providers may be in a position to better obtain licences, others would not (opt-outs) and rightholders are unlikely to be better off than today.

In terms of **proportionality** of EU intervention, option B4 would seem to go beyond the necessary to address the identified problems as it would affect the definition of existing rights whilst Options B2 and B3 provide answers for the specific identified problems. The other options do not raise concern in this respect. Option B2 is the one, as shown in the description of the impacts above, which achieves a better balance between the different interests involved: those of rightholders, of CS, of service providers and consumers, while at the same time guaranteeing a sufficient protection of cultural diversity. Other options are less proportionate as they seem to favour certain stakeholders: direct licencing would largely favour music publishers to the detriment of CS, in particular smaller ones, and of smaller rightholders; while the extended collective licensing would favour CS without necessarily providing for efficiency gains to the advantage of both rightholders and service providers.

6.6.6. Efficiency

Option B3 would entail the lowest compliance costs. It would lead to efficiency gains in particular for those rightholders opting to grant direct licences. Rightholders in niche or local repertoire, however, would be unlikely to benefit from such efficiencies. Option B4 would entail compliance costs for CS, rightholders, and also for MS, which would have to step up the oversight of CS granting ECLs. These costs would not be expected to lead to improvements in the efficiency of CS to grant licences or to distribute income to rightholders. Option B2 (passport) entails compliance costs mainly for licensing entities which opt to become a passport holder. The main cost-benefits of the passport option are that the costs would be incurred by those entities best placed to sustain them, and would lead to an improvement in the efficiency of CS (in their relationship with users and with rightholders). Further, the passport allows smaller societies to benefit from these efficiencies by tagging on their repertoire. In light of this analysis, the passport option (B2) (combined with a G&T framework) would appear proportionate to the objectives.

[164] As opposed to CS active in other fields (mentioned in section 5.5.4 with respect to measures related to G&T).

7. COMPARISON OF THE COMBINATIONS OF G&T AND "LICENSING" OPTIONS

7.1. Combination of options

As shown in Chapter 4, operational objectives in the two areas are interconnected: improvements in the transparency and governance of CS will positively impact on their capability to carry out MT licensing of authors' rights for online use of musical works and the reverse is also true. Therefore, it is necessary to examine if different combinations of options from both areas could achieve the desired objectives and which combination is the most proportionate. In the following paragraphs, a summary analysis of the combination of option B2 (passport), which is the most effective for the improvement of multi-territory licensing, with options A3 (codification of existing G&T rules) and A4 (framework of G&T rules) is presented[165]. For further detail on other combination of options, see Annex R.

The combination of the passport (option B2) with the codification of existing G&T rules (option A3) would not compensate for the weaknesses of Option A3 in addressing all the G&T problems. Whilst the passport (option B2) would bring more transparency on the income derived from online rights (by promoting rights management practices which account precisely revenue and costs at the level of individual works), it would not bring further transparency as to how a society finances the costs of its online operations (i.e. whether from cross-subsidisation from other revenue streams, financial income, etc.). Lack of financial transparency would thus remain. Similarly, while the passport acknowledges that rightholders and societies should choose how best to licence online rights (i.e. by choosing the best passport society), it does not strengthen the ability of rightholders to control their CS.

Compared to codification, a framework of G&T rules (option A4) would further improve the oversight of all rightholders over CS and guarantee a fair handling of collected royalties. In this context, the passport would improve transparency and the fair handling of revenues for all rightholders: entities which come under the scope of the passport rules would have to provide a sophisticated and accurate level of transparency in the reporting and distribution of remuneration collected from online uses. This would complement the framework of G&T rules to give a full picture of the activities of CS, from their general financial activities (including their investments decisions) to their online activities.

Codification (option A3) or a framework of G&T rules (option A4) would also affect the way to improve the supply of multi-territory licences, mainly because they would increase, the trust and confidence of rightholders in CS. Over time, this would reduce the incentives for rightholders to deliver MT licences through other means than a collecting society. Some rightholders have indicated that they would be prepared to re-entrust some of their rights to CS, should there be appropriate levels of G&T. This is more likely to be the case under option A4 than under option A3, as the latter would not deliver transparency in the financial activities of CS, and would only marginally improve the ability of rightholders to control CS. Comprehensive G&T rules, however, would contribute significantly to improving the effectiveness of the passport. Rightholders would have a clear picture, including of the implications from a financial point of view, of whether their CS should engage itself in licensing under passport rules, or choose to entrust their rights to a passport entity. Well

165 While the policy options for improving multi-territory licensing largely differ from each other, the options regarding G&T imply a certain graduation of the policy intervention, from the less intrusive (option A2) to the stricter one (option A4, in particular sub-option A4b).

governed and transparent CS would be able to reach the most appropriate solution for the licensing of their rights on a MT basis in the interest of rightholders.

7.2. Other impacts

The options have no impact on the **environment**.

The options have no direct impact on **third countries**. Rightholders and commercial users from third countries would however benefit from the improved enforcement (Option A2), the codification of existing principles (Option A3) and from better transparency and control over financial management, in particular over cross-border royalty flows (Option A4) the same way as European nationals. As regards MT licenses, the requirements in the options would not cover repertoires from third countries but in Option B2 such rightholders may indirectly benefit from the improved conditions as they may agree with a "passport entity" to grant MT licences for their repertoires in Europe.

The options do not have a direct impact on **employment**. The improvement of multi-territory licensing in Europe, however, is likely to contribute to making it easier for commercial users to launch new music services. This could have a positive impact on employment by service providers. As better G&T standards are also necessary for improving the conditions of MT licensing, indirectly they also contribute to the positive effect. In turn, better supply of music services could contribute to increase the size of European digital market, resulting in increased revenues for rightholders. While a positive effect would be undeniable, it is hard to estimate how many additional rightholders could be able to effectively live from their music revenues (as self-employed persons).

7.3. Policy choice

Based on the above analysis it seems that **a combination Option A4 (G&T framework) and Option B2 (European Licensing Passport)** would be most suitable to achieve the objectives set out in Chapter 4.

8. CHOICE OF INSTRUMENT

The chosen policy options would best be implemented in a single instrument. The analysis above shows that both sets of options are strongly dependent on one another. Comprehensive G&T rules would have a significant impact on authors' CS, which play an important role in the licensing of musical works for online uses, and would contribute to improving the licensing of musical works for online uses. A single instrument would ensure the coherence and effectiveness of both policy options.

A **non-binding instrument** such as a recommendation encouraging MS to improve their legal framework and stakeholders to develop self-regulatory approaches could be envisaged. However, a "soft law" approach in this area was already pursued in 2005, when the Commission adopted a Recommendation. While this has contributed to industry-driven developments, it is clear that this has not been sufficient to trigger the necessary changes in national laws and in stakeholders' practices.[166] Furthermore, a soft-law approach would not ensure improvements across all CS and MS. Given that CS depend on each other to

[166] See Annex L.

effectively licence the European repertoire, there is a risk that a "soft-law" approach would fail to achieve the objectives set forth in this IA.

A legislative instrument – Regulation or Directive – would appear to be more appropriate to address the issues identified. Only a binding instrument can guarantee that the policy options are introduced in all MS and that improvements follow for all CS across the EU.

A **Regulation** allows for quick implementation and is particularly suitable when the objective is the full harmonisation of national rules in a certain area. However, in this case, the chosen policy options allow MS some flexibility to articulate harmonised rules with their own national legal framework on CS (e.g. their legal form, additional means of supervision). Further, the legal basis for the proposed action includes freedom to provide services, which only provides for the adoption of Directives. Finally, collecting management mechanisms reflect different traditions existing in MS which are an important element of the cultural diversity that the EU action in this area should respect. A Regulation would deprive MS from the flexibility required to take account of their different experiences and legal frameworks. Imposing a single European model of collecting management would neither be effective to achieve the objectives nor would it be compatible with the principles of subsidiarity and proportionality.

A **Directive** would therefore best ensure the achievement of the objectives of the proposed action, whilst allowing individual MS to adapt their existing legal frameworks. A Directive could also allow for different degrees of harmonisation depending on the specific aspects touched upon, given the different, although correlated areas (G&T and licencing) that will be regulated. Where a need should arise for the adoption of more detailed technical rules reflecting market or technological developments, a Directive could confer on the Commission the power to adopt delegated or implementing acts. The need for a quick implementation of the new rules could be accommodated by proposing a short transposition deadline.

9. MONITORING AND EVALUATION

Monitoring and evaluation will be conducted in line with the objectives identified above.

The **monitoring** process could consist of two phases:

(1) The first would concentrate on the short-term, starting right after the adoption of the proposal. It would focus on its basic implementation, i.e. establishment and/or amendments of national rules on G&T and the provision of rules related to the licensing of the rights of authors of musical works for online services. Before the transposition deadline, the Commission would organise transposition workshops and meetings with MS' representatives (e.g. group of experts) to assist them in the transposition process and to facilitate the mutual exchange of information. After the transposition deadline, the Commission would verify the timely adoption and correctness of the transposition measures. The number of MS which have transposed the Directive in a timely and correct manner would constitute a success indicator.

(2) The second would be mid to long-term and would focus on direct effects of the rules such as the improved transparency (including as regards cross-border flows of income collected between CS), governance of CS and the improved MT licensing for online use of musical works. Whether success criteria are met can be assessed on the

basis of indicators available from a number of sources. The implementation of G&T criteria would, at this stage, lead to more information being available on the activities of CS – more information should be available publicly, in the annual (financial) reports as well as in other documents of CS. The Commission could further obtain information from MS by using a group of national experts and by sending questionnaires, which each MS would redirect to the relevant national authorities. Information from stakeholders could be obtained from a survey or questionnaires sent to stakeholders, from complaints (to dispute resolution bodies, courts, national authorities or the Commission) and from bilateral contacts with stakeholders. The information-gathering should start 2/3 years after the transposition deadline. A comprehensive system with a well-defined set of indicators will be set up to monitor the progress under each objective. Monitoring indicators are presented in Annex S.

A comprehensive **evaluation** could take place 5 years after the entry into force of the rules.

10. ANNEX A: REPORT FROM THE HEARING ON COLLECTING SOCIETIES, 23 APRIL 2010

On April 23 2010, the copyright unit organised a hearing on collective rights management. 350 participants registered and almost all of them attended.

The hearing focused on two main issues: licensing and governance.

10.1. Licensing

A. The relationship between commercial users and collecting societies

GESAC, representing 34 European collecting societies, highlighted that the Santiago model (rejected by DG COMP) would have avoided the current internet licensing dilemma. They argued that if DG COMP had accepted the "customer allocation" clause contained in the Santiago agreements, every internet service provider could have obtained access to the world repertoire through the collecting society domiciled in its territory. The latter would then have granted a licence covering its own and the repertoires of all other 26 societies. The "customer allocation", according to GESAC, was essential to avoid competition between collecting societies, a phenomenon that GESAC considers as triggering "a race to the bottom".

The EBU advocated "country of origin" licensing. They argued that it is wrong to assume that a "communication" occurs in every territory where the internet can be accessed. For the EBU, an act of "communication" only occurs in the territory where the broadcaster introduces the signal into an uninterrupted chain of communication. As this territory can only be identified with relative ease with respect to satellite transmissions, the EBU argued that, in the case of internet transmissions, the "country of origin" should be freely chosen by the broadcaster himself.

In this context, EBU did not share GESAC's concern about "a race to the bottom" as the licence fee in the "country of origin" could well integrate the amount of viewers that are domiciled outside this territory. Ideally, the "country of origin" licence should be an "extended collective licence", i.e., a licence that also comprises rightholders that are not members of the licensor collecting society. This would provide broadcasters with increased legal certainty against lawsuits by "outsiders" (authors that are not affiliated with a collecting society).

On the other hand, the EBU stated that "country of origin" licensing should only apply to broadcasting and broadcasting-like services (essentially time shifted broadcasts, such as "catch-up" TV) but not to other services or service providers.

Nokia and a number of music publishers (EMI, Warner, Sony) referred to new business models where the traditional mass usage model of collecting societies fails. Nokia deplored that it is hard to negotiate with collecting societies for new subscription services as its service is not based on mass usage of unspecified "world" repertoire. New, repertoire-specific services cannot negotiate licensing agreements based on their individualised licensing needs.

B. The relationship between rightholders and collecting societies

RTL, a private broadcaster, advocated a system of non-exclusive collecting society mandates. RTL advocated that collecting societies should be obliged to accept non-exclusive mandates

whereby authors assign some of their rights (e.g. broadcasting) to collecting societies while other rights necessary for online services (e.g. making available) could be retained by the author or the music publisher, for "direct licensing". This, according to RTL, would avoid the current situation whereby music publishers have to withdraw their rights in order to license services such as Apple iTunes or Nokia directly.

SACEM and GEMA indicated that they were absolutely opposed to non-exclusive mandates. In SACEM's view, the exclusivity of collecting society mandates is justified by the fact that rightholders should not be able to enter into separate arrangements with online music services or even with music publishers. This is because rightholders would not obtain favourable conditions by negotiating alone and that the bad deals they enter into will set precedents making it more difficult for collecting societies to negotiate an appropriate rate. GEMA also indicated that non-exclusive mandates would further strengthen music publishers as a corporate force within collecting societies.

C. Collective licensing practices outside the music sector

Participants often deplore that the collective licensing debate is overly focused on practices in the music sector. Therefore, the hearing also examined licensing practices in three other sectors: fine arts and photography, reprography and film.

Societies active in visual art and photography have, for quite some time now, overcome the territoriality issue by setting up a joint portal where all of their works are pooled. Each partner society has a mandate to license any work contained in the pool to any user anywhere in Europe. There are no territorial restrictions and no customer allocation mechanisms with this online licensing portal.

Societies active in reprography rarely license beyond national territories. Reprography is linked to the operation of copying machines which tend to be stationary. On the other hand, imposing levies on private copying devices is potentially a cross-border activity (levies mostly affect goods in commerce). Nevertheless, the current administration of levies is purely domestic -- due to the fact that levies are administered in the "country of destination". Societies active in reprography insist on maintaining this principle as they believe cultural diversity requires application of the levy rates charged in the "country of destination". The ICT industry, on the other hand, is willing to pay levies, but only once in the "country of origin". One notable exception to territorial licensing by reprography societies are so-called virtual learning environments (VLEs). Here, the licence covers domestic and foreign-based students who access the VLE. VLEs are currently a minor part of the reprography societies' turnover.

Reprography societies also already offer non-exclusive mandates, allowing their members to license certain users directly. Reprography societies also allow rightholders to 'opt out' of certain uses or to limit the societies' mandate to certain uses.

Collective licensing of film is essentially limited to cable retransmissions. These are licensed for each territory in which a cable network operates.

10.2. Governance

The most interesting point with respect to governance is whether the self-regulatory approach promoted by the Commission in its 2005 online music recommendation has produced tangible

results. On balance, it appears that the Recommendation and the 2006 joint GESAC/ICMP declaration have produced some limited results.

GESAC argued that there was good progress in implementing the 2006 GESAC/ICMP declaration. In SACEM's view, the rule that publishers should be able to become members in collecting societies is universally respected, as is the recommendation that publishers can have up to 1/3 of the seats on any given collecting society's board. If there were residual issues linked to board representation, these could best be addressed by further dialogue between the parties. SACEM also pointed out that it was in full compliance with both the 2005 online music recommendation and the 2006 GESAC/ICMP joint declaration, thus hinting that, in its view, no further legislation was warranted with respect to governance.

Music publishers argue that the recommendation, by introducing two new online categories (interactive and non-interactive online exploitation), has strengthened the power of rightholders. However, music publishers are less convinced that there is real progress with respect to their voting power and board representation. Especially the Eastern European societies, publishers argued, denied their industry representation on the board, even if the society managed publishers' rights.

Authors seemed to fear the corporate influence that music publishers are granted when they exercise voting power within collecting societies. This fear seems to outweigh their fear that current collective licensing models produce little revenue for online exploitation of their works - a fact they equally deplore.

11. ANNEX B: SHORT SUMMARY OF MAIN STAKEHOLDERS VIEWS

11.1. Collecting societies

GESAC (the European Grouping of Societies of Authors and Composers)[167] argues that the societies are already meeting high standard of transparency and governance by complying with the GESAC-ICMP Common Declaration and the CISAC Professional Rules adopted in 2007 and 2009.[168] In July 2006, the ICMP (the international umbrella trade association representing music publishers) and GESAC adopted a joint declaration in order to implement the Commission's recommendations on governance and transparency. In the ICMP/GESAC Joint Declaration[169] the parties agreed, *inter alia*, that publishers should be admitted as members of collecting societies and on the maximum number of seats publishers may have on a society's board. They also agreed that societies should report regularly to all rightholders they represent, whether directly or under reciprocal representation agreements, on any licences granted, on applicable tariffs, and on royalties collected and distributed. They would also inform rightholders of the repertoire represented, the territorial scope of the mandates granted, and on existing reciprocal agreements. However, GESAC also points out that currently, diverging national regulatory frameworks leads to an un-level playing field for European collecting societies.

In relation to the online licensing of musical works, GESAC supports voluntary re-aggregation of repertoires and protection of cultural diversity (equal access of repertoires to the market and protection of authors' societies' role in the promotion of local repertoires). GESAC originally advocated a central portal, developed with CISAC[170], based on voluntary and non-exclusive participation of all collecting societies with no competition as to the choice of licensing society. Collecting societies strongly oppose any 'intra-brand' competition and the non-exclusivity of mandates.

Individual collecting societies nevertheless have differing approaches. Some large collecting societies argue that national regulation hampers their multi-territorial licensing activities. They argue that they should also be able to attract and licence repertoire from other societies, or constitute licensing hubs with other societies. Other collecting societies, generally small or medium sized, are concerned at the emergence of a two-tier licensing system, whereby they would be excluded from licensing major European music services. Some want to aggregate all rights in their hands so that they can deliver blanket licences on a multi-territory basis and suggest that inclusion of publishers' rights into this system should be mandatory. Others see their role as continuing to provide a blanket licence, on a territorial basis and with a carve-out for repertoire directly licensed by large societies or publishers, to any service operating in their territory. This blanket would be act as "insurance" to the service provider that the remainder of the repertoire is covered in the licence. Finally some see their role as continuing to licence the services directed at mainly national audiences, but operating on a multi-territory basis (multi-territory multi-repertoire licensing with customer allocation for multi-territory services aimed mainly at a national audience). Finally, at least one medium sized society

[167] See, among others, GESAC Position Paper on Certain Aspects of Collective Management of Copyright in the Single European Digital Music Market, 8 February 2011

[168] http://www.cisac.org/CisacPortal/consulterDocument.do?id=18258

[169] http://www.gesac.org/eng/positions/download/ICMPGESACDeclaration_final_EN_070706.pdf

[170] CISAC (Confédération internationale des sociétés d'auteurs et compositeurs) is an international organisation of collecting societies which manages performing rights.

argues for competitive licensing on the basis of system of reciprocal agreements without customer allocation (along the lines of the agreements concluded by record producers collecting societies for the licensing of simulcasting, webcasting and certain forms of on demand streaming). In that system collecting societies would pool their rights together, each having the authority to grant multi-repertoire multi-territory licences to any user, and compete on administrative costs.

11.2. Creators

Authors in principle advocate free choice to decide to which society to entrust their rights and possibility to move repertoire between societies. They support strong authors' rights management societies, which represent all repertoires in an equal and non-discriminatory manner, with emphasis on cultural responsibility, transparency and flexibility. They call for non-discriminatory distribution rules and transparency of deductions. Collecting societies should comply with minimum standards – these would cover structure, governance and the role of management. On the other hand they guard against over-regulation. They strongly defend the maintenance of exclusive assignment of rights to collecting societies. They support re-aggregation of repertoire into authors' rights management societies, including by mandatory means if necessary.

Some representatives of performing artists also stress the importance of improved governance and transparency standards, notably: royalty distribution should reflect actual usage of individual tracks (harmonisation of reporting standards to guarantee distribution on the basis of usage) and timely reporting on usage. They call for competition between collecting societies to improve standards. The Commission should consider the establishment of separate data clearing houses to manage data on usage, leaving collecting societies to manage royalty distribution on the basis of reports generated by such independent organisations. They support the creation of a Global Repertoire Database.

11.3. Music publishers

Music publishers argue strongly for European legislation on the governance of collecting societies: better governance rules would ensure that rightholders are in a position to control and improve their collecting societies. The governance rules should provide for regular general assemblies, ensure the eligibility of publishers for board membership, provide for transparency of remuneration, for fair, transparent and regular elections and a cap on the maximum duration of board tenure. Music publishers also advocate increased transparency, i.e. administrative costs should be clear and there should be non-discriminatory distribution policies. Income should be distributed to rightholders on the bases of clear non-discriminatory distribution policies.

Major music publishers call on the Commission to support important initiatives already under way (such as the work on the Global Repertoire Database or the emergence of licensing agents such as CELAS or Armonia). Key elements to achieve pro-competitive, flexible and robust licensing market would be: (i) support for the creation and promulgation of technical standards; (ii) improved transparency, efficiency and accountability of collective rights managers; and (iii) the preservation of the basic principles of copyright law and contractual freedom so that those collective rights managers that deliver the best service to their members are rewarded with the possibility of attracting rightholders thereby delivering the greatest possible aggregation. This should lead to 'bespoke' licences agreed on a commercial, market-driven basis as many services do not fit into the existing licensing schemes. The licences

should be granted on a multi-territorial or pan-European basis if demanded by the service provider. Some suggest to review the non-exclusivity of mandates and making withdrawal of digital rights more flexible. All rights in a given digital usage (e. g. the reproduction and the communication to the public rights in a download) should be licenced together by the licensor of the mechanical right.

11.4. Record producers

IMPALA (Independent Music Companies Association) supports improved governance and transparency of collecting societies. They argue that common standards are needed to ensure the proper flow of revenues. They point out that independent record producers rely heavily on their local collecting society to collect revenue from abroad. This means that more transparency is needed in the cross-border distribution of income between societies (in Europe and internationally). They also argue for common accounting standards and effective dispute resolution procedures (arbitration is an option) to guarantee more transparency and governance. Regarding the licensing of musical works for online uses, IMPALA supports efforts to improve multi-territorial licensing by collecting societies. This should ensure access to all repertoire, with Anglo-American and European local repertoires treated equally, and would maintain strong local collecting societies. To this end it is important to restore reciprocity so that all societies are able to license the entire repertoire without a race to the bottom on the licence fees. Major music publishers must be covered by the rules applied to collecting societies. A global track database should be created with neutral management and equal treatment for all society members in terms of database functionality, membership, management fees, access to data and participation in earnings. Track based accounting should be standard and local repertoire should be included on an equal basis.

IFPI (International Federation of the Phonographic Industry) notes that the fundamental issue limiting the development of digital services in Europe remains the problem of piracy. Regarding governance and transparency, IFPI argues that rightholders are in the best position to improve the efficiency and transparency of collecting societies. It would be sufficient to ensure that the Commission and national authorities enforce the already existing rules and remove national rules upholding local monopolies.

In relation to the licensing of musical works, IFPI advocates that authors' collecting societies should grant (which they refuse for the time being) licences to record producers allowing them to act as 'wholesalers' of authors' rights for music service providers. This way online and mobile music providers could obtain "all rights included" licences from producers. Therefore authors' societies should not be allowed to refuse to license record producers where acting in such capacity. Alternatively, IFPI argues that authors' societies should be mandated to conclude reciprocal agreements for the competitive licensing of rights, i.e. without customer allocation clauses, based on the model of existing agreements amongst record producer collecting societies. Finally, IFPI argues that the introduction of effective and fair dispute resolution systems would improve licensing by authors' societies.

11.5. Commercial users

A coalition of users, the ***Copyright Users Platform*** (CUP),[171] calls for the adoption of European legislation on the governance and transparency of collecting societies. Societies should have a duty to accept every interested rightholder as a member and an obligation to

[171] Representing EBU, Cable Europe, AER, GSMA Europe, BEUC, Hotrec and Digital Europe

contract with every interested user on non-discriminatory grounds. Collecting societies should be fully transparent as regards repertoires they represent and the rights they are mandated to manage for those repertoires – this information should be published in a publicly accessible worldwide database. They must be subject to a clear and common accounting framework that provides full transparency in their accounts. Costs, cross-subsidisation of different revenue streams, cultural and social deductions should all be identified and accounted for. Financial flows between collecting societies, i.e. the redistribution of income between societies, should also be transparent. Users should be informed ahead of negotiations about criteria for calculating tariffs, licensing conditions and administrative requirements. Societies should be subject to independent authorisation regimes and independent control. Each Member State should be encouraged to set up fair dispute resolution mechanisms to solve rights clearance problems.

Music service providers generally call for flexible, innovative, contractually negotiated multi-territorial licences. There should be a limited number of licensors licensing different repertoires on a pan-European level. They are sceptical about the notion of a 'one-stop-shop' which would not be sufficiently agile, flexible or competitive and caution against a "one-size fits all" approach. They support voluntary aggregation efforts, which are already taking place on the market. They support the creation of a Global Repertoire Database to facilitate the identification of repertoire and avoid 'double invoicing'. Some call for an aggregation of the mechanical and communication to the public rights to avoid the possibility of having to license them from separate licensors. Some call for "full scope licensing", e.g. two rights should not be licensed separately for the same type of use. Some music service providers state however that multi-territorial licensing has not had a positive impact because it increase fragmentation, and transaction costs. Moreover, entities licensing a large share of repertoire on a multi-territory basis are in a position to require high royalties but are not subject to any ad hoc regulatory requirements (such as dispute resolution). Most advocate greater transparency in the management of rights. However, some guard against transposing some aspects of the regulation of "traditional" licensing. E.g. rules obliging societies to publish static tariffs for predefined types of use may be a hindrance to the development of bespoke licences for innovative services. Some of them call for introduction of an audit right for rightholders against societies with a view to allowing rightholders to check whether royalty payments have been distributed accurately.

Representatives of the ICT industries argue that a proposal should promote more efficient and streamlined collective management of rights. There should be tighter supervision of collecting societies. Financial reporting and payment schedules should be harmonised, and particular areas (non-distributable income, public domain works, social and cultural funds) should be more tightly regulated. Collecting societies should be required to provide an annual declaration of their assets and the value of those assets. They should provide audit rights for their rightholder members. Collecting societies should report their revenue streams for different types of exploitation, services and devices. They call for an independent dispute settlement body to deal with licensing and remuneration issues. They argue that a legislative proposal should also cover the issue private copying levies in depth.

Public sector broadcasters, represented by the EBU, argue that an effective legal framework should be introduced which ensures better supervision and enhanced governance and transparency in the operation of collective licensing organisations, reflecting the right holders' interest and the interests of users of copyright-protected works. The legal framework should set out the definition, the main tasks and obligations of collective management, including

dispute resolution mechanisms. In relation to the licensing of musical works for online uses, EBU advocates for 'country of origin' licensing, where providers of audio or audiovisual media services (e.g. a broadcaster) should be able to clear all rights, including for online and on-demand use, through a single licence under the law of the provider's country of establishment. This should be combined with extended collective licences as an additional model for clearing rights and, in particular for audio and audiovisual media services where this is necessary and useful. Already existing collective arrangements for the use of musical works incorporated in the broadcasters' programmes should be extended to cover on-demand use for broadcast-like media services (on voluntary, and if it cannot be achieved on voluntary, compulsory basis). This, in principle, would however not apply to retail (or retail-like) services but would include services such as podcasts. The EBU also argues that where a broadcaster has obtained a licence allowing to carry out certain acts of communication to the public online, those acts should not require an additional licence of the reproduction right.

Private broadcasters' views vary. The governance and transparency of collecting societies should be improved (e.g. in accounting and by the separation of administrative fees from royalty fees). There should be transparent criteria for setting up a collecting society and more clarity as to the definition of a collecting society (see for e.g. the CELAS case), i.e. public authorisation, independent scrutiny and user consultation/involvement in the process. Effective external control of collective management societies is needed in order to prevent abusive dominant behaviour (e.g., excessive pricing, or discrimination in favour of the public broadcaster). This control could be carried out by one or more of the following: copyright tribunal, other independent authorities, arbitration boards, courts, national competition authorities, or the EU Commission. In relation to the licensing of musical works, some stress that a one-stop-shop for the global repertoire is essential and that non-compulsory solutions for the re-aggregation of repertoire should be encouraged. A distinction should be drawn between various users of music: online television services which use incidental or background music, on the one hand, services that only offers music on the other. In the former case, a one stop shop remains essential. Others argue essentially that mandates to collecting societies should be non-exclusive, in order to allow "parallel direct licensing". They argue that "parallel direct licensing", coupled with accompanying measures, will foster innovative and efficient licensing in the EU.

11.6. Consumers

Consumers would like to enjoy the widest possible choice and easy access (and payment) to a broad range of legal services. As the BEUC state in the 'BEUC Digital Agenda 2010-2014'[172], consumers want to get access to the content of their choice, irrespective of their nationality and place of residence. They call for simplification of rights clearance and encouragement of multi-territory licensing of, among others, music online. They advocate the development of a competitive online market for digital content and adoption of regulatory measures regarding the entities entrusted with the collective rights management. ConsumerFocus[173] calls for more effective supervision of collecting societies and for the establishment of minimum standards for collecting societies, such as: the provision of information to users and rightholders on administrative deductions and royalties paid, non-discriminatory membership rules and the use of appropriate technology to monitor usage of repertoire.

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172 http://docshare.beuc.org/docs/2/ENBAMCNAAAFPMAEILODKMPFNPDWD9DBYBK9D W3571KM/ BEUC/docs/DLS/2010-00204-01-E.pdf

173 Establishing minimum standards for collecting societies: applying EU competition case law (October 2011)

12. ANNEX C: GOVERNANCE AND TRANSPARENCY IN THE ACQUIS

In the context of this impact assessment, the *acquis* refers to judgements of the CJUE, decisions of the Commission on the basis of EU competition law, and the Commission Recommendation 2005/737 on collective cross-border management of copyright and related rights for legitimate online music services. The general principles applicable to the activities of collecting societies take into account the need to protect the collecting interests of authors and publishers, the need to preserve the exclusive property rights of authors and their individual exercise, and the need to control the monopoly power of collecting societies. The general principles which have emerged from the case law of the Court[174] are as follows:

(1) Collecting societies may not discriminate between their members on the basis of their nationality or place of residence or establishment.

(2) Collecting societies entrusted with the exploitation of copyright may not impose on their members' obligations which are not absolutely necessary for the attainment of its object and which encroach unfairly upon a member's freedom to exercise his copyright.

(3) Licences and tariffs applied by collecting societies should take into account as precisely as possible the actual use of works.

Membership and representation

Non-discrimination: Membership, voting rights or access to services shall not be restricted to authors and publishers on the basis of their nationality, domicile or establishment.

Membership requirements: Collecting societies may require a minimum yearly income stream for authors and publishers to accede to membership, voting rights or certain services.

Collecting societies may not refuse membership on the basis that an author or publisher manages some of its rights individually.

Right to participate in governance and conflicts of interest: The representation of rightholders in the internal decision making process has to be fair and balanced.

Collecting societies may not refuse membership to authors or publishers on the basis of their economic links with users. However, collecting societies may limit the participation of such members in the governance of the society.[175]

Rightholder choice of collecting society per category of rights

Rightholder choice: Members are free to decide which category of rights to entrust to a collecting society, for which territories, and to which collecting society.[176]

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[174] Case 127-73, *BRT v SABAM*; Case 22/79, *Greenwich Film Production v SACEM and Société des éditions Labrador*; Case 7/82, *GVL v Commission*; Case 402/85, *Basset v SACEM*; Case 395/87, *Ministère public v Jean-Louis Tournier*; Joined cases 110/88, 241/88 and 242/88, *François Lucazeau and others v SACEM and others*; Case C52/07, *Kanal 5 Ltd, TV 4 AB v STIM*.

[175] Commission Decision of 4 December 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.971-GEMA statutes), OJ L 094, p. 12.

Collecting societies should allow authors and publishers the possibility of withdrawing their rights at notice with effect, at the latest, three years after the notice, or, for online rights, on reasonable notice[177]

Categories of rights: Collecting societies should allow authors and publishers to exercise their choice in relation to categories of rights which are separable from an economic perspective, taking into account national legislation on copyright.[178]

Change of collecting society: When an author transfers rights from one collecting society to another, the income managed by the first society shall be taken into in consideration when considering the eligibility of that author or publisher to services of the other collecting society such as membership, social or cultural services.

Social and cultural funds

Collecting societies may provide social and cultural services, provided that:

– The allocation of social funds is not at the discretion of the collecting society, but gives members a legally enforceable right to benefits based on objective criteria;

– Eligibility to social funds is not subject to a requirement that the applicant has been a member for more than 5 years.

– Authors and publishers whose past contributions have made them eligible to a social or cultural fund do not cease to be eligible on the sole ground that they are no longer members of the collecting society.

– Collecting societies shall specify to their members whether they operate such funds on the basis of deductions from the income of the rights entrusted to them, and should report the amounts so deducted to members on an individual basis.[179]

Distribution

Collecting societies may not distribute income collected from the rights of its members in a way which favours certain group of members over others.[180]

Collective rights managers should distribute royalties to all rightholders or category of rightholders they represent in an equitable manner.

Licensing and relationship with users

Non-discriminatory tariffs: Collective rights managers should grant commercial users licences on the basis of objective criteria and without any discrimination among users.[181] A collecting

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176 Commission Recommendation 2005/737; Décision de la Commission du 2 juin 1971 relative à une procédure d'application de l'article 86 du Traité CEE (IV/26.760 GEMA), OJ L134/15 (hereafter "GEMA I").

177 Décision de la Commission du 6 juillet 1972 relative à une procédure d'application de l'article 86 du Traité CEE (IV/26.760 GEMA), OJ L166/22 (hereafter "GEMA II"); Commission Recommendation 2005/737m point 5(c).

178 GEMA II.

179 Commission Recommendation 2005/737, points 11 and 12.

180 GEMA I.

society may not apply dissimilar conditions to equivalent services if it places them as a result at a competitive disadvantage, unless such a practice may be objectively justified.[182]

Transparency: Collective rights managers should inform rightholders and commercial users of the repertoire they represent, any existing reciprocal representation agreements, the territorial scope of their mandates for that repertoire and the applicable tariffs.[183]

Controls on pricing: Tariffs and royalties charged by collecting societies may be subject to control by competition authorities.[184]

Methods of calculating tariffs: Tariffs should identify precisely the use of the works and the audience, to the extent that this does not result in disproportionate costs for the management of the rights. Tariffs should be proportionate overall to the quantity of works users or likely to be used.[185]

Blanket licensing: collecting societies should grant licences limited to sub-divisions of their repertoire unless this would not fully safeguard the interests of authors, composers and publishers of music and would increase the costs of managing contracts and monitoring the use of protected musical works.

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181 Commission Recommendation 2005/737, points 11 and 12.

182 Case C52/07, *Kanal 5 Ltd, TV 4 AB v Föreningen Svenska Tonsättares Internationella Musikbyrå (STIM) upa*.

183 Commission Recommendation 2005/737, point 6.

184 Joined cases 110/88, 241/88 and 242/88, *François Lucazeau and others v Société des Auteurs, Compositeurs et Editeurs de Musique (SACEM) and others*.

185 Case C52/07, *Kanal 5 Ltd, TV 4 AB v Föreningen Svenska Tonsättares Internationella Musikbyrå (STIM) upa*.

13. ANNEX D: MAJOR EU ONLINE SERVICES

Table D1. Availability of main online services in EU Member States (January 2012).

	iTunes	7 digital	eMusic	Deezer	Nokia Music	Vodafone	YouTube	Last FM	Sony Music Unlimited	Spotify	Orange	Jamba	MySpace	Zune	Amazon MP3	WimP	Napster	Total
MT	■	■	■															3
LU	■	■	■															3
CY	■	■	■															3
SI	■	■	■															3
HU	■	■				■												3
EE	■	■	■	■														4
LV	■	■	■	■														4
LT	■	■	■	■														4
BG	■	■	■						■									4
EL	■	■	■			■												4
RO	■	■				■					■							4
DK	■		■	■					■	■						■		6
SK	■	■	■		■		■				■							6
CZ	■	■	■		■	■	■											6
FI	■	■	■	■	■				■	■								7
PT	■	■	■	■	■	■						■						7
BE	■	■	■	■	■		■			■		■						8
PL	■	■	■		■		■	■			■		■					8
SE	■	■	■	■	■			■	■	■			■			■		10
IE	■	■	■	■	■	■	■	■	■				■					10
NL	■	■	■	■	■	■	■	■		■		■						10
IT	■	■	■	■	■	■	■	■	■			■						10
FR	■	■	■	■	■		■	■	■	■	■	■			■			12
DE	■	■	■	■	■	■		■	■	■		■		■	■		■	13
AT	■	■	■	■	■		■	■		■	■	■	■	■	■			13
ES	■	■	■	■	■	■	■	■	■	■	■	■	■	■				14
UK	■	■	■	■	■	■	■	■	■	■	■		■	■	■		■	15
Total	27	26	25	16	15	11	11	10	10	9	7	8	6	4	4	2	2	

Source: pro-music.org. Pro-music provides information about legitimate online music services. The information is compiled by organisations active in the music sector, including GERA (Global Entertainment Retail Association-Europe), IFPI and IMPALA (record producers), GIART and FIM (performers), ICMP and IMPA (music publishers), and IMMF (music managers).

Table D2: Major EU online services – explained (accessed January 2012)

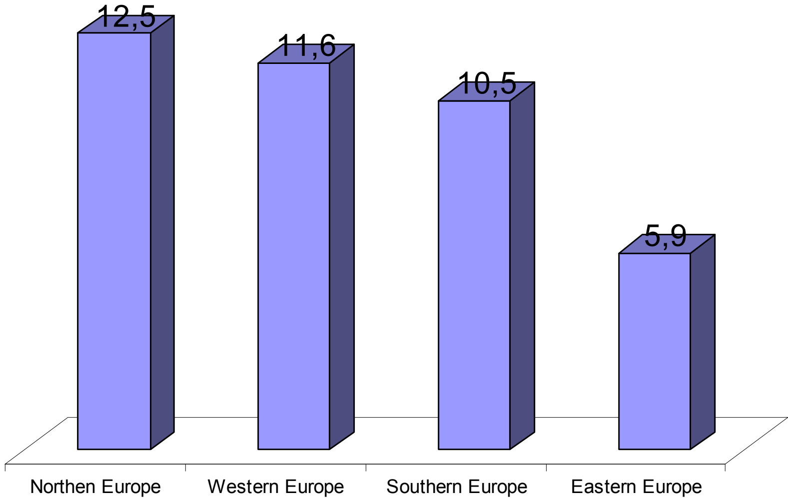
7digital[186] was established in 2004 and has a catalogue of over 17 million tracks. It is an online store offering pay-per-download music. 7digital operates digital download stores in over 37 countries in addition to providing digital download services for a range of business partners, including the major labels, across the world. **AmazonMP3**[187] Amazon.com, Inc. launched its online music store, Amazon MP3, in the US in September 2007, selling downloads exclusively in MP3 format without DRM. It began rolling out the MP3 service worldwide in January 2008, opening in the UK in December 2008. **Deezer**[188] was first launched in France in 2007. Deezer offers web-based streaming music services (ad-supported and subscription-based) and holds a catalogue of over 15 million tracks. **eMusic**[189] is an online music store that operates a download-to-own subscription service. eMusic launched the world's first digital music subscription service in 2000. Until July 2009, eMusic sold only music from independent labels. It has concluded agreements with the major labels and has a catalogue of more than 13 million downloadable songs. **iTunes**[190] is a download-to-own store operated by Apple Inc. since April 2003. It provides access to over 20 million tracks worldwide. **Jamba**[191], headquartered in Germany, offers more than 4 million songs worldwide available. In some Member States (e.g. Spain), the company operates under the name "Jamster". It provides subscription-based music content through mobile telephones and computers. **LastFM**[192] was launched in the UK in 2002 and was acquired by CBS Interactive in 2007. It offers ad-supported streaming services in the US, the UK and Germany and subscription-based streaming in other countries. A small number of tracks are available for free download, where authorised by individual bands or labels (independents). **My Space**[193] is a US owned company with an ad-supported social music website holding a collection of over 47 million of free streaming music online. This service allows the artists to upload their own works. **Napster**[194] offers both unlimited streaming and DRM-free downloading, with access to a catalogue of over 15 million tracks. Napster currently operates in 2 EU Member States: Germany and the UK. **Nokia Music**[195] has offered a subscription-based download service in Europe since autumn 2007. Nokia Music is a pay-per-download service with a catalogue of over 11 million tracks. **Orange Music Store**[196] belongs to France Télécom. It offers pay-per download music downloading services in 7 different Member States. **Sony Music Unlimited**[197] is a subscription-based service launched in December 2010 in the UK and Ireland. It provides access to over 10 million songs on demand.

186 http://about.7digital.net/
187 http://www.amazon.co.uk/
188 http://www.deezer.com/
189 http://www.emusic.com/
190 http://www.apple.com/
191 http://www.jamba.de/
192 http://www.last.fm/
193 http://www.myspace.com/
194 http://www.napster.co.uk/ and http://www.napster.de/
195 http://music.ovi.com/in/en/pc
196 http://www.orange.com
197 http://www.sonyentertainmentnetwork.com

Spotify[198] was founded in 2006 and is based in Europe. It provides subscription-based and ad-supported streaming services, giving access to approximately 15 million tracks.
Vodafone[199] is an international mobile telecommunications company based in the UK. It offers a pay-per and subscription based download music service and holds a catalogue of over 6 million tracks.
WiMP[200] is a Norwegian music streaming service that allows to play music from a library of several million tracks. This subscription-based service is available in SE and DK.
YouTube[201] was founded in February 2005 and is headquartered in the US. It is a video-sharing website which currently offers free licensed streamed music videos in 11 Member States.
Zune[202] (Microsoft) has offered a subscription-based music streaming service in Europe since autumn 2010. It offers 11 million tracks, covering the catalogues of smaller music labels as wells as the four majors.

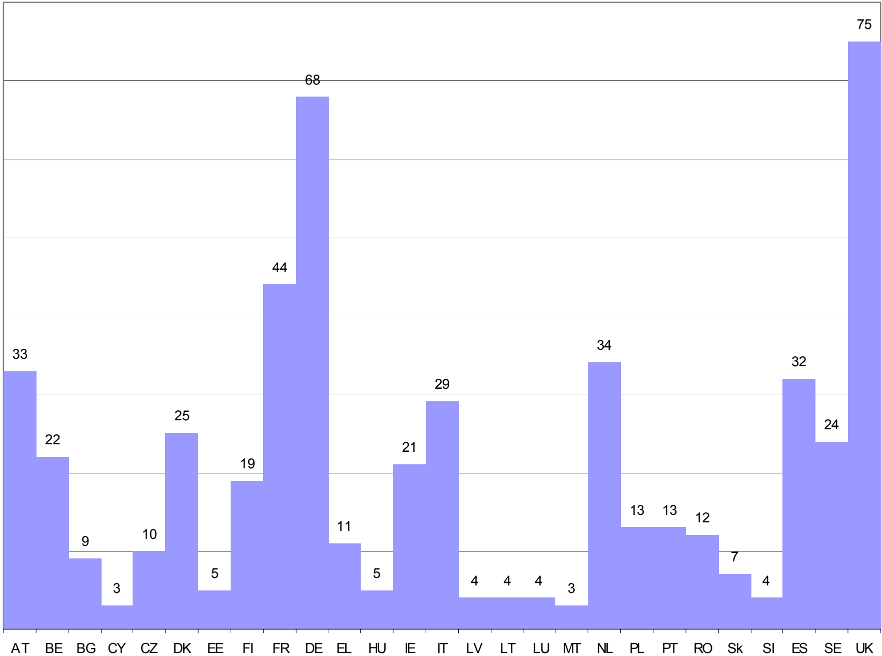
198 http://www.spotify.com
199 http://www.vodafone.com
200 http://www.wimpmusic.se
201 http://www.youtube.com
202 http://www.zune.net

Table D3. Average number of major services per region (average weighed by population, source: table D1).



Western Europe; AT, FR, DE, NL, BE, LU; Soutern Europe: ES, IT, PT, EL, MT, CY, SI; Nothern Europe: UK, IE, SE, FI, DK, EE, LV, LT, Eastern Europe: PL, SK, CZ, BG, RO, HU.

Table D4. Total availability of online services in EU Member States (source: pro-music.org).



14. ANNEX E: DIGITAL MUSIC REVENUE

14.1. Recording industry

Table E1.1: Digital sales as percentage of trade value, 2010; million EUR

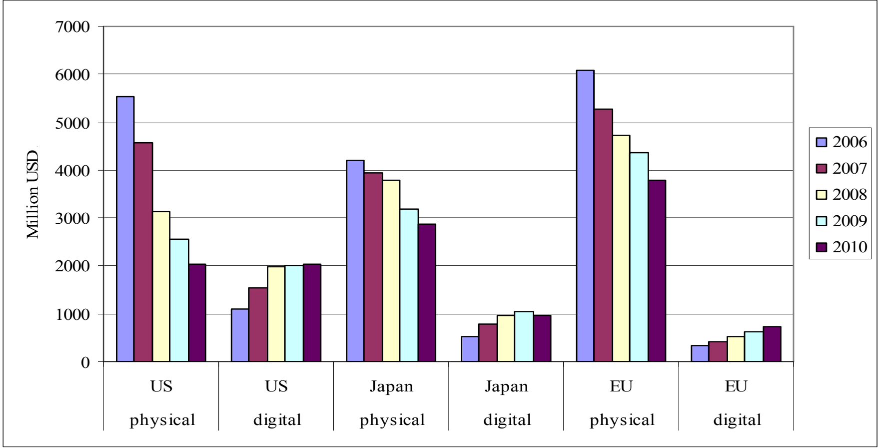
	Trade value 2010 (€m)			
	Physical	Digital	Total[a]	Digital as % of total
DK	44.25	22.73	66.98	33.93
SE	62.18	28.13	90.30	31.15
UK	690.00	260.55	950.55	27.41
ES	91.58	27.45	119.03	23.06
IE	34.05	10.13	44.18	22.92
EL	14.40	3.90	18.30	21.31
BG	1.20	0.30	1.50	20.00
FR	480.83	109.58	590.40	18.56
FI	37.05	8.25	45.30	18.21
IT	133.28	27.23	160.50	16.96
AT	69.68	12.83	82.50	15.55
DE	857.25	133.65	990.90	13.49
BE	88.50	10.35	98.85	10.47
NL	137.85	15.90	153.75	10.34
PT	28.05	2.55	30.60	8.33
CZ	14.48	1.05	15.53	6.76
SK	4.50	0.23	4.73	4.76
PL	56.63	2.03	58.65	3.45
HU	11.70	0.38	12.08	3.11
Europe	2857.43	677.18	3534.60	19.16
US	1536.53	1521.98	3058.50	49.76
JPN	2163.90	734.25	2898.15	25.34
[a] total includes physical and digital sales				

Source: IFPI Recording Industry in Numbers 2011

Table E1.2: Percentage change in digital sales by trade value, 2009 – 2010

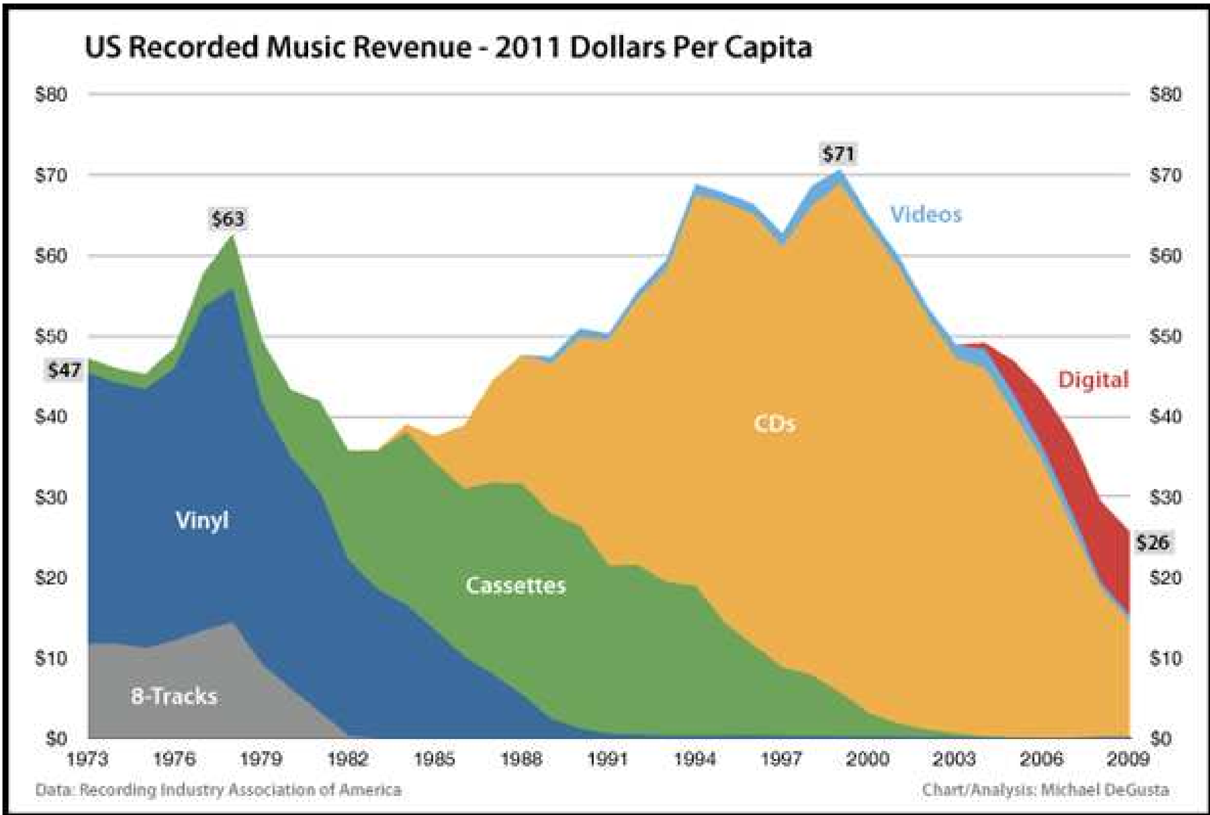
Source: IFPI Recording Industry in Numbers 2011

Table E1.3: Physical and digital sales by trade value 2006-2010



Source: IFPI Recording Industry in Numbers 2011

Table E1.4: US Recorded Music Revenue, 2011; USD per capita



Source: http://www.businessinsider.com/these-charts-explain-the-real-death-of-the-music-industry-2011-2

14.2. Authors' collecting societies

Table E.2.1: Digital share of authors' mechanical reproduction rights, worldwide

	Total Revenue million EUR	Total Digital Revenue million EUR	Share of Digital %	Streaming		Downloading		Webcasting		Ringtones		Other	
				% share	Million EUR	% share	Million EUR	% share	Million EUR	% share	Million EUR	% share	Million EUR
2006	2010.0	108.5	5.4	2.9	3.1	18.6	20.2	1.5	1.6	64.1	69.6	12.9	14.0
2007	1934.0	119.9	6.2	4.8	5.8	33.8	40.5	1.8	2.2	46.7	56.0	12.9	15.5
2008	1792.0	130.8	7.3	8.3	10.9	44.5	58.2	3.7	4.8	33.9	44.3	9.6	12.6
2009	1615.0	142.1	8.8	15.6	22.2	53.8	76.5	2.5	3.6	27.7	39.4	0	0.0
2010	1702.0	170.2	10	18.8	32.0	58.2	99.0	2.1	3.6	20.9	35.6	0	0.0

Source: CISAC Global Economic Survey 2011 and 2012.

Mechanical rights are the rights of authors which, historically, are licensed for the recording of music on sound carriers such as tapes, LPs, CDs. E.g. to press CDs, a record producer needs to obtain a licence in the mechanical rights of the author. These mechanical rights are also licensed for online exploitation, from streaming to downloads. However, for such online uses, a licence is usually also needed for the authors' performing rights (a.k.a. "communication to the public"). CISAC only provides the breakdown for digital in relation to mechanical rights, which is why this table refers only to the mechanical right. Further, CISAC only accounts for rights licensed by its members, who are collecting societies. The table accordingly does not take into account mechanical rights which are licensed by entities which are not collecting societies, e.g. publishers or their agents. For 2010, the data for ringtones (reported as declining but not quantified) and webcasting has been extrapolated, as CISAC did not report the detail of those income streams in its 2012 Global Economic Survey.

Table E.2.2: Digital share of authors' mechanical reproduction rights, worldwide (source: Table E2.1)

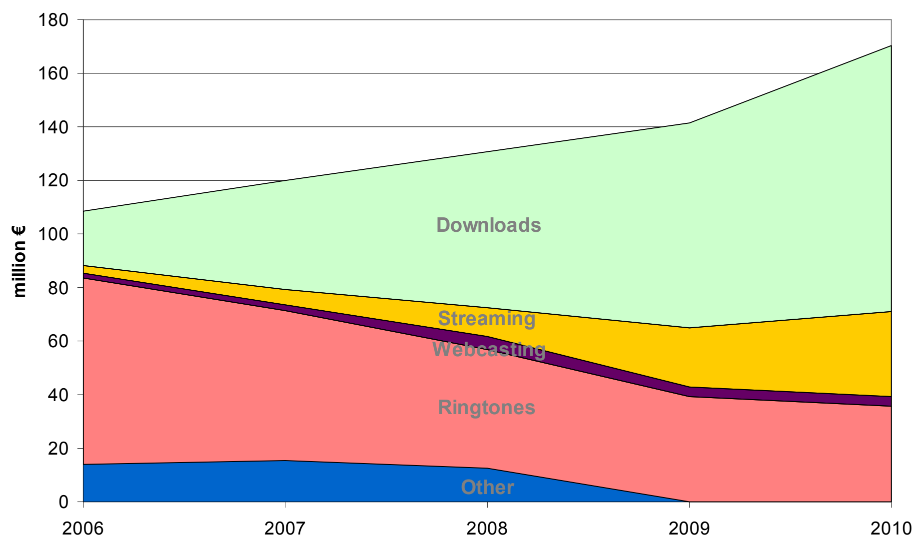


Table E.2.3: Digital share of major EU collecting societies' collections

Million EUR		2007	2008	2009
Public Performance Rights	Internet & new media	20.10	23.10	33.30
	Total public performance rights (excluding international)	2 174.50	2 299.20	2 329.50
	Digital as share of total performance rights (excl. int.)	0.92%	1.00%	1.43%
	Growth digital		14.93%	44.16%
	Growth total excl. int.		5.73%	1.32%
	2007-2009 growth digital			65.67%
	2007-2009 growth total excl. int.			7.13%
Reproduction Rights	Internet & new media	31.70	39.20	48.60
	Total reproduction rights (excluding international)	636.5	561.5	514.7
	Digital as share of total reproduction rights (excl. int.)	4.98%	6.98%	9.44%
	Growth Digital		23.66%	23.98%
	Growth total excl. int.		-11.78%	-8.33%
	2007-2009 growth digital			53.31%
	2007-2009 growth total excl. int.			-19.14%

Source: Replies to commission's consultation of collecting societies of 17 December 2010.

Table E.4: Per capita spending on music, 2010

	US	JAPAN	EUROPE AVERAGE	FRANCE	GERMANY	ITALY	SPAIN	UK
Digital retail spend	€7.53	€7.37	€2.05	€2.80	€2.41	€0.67	€0.96	€6.17
Total retail spend	€16.32	€31.60	€10.90	€14.51	€18.12	€4.09	€3.95	€22.96
Digital as a percentage of total	46.15%	23.32%	18.82%	19.31%	13.30%	16.34%	24.33%	26.89%

Source: IFPI Recording Industry in Numbers 2011

15. ANNEX F: ECONOMIC DIMENSION OF COLLECTIVE RIGHTS MANAGEMENT IN EUROPE

Introduction to the economic dimension of collective rights management in Europe

Authors: There are over one million authors who are members of collecting societies in the EU. The majority of these authors are active in the music sector but the number also includes audiovisual authors (directors and screenwriters), writers (book writers, journalists etc.) and authors of original works of art.

Of all societies, authors' societies collect the largest amount of royalties. € 7.5 billion in royalties were collected worldwide by members of the International Confederation of Authors and Composers Societies (CISAC) in the fields of music, drama, literature, audio-visual, and graphic and visual arts in 2010.[203]

In Europe, there are 101 European authors' societies which are members of CISAC and which collected € 4.6 billion in 2010, i.e. 61% of global royalties. The largest share of royalties (82.8%) comes from the music sector. Western European societies collect 93% of total royalties collected in Europe.

Most of the revenue of authors' collecting societies pertains to the reproduction right and to radio and television broadcasting. Revenues from cable retransmission and satellite and from, private copying and reprography are also significant. Other revenue streams (resale rights, rental and lending rights) are less significant. [204]

Related rights: There are over 500,000 performers who are members of a collecting society in Europe (such as actors, musicians and singers). There are 29 societies that manage performers' rights in the music sector in the EU (12 of which manage the rights of both performers and record producers). These performers' collecting societies collected approximately €460 million in 2009.[205] They derive about two-thirds of their revenues from equitable remuneration for broadcasting and public performance, revenues from private copying levies are also significant. Record producers also manage part of their rights collectively through 24 societies (12 of which are the same as for performers, see above). Collectively managed revenue mainly stems from equitable remuneration for broadcasting and public performances and amounted to slightly less than € 460 million in 2009.[206] Collectively managed rights amount to less for performers and record producers than for music authors largely because rights relevant to music sales (CD sales, downloads, streaming services, the bulk of income),[207] unlike authors' rights, are not collectively managed for performers and producers. Audiovisual producers, who otherwise licence most of their rights

[203] CISAC (2012) Global Economic Survey 2010.

[204] Overall income from reprographic rights amounted to € 843 million in 2009. This includes income collected by societies which are members of the International Federation of Reprographic Rights Organisations (IFFRO), see below tables F.5.1 and F.5.2; and income collected by collecting societies which are members of CISAC. Some societies are members of both CISAC and IFFRO.

[205] See below 16.3.

[206] See below, table F.2.1.

[207] Non-collectively managed recorded music sales in the EU amounted to € 3.5 billion (trade value) in 2010, see below, table E.1.1.

directly, collect a share of the cable retransmission right which amounts to approximately € 107 million.[208]

Overall: collecting societies collected around € 6 billion in the EU in 2009.[209] The vast majority of this income fell to collecting societies managing authors' rights. Most of this income is derived from musical creations. The share of digital revenue[210] for CISAC societies is still small. It represented only 1.7% of the collections of CISAC societies in 2010 (worldwide). In relation to major EU authors' societies, in 2009, digital revenue amounted to 1.4% of performing rights income and 9.4% of reproduction right income. However, digital growth significantly outpaces overall growth. While reproduction rights income for those societies contracted by 19% (driven by diminishing CD sales) between 2007 and 2009, digital reproduction rights income increased by 53%. In the same period, overall performance rights income increased by 7%, while digital performance rights income increased by 66%. Digital income should continue to grow as consumer spending on digital music is increasing in the EU. Moreover, digital music sales – which accounted for 19% of the market for recorded music in the EU (49% in the US) in 2010 are steadily increasing.[211] The latest figures available confirm the trend with an 8% growth of digital music revenues globally in 2011 (as compared to 5% in 2010).[212]

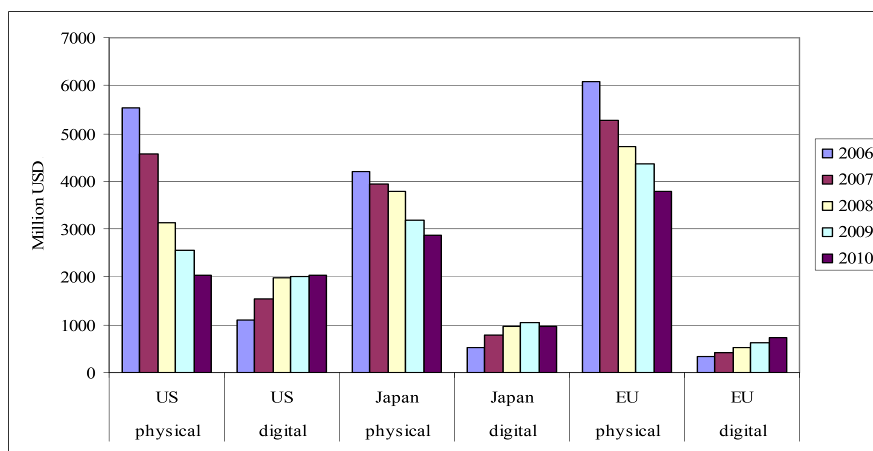


Table F.0.1: Physical and digital sales by trade value 2006-2010. Source: IFPI Recording Industry in Numbers 2011

208 See below, table F.7.1.

209 See below, table F.8.1; the overall value of European copyright industries is estimated at €400 billion (European Competitiveness Report 2010, Commission Staff Working Document, SEC(2010) 1276 final and Eurostat).

210 See below, tables E.2.1, E.2.2 and E.2.3.

211 See below, tables E.1.2 to E.1.4. The latest figures available (for 2011) confirm the trend in markets such as France or the UK (where the digital market for recorded music now represents 24.6% and 23.5% respectively).

212 IFPI Digital Music Report 2012, available at http://www.ifpi.org/content/library/DMR2012.pdf .

15.1. Collecting Societies

Table F.1.1: Sample of EU collecting societies illustrating their different sizes and types

Society	MS	Year	Collections (€)	Operating Costs (€)	Personnel Costs (€)	Employees	Members*	Rightholders	Rights
GEMA	DE	2010	862 961 000.00	127 072 000.00	67 788 000.00	1068	65 000	Au M , Pub M	Bding, Cable, PPerf, Repro, PC, Digital
SACEM	FR	2010	819 620 000.00	191 317 864.58	125 186 189.01	1399	137 000	Au M, Pub M	Bding, Cable, PPerf, Repro, PC, Digital
MCPS-PRS	UK	2010	709 097 267.56	77 432 854.61	39 192 623.33	N/A	75 064	Au M, Pub M	Bding, Cable, PPerf, Repro, Digital
SIAE	IT	2010	605 000 000.00	203 900 000.00	95 500 000.00	1346	82 500	Au M, Au L, Au AV, Au V	Bding, PPerf, Repro, PC, Digital, Lending, Resale
SGAE	ES	2010	341 200 000.00	65 763 000.00	32 547 000.00	451	96 955	Au M, Au AV, Pub M	Bding, Cable, PPerf, Repro, PC, Digital, Rental, Lending
SACD	FR	2010	219 731 531.36	47 191 193.00	17 750 457.00	230	51 393	Au AV, Au D	Bing, PPerf, Repro, PC, Digital
SABAM	BE	2010	192 966 000.00	37 345 445.00	22 637 380.00	289.5	36 400	Au M, Au L, Au AV, Au V, Au D, Pub M	Bding, Cable, PPerf, Repro, PC, Digital, Resale
GVL	DE	2010	177 918 200.00	12 091 700.00	N/A	N/A	135 725	Perf M, Prod M	Bding, Cable, PPerf, PC
BUMA-STEMRA	NL	2010	175 900 000.00	25 160 000.00	13 169 000.00	195	20 000	Au M, Pub M	Bding, Cable, PPerf, Repro, PC, Digital, Lending
PPL	UK	2010	167 273 617.46	23 273 570.83	13 643 569.90	250	53 800	Perf M, Prod M	Bding, PPerf
STIM	SE	2010	145 810 000.76	21 463 412.08	9 502 270.03	128	64 874	Au M, Pub M	Bding, Cable, PPerf, Repro, PC, Digital
VG Wort	DE	2010	131 690 308.00	9 300 000.00	N/A	66	431 362	Au L, Pub L	Cable, Repro, PC, Lending
AGICOA SE	SE	2010	111 600 000.00	14 569 793.00	6 486 813.00	N/A	45	Prod AV	Cable
SCAM	FR	2010	97 500 000.00	12 322 278.03	7 347 000.00	79.72	29 576	Au L, Au AV, Au V	Bding, Cable, PC, Lending
AKM	AT	2010	86 200 000.00	12 522 454.29	8 038 877.56	153	18 559	Au M, Pub M	Bding, Cable, PPerf
KODA	DK	2010	82 464 000.00	9 102 000.00	7 310 000.00	N/A	36 500	Au M, Pub M	Bding, Cable, PPerf, PC, Digital
SCPP	FR	2010	64 877 000.00	8 285 996.00	3 439 066.00	45	3 000	Prod Phono	Bding, PPerf, PC
TEOSTO	FI	2010	58 456 114.39	9 087 898.04	5 667 693.47	90	25 106	Au M, Pub M	Bding, PPerf, PC, Digital, Lending
SENA	NL	2010	58 356 000.00	9 333 000.00	3 142 000.00	45.6	19 684	Perf M, Prod M	Bding, PPerf
ADAMI	FR	2010	58 335 059.00	8 369 841.00	N/A	74.04	24 000	Perf	Bding, PPerf, PC
Bild-Kunst	DE	2010	56 336 281.68	3 849 750.98	2 477 366.12	37	48 516	Au, Pub L, Prod AV	Bding, Cable, Repro, PC, Lending, Resale
NCB	DK	2010	49 443 352.57	8 350 169.41	4 708 762.36	60.9	5	Au M	Repro
AISGE	ES	2010	46 968 992.61	4 073 925.73	2 221 531.47	N/A	7 932	Perf AV	Bding, PPerf, PC, Rental
SPA	PT	2010	37 771 245.00	8 560 698.00	6 670 954.00	162	19 917	Au, Pub	Bding, Cable, PPerf, Repro, PC, Digital, Lending
CFC	FR	2008	37 760 000.00	4 830 000.00	3 120 000.00	43.67	433	Au, Pub	Repro
ALCS	IE	2010	32 247 816.61	3 496 830.41	1 833 787.19	34	54 694	Au L	Cable, Repro, Digital
AIE	ES	2010	31 212 620.69	4 862 729.68	3 170 637.28	64	16 531	Perf Phono	Bding, PPerf, PC
AGEDI	ES	2010	30 022 200.00	1 557 408.82	287 715.23	9	369	Prod Phono	Bding, PPerf, PC
UCMR-ADA	RO	2010	29 843 299.16	1 896 903.48	1 140 819.56	106	6 976	Au M	Bding, Cable, PPerf, Repro, Digital
KOPINOR	NO	2010	29 595 163.97	3 451 438.10	2 179 090.74	21	22	Au, Pub	Repro
Stichting Reprorecht	NL	2010	28 932 000.00	3 573 980.00	1 717 879.00	20	N/A	Au, Pub	Repro
Literar-Mechana	AT	2009	28 503 000.00	1 764 000.00	923 000.00	15.4	13 137	Au, Pub	Cable, Repro, PC
KOPIOSTO	FI	2010	25 234 034.38	4 001 698.46	2 602 982.26	40.3	44	Au, Pub, Perf	Cable, Repro, PC, Lending
REPROBEL	BE	2010	24 580 974.00	2 924 957.00	1 938 735.00	24.6	15	Au, Pub	Repro, PC, Lending
GRAMEX DK	DK	2010	24 085 583.50	3 398 207.40	1 840 339.72	N/A	63 000	Prod M, Perf M	Bding, PPerf
Austro-Mechana	AT	2010	24 000 000.00	3 769 431.94	1 749 221.22	28	18 000	Prod Phono	Bding, Repro, PC, Lending
COPYSUEDE	SE	2010	23 566 432.32	1 979 821.44	1 286 748.14	17	14	Au, Perf	Cable, Repro, PC
CEDRO	ES	2010	23 309 508.51	4 790 824.00	2 662 422.00	45	19 275	Au, Pub	Repro, PC, Lending
AUVIBEL	BE	2010	22 262 885.05	1 114 628.00	595 342.16	7	10	Au, Perf, Prod Phono, Prod AV	PC
Bonus Presskopia	SE	2010	17 782 810.65	1 106 052.76	759 890.01	8	15	Au, Pub	Repro
SAMI	SE	2010	14 363 289.40	4 988 908.50	3 198 599.18	35	23 000	Perf	Bding, Cable, PPerf, PC, Lending
INTEGRAM	CZ	2010	14 216 579.66	3 708 788.17	791 646.89	N/A	12 360	Prod Phono, Perf	N/A
SOZA	SK	2010	9 260 530.00	1 837 864.00	1 348 716.00	N/A	1 924	Au M, Pub M	Bding, Cable, PPerf, Repro, PC, Digital
VEGAP	ES	2010	7 936 618.00	2 501 676.00	1 530 954.00	30	2 010	Au V	Bding, Cable, PPerf, Repro, PC, Rental, Lending
CREDIDAM	RO	2010	6 344 610.42	1 226 646.88	242 619.53	41	10 563	Perf	N/A
UPFR	RO	2010	4 717 035.52	1 087 851.72	387 170.60	25	54	Prod M	Bding, Cable, PPerf, PC
LATGAA	LT	2010	4 356 923.08	986 497.05	625 490.62	N/A	5 027	Au M, AU L, Au AV, Au V, Au V, Pub M	Bding, Cable, PPerf, Repro, PC, Digital, Lending, Resale
AGATA	LT	2010	1 419 589.90	431 797.38	231 331.09	N/A	2 899	Perf, Prod Phono	N/A
EGEDA	ES	2010	N/A	3 380 297.34	1 727 023.14	51	N/A	Prod AV	Bding, Cable, PPerf, PC, Rental
			5 853 029 475.19	1 018 408 083.10	532 318 713.82	6 835	1 733 285		

Rightholders: Au = Authors, Pub = Publishers, Perf = Performers, Prod = Producers
Works: M = Music, L = Literary, AV = Audio visual, V = Visual, D = Dramatic, Phono = Phonograms

Rights: Bding = Broadcasting rights, Cable = Cable retransmission, PPerf = Public performance rights, Repro = Reproduction rights, PC = Private copy, Digital = Digital rights, Rental = Rental rights, Lending = Lending rights, Resale = Resale rights *Members in some CS may be other CS or associations representing rightholders.

Sources: Annual reports, Reports of the Commission Permanente de Contrôle des SPRD, IFPI. Data in the table is intended to provide an order of magnitude of the collections (or turnover) of collecting societies, of their operating expenses, of their personnel costs and number of employees. However, the data for each collecting society is not systematically and directly comparable, e.g. as annual reports do not use the same definition of operating expenses or provide the number of employees in full-time equivalent (FTE). Generally, the reported operating expenses do not include financial items and exceptional items. Reported operating expenses are not equivalent to the administrative fee charged by the collecting societies for their services. This fee is set by the collecting society taking into account other income and other costs and accordingly does not necessarily reflect the operating expenses of the societies.

15.2. Authors' societies

15.2.1. General characteristics of CISAC societies

A study published by CISAC in 2012[213] identified 101 authors' collecting societies active in Europe, of which 70 are in the EU. These societies manage the rights of authors in the musical, audio-visual, dramatic, literary and visual arts sectors. Of these societies, 31 societies manage musical works in the EU[214].

According to CISAC, authors' societies around the world collected € 7.5 billion in royalties in 2010 for all sectors (musical, audio-visual, literary, dramatic, visual arts). Europe accounted for 61% of worldwide royalty collections, or € 4.6 billion, its share remaining fairly constant over time.

Table F.2.1: Collections on behalf of authors in 2009 and 2010; by region

	Revenues collected, 2009		Revenues collected, 2010	
2009	Million EUR	% of total	Million EUR	% of total
Africa	42.48	0.59	44.00	0.60
North America	1 369.21	19.14	1 447.00	19.20
Latin-Caribbean	250.34	3.50	302.00	4
Asia	1 007.42	14.09	1 151.00	15.30
Europe[215]	**4 482.40**	**62.67**	**4 600.72**	**61**
Total	7 151.84	100	7 545 000.00	100

Source: CISAC (2011) Global Economic Survey 2009 and CISAC (2012) Global Economic Survey 2010

Almost 93% of the € 4.6 billion royalties collected in Europe were collected in Western Europe and the rest in Eastern Europe.

Collective rights management plays a particularly important role in the music sector which represents 86% of the world-wide royalties collected (€ 6.5 billion in 2010). With regard to authors' rights, the music sector accounted for a full 82.8% of the royalty collections for authors in Europe in 2010 (some € 3.8 billion), with audio-visual accounting for 9.6% (some € 442 million), dramatic works for 3.7% (some € 170 million), and visual and literary works just 2.1% (some € 97) and 1.6% (some € 75.6 million) respectively.

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213 "Authors' Royalties in 2010: An Unexpected Rebound", Global Economic Survey of the Royalties Collected by the CISAC Member Authors' Societies in 2010. http://www.cisac.org/CisacPortal/initConsultDoc.do?idDoc=22951

214 A number of these societies also manage rights other than those in musical compositions. At least, one collecting society operates on behalf of authors' rights in music in each Member State. Sometimes, different societies manage the performance and mechanical rights (e.g. in Austria, the Netherlands and Denmark). Licensing in Luxembourg is managed by SACEM (France) and in Malta by PRS for Music (UK).

215 In the CISAC report, "Europe" is a very broad geographic area covering the CIS, Balkans and EEA countries.

Table F.2.2: Collections on behalf of authors in 2010 by region and sector; million EUR

	Music	Visual Arts	Audio-visual	Dramatic	Literary	Others	Total
Eastern Europe	263.228	1.926	36.373	24.305	3.750	584	330.168
Western Europe	3546.462	94.802	405.623	145.524	71.883	6.257	4270.551
Europe Total	**3809.690**	**96.728**	**441.997**	**169.829**	**75.633**	**6.841**	**4600.719**
World Total	6522.776	102.615	492.564	183.824	100.134	143.584	7545.498

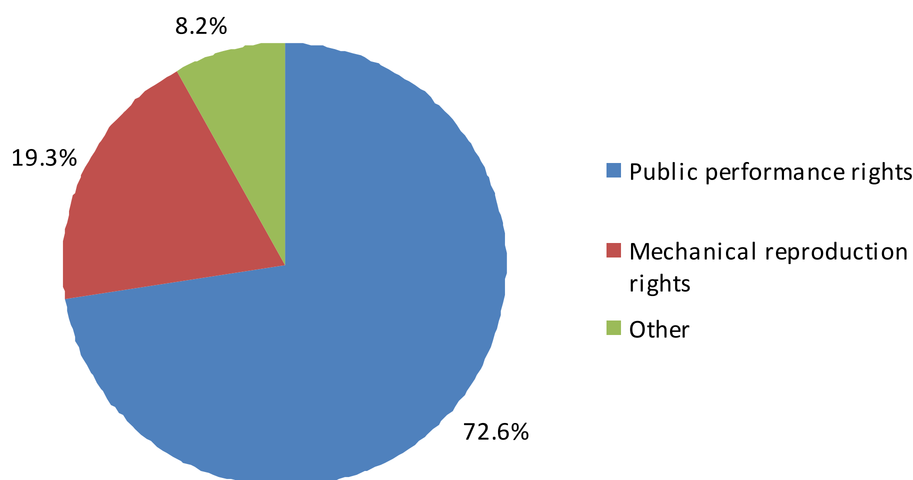
Source: CISAC (2012) Global Economic Survey 2010

Table F.2.3: Collections on behalf of authors in Europe in 2010 by origin

	Origin of revenues collected, Europe	
2010	Million EUR	% of total
Radio / TV	1334.208	29
Phonograms	1311.205	28.5
Live Music / Theatre	644.100	14
Cable / Satellite	492.277	10.7
Video / Cinema	138.021	3
Digital / Multimedia	78.212	1.7
Other	602.694	13.1
Total	4600.719	100.0

Source: CISAC (2012) Global Economic Survey 2010

Table F.2.4: Collections on behalf of authors in Europe in 2010 by rights; %



Source: CISAC (2012) Global Economic Survey

15.2.2. Royalty collection of major European author societies

In December 2010 the European Commission launched a closed consultation, targeted at European collecting societies, in view to collect data to enable the analysis of the Impact Assessment.

The addressees of the questionnaire were: AKM (AT), SABAM (BE), OSA (CZ), GEMA (DE), KODA (DK), AEPI (EL), SGAE (ES), SACEM (FR), IMRO (IR), TEOSTO (FI), ARTISJUS (HU), SIAE (IT), LATGAA (LT), SACEM Lux (LU), BUMA STEMRA (NL), TONO (NO), ZAIKS (PL), SPA (PT), SOZA (SK), STIM (SE), PRS for music (UK).

Not all responses contained the same amount of data in a comparable form; therefore all cross sectional analyses are for illustration purposes only.

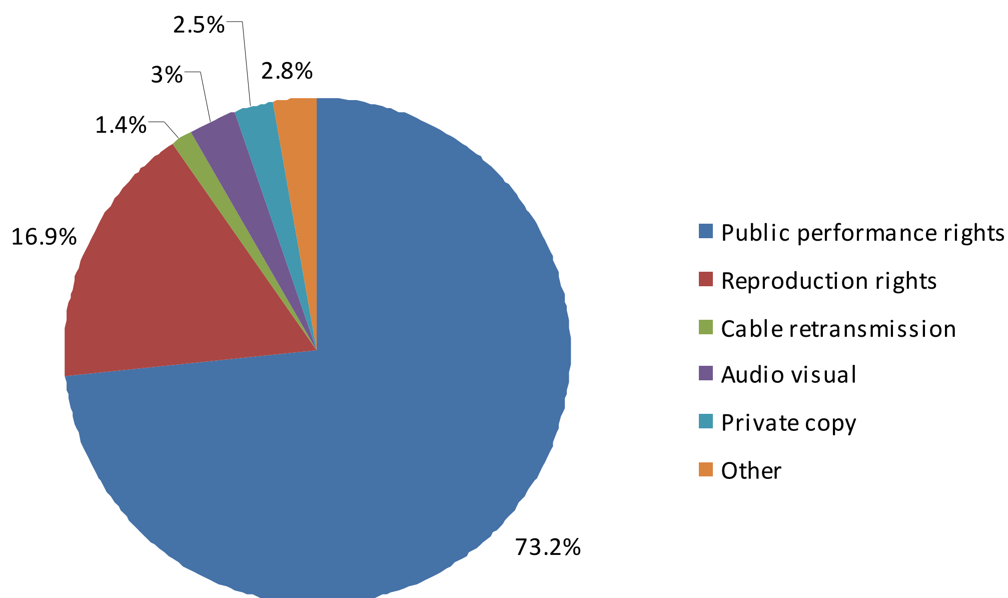
Table F.2.5: Royalty collections of major European authors' collecting societies by area; million EUR

Million EUR	**2007**	**2008**	**2009**
PUBLIC PERFORMANCE RIGHTS	2519.5	2688.4	2758.7
· Live performance	568.1	582.7	591.2
· Public Performance	531	573.8	566.8
· TV & Radio broadcasting	875.9	953.2	963.5
· Internet & new media	20.1	23.1	33.3
· International	345	389.2	429.2
REPRODUCTION RIGHTS	775.7	691.8	643.8
· Physical products	611.5	529	472.2
· Internet & new media	31.7	39.2	48.5
· International	139.2	130.3	129.1
CABLE RENSTRANSMISSION	41.7	44	54
AV	113.6	118.4	113
RENTAL & LENDING	0.9	0.9	0.9
PRIVATE COPY LEVY	145.4	112.6	96.1
Other	122.2	141.5	110
TOTAL[216]	3875.7	3957.5	3913.7

Source: Replies to Commission's consultation of collecting societies of 17 December 2010.

[216] Total is a sum of "Total" reported from the respondents to the questionnaire.

Table F.2.6: Royalty collections of major European authors' collecting societies by area in 2009; %



Source: Table F.2.5

The table above shows that in Europe, most of the royalties are collected from public performance rights (almost ¾), reproduction rights (almost 1/5).

15.2.3. Rightholders

Table F.1.8: Members and works of major European authors' collecting societies

		Members of collecting societies		**Works**		**Population (m)[b]**		**Administrative costs**
		Number	% of EU total	Number	% of EU total	Million	% EU total[d]	%
AT	Austro-Mechana	18000	2.50	791000	4.48	8.38	1.67	11.88
BE[a]	SABAM	35200	4.88		0.00	10.84	2.16	12.97
CZ	OSA	7000	0.97	400000	2.26	10.51	2.10	16.08
DE	GEMA	65000	9.02	3000000	16.98	81.80	**16.32**	15.2
DK	KODA	36000	5.00	724000	4.10	5.53	1.10	**10.6**
EL	AEPI	11741	1.63	260087	1.47	11.31	2.26	
ES	SGAE	96955	13.45	5000000	**28.29**	45.99	9.18	
FI	TEOSTO	25106	3.48	500000	2.83	5.35	1.07	15.7
FR	SACEM	137819	**19.13**	2694631	15.25	64.71	12.91	11
HU	Artisjus	9766	1.35	208623	1.18	10.01	2.00	
IE	IMRO	7500	1.04	120000	0.68	4.47	0.89	**20.3**
IT	SIAE	82550	11.46	3453006	19.54	60.34	12.04	17.165
LT	LATGA-A	5000	0.77		0.00	3.33	0.66	
NL	BUMA-STEMRA	20000	2.77		0.00	16.57	3.31	16.25[d]
PL	ZAIKS	9000	1.25	270000	1.53	38.17	7.62	16
PT	SpaAutores	15000	2.08	150000	0.85	10.64	2.12	
SE	STIM	61708	8.56	952365[a]	0.00	9.34	1.86	22.1
SK	SOZA	1979	0.27	100000	0.57	5.42	1.08	19.17
UK	PRSforMusic	75064	10.42			62.01	12.37	11
Total EU		**720388**	100.00	18 623 712	100.00	464.72[c]	**92.74**	**13.88[e]**

[a] annual reports for FY 2009
[b] Eurostat
[c] without missing countries total population is 501.10 million
[d] 10.9 Buma; 21.6 Stemra; simple average 16.25
[e] weighed average by royalties collected

Source: Replies to commission's consultation of collecting societies of 17 December 2010 (except when other source is explicitly stated)

15.3. Record producers' societies

Table F.3.1: royalties collected by producer and joint producer-performer societies (2009; source: IFPI)

	Name of Collecting society	Member State	Sector active	Rightholders represented (Performers / producers)	Producers Members	Performer members	Total Members represented	Website (National language and other languages)	Annual report online	Total income during year, incl non-recurring items (€m)	Deductions for administrative costs (€m)	Admin deductions/ turnover	Distributions to Producers only (€m)	Payments from abroad (€m)	Payments abroad (€m)	Disributable income (€m) [previous IFPI submission]
Producer Societies	SCPP	FR	MU	Prod only	3000		3000	Nat /EN	Yes	91.25	6.02	6.6%	69.37	0.19	1.56	69.37
	ZPAV	PL	MU	Prod only			0	Nat / EN	No	6.01	0.80	13.3%	4.43	0.07	0.00	4.77
	EFU	EE	MU	Prod only	160		160	Nat	No	0.58	0.11	18.5%	0.25	0.00	0.02	0.25
	MAHASZ	HU	MU	Perfs, Prods			0	Nat	No	8.61	0.58	6.8%	3.88	0.00	0.00	3.92
	PassMusica	PT	MU	Prod only			0	Nat / EN	No	3.68	0.53	14.3%	3.68	0.00	0.00	3.68
	PPI Ltd	IE	MU	Prod only	500		500	Nat	No	12.23	2.29	18.7%	7.05	0.12	0.01	11.24
	SCF	IT	MU	Prod only	344		344	Nat / EN	No	24.92	8.23	33.0%	26.88	0.01	0.02	45.41
	IFPI Sweden	SW	MU	Prod onlly	3200		3200	Nat	No	12.73	1.58	12.4%	11.40	0.15	0.00	12.60
	UPFR	RO	MU	Prod only			0	Nat / EN	No	4.42	0.00	0.0%	3.00	0.00	0.00	3.04
	SIMIM	BE	MU	Prod only	610		610	Nat (FR/NL)	No	13.13	2.54	19.3%	10.70	0.00	0.98	13.47
	GRAMMO	EL	MU	Prod only	28		28	Nat	No	3.70	0.63	17.1%	3.28	0.00	0.00	3.28
	AGEDI-AIE	ES	MU	Prod only	370		370	Nat / EN	Yes	47.36	3.50	7.4%	22.19	0.02	0.03	38.02
				Total Producer societies	8212	0	8212			228.65	26.81	11.7%	166.11	0.57	2.63	209.05
Joint Producer - Performer societies	LSG	AT	MU	Perfs, Prods			17384	Nat	No	20.00	1.06	5.3%	9.75	0.31	0.75	9.75
	PROPHON	BG	MU	Perfs, Prods			154	Nat / EN	Yes	2.18	0.17	7.9%	1.98	0.11	0.00	
	INTERGRAM	CZ	MU	Perfs, Prods	618	11742	12360	Nat / EN	Yes	15.24	2.71	17.8%	5.14	0.00	0.34	5.86
	GRAMEK DK	DK	MU	Perfs, Prods			64307	Nat	Yes	22.27	3.72	16.7%	9.77	0.88	2.31	20.12
	GRAMEX FI	FI	MU	Perfs, Prods	8000		8000	Nat / EN	No	9.60	2.50	26.1%	7.45	0.03	0.14	7.45
	GVL	DE	MU	Perfs, Prods	7822	127903	135725	Nat	No	177.92	12.09	6.8%	70.54	0.96	7.32	165.83
	LaiPA	LV	MU	Perfs, Prods			0	Nat / EN	No	0.96	0.19	20.1%	0.00	0.00	0.00	0.00
	AGATA	LT	MU	Perfs, Prods	81	2818	2899	Nat / EN	Yes	1.81	0.40	22.3%	0.48	0.00	0.26	1.00
	SENA	NL	MU	Perfs, Prods			19684	Nat / EN	Yes	65.94	9.19	13.9%	51.59	6.77	12.20	96.13
	SLOVGRAM	SK	MU	Perfs, Prods	366	5430	5796	Nat	Yes	4.76	0.73	15.3%	1.98	0.00	0.00	5.18
	Zavod IPF	SL	MU	Perfs, Prods	205	2014	2219	Nat / EN	Yes	1.91	0.60	31.4%	0.27	0.00	0.00	0.41
	PPL	UK	MU	Perfs, Prods	6500	50000	56500	Nat	Yes	138.54	24.57	17.7%	81.83	24.90	3.72	110.47
				Total joint Producer - Performer Societies	23592	199907	325028			461.12	57.94	12.6%	240.80	33.96	27.05	422.18
				Estimated Total Producer share of joint societies						230.56	28.97		240.80			211.09
Total all societies					31804	199907				689.77	84.75	12.3%		34.53	29.68	631.24
Estimated Total Producer share										459.21	55.78					420.15

The rights of phonogram producers which are collectively managed can be managed by a collecting society entirely controlled by phonogram producers (a "producer society"). In this situation performers' rights are generally managed in parallel by a collecting society controlled by performers only (a "performer society"). In most cases, the rights of performers and of phonogram producers are managed through a single society which is controlled jointly by performers and record producers (a "joint producer – performer" society). In a joint producer – performer society, it can be assumed that the performers and the producers will generally split the income from the society equally between themselves. This is generally the case for so-called equitable remuneration from broadcasts, bars and discotheques. In table F3.1, the total collectively managed income of producers from joint producer – performer societies is thus half of the total income of those societies. Added to the income of producer societies, it yields the total collectively managed income of record producers.

All figures are for 2009 at 2010 exchanges rates. Payments received from abroad and made abroad do not fully reflect international flows in this area, as record producers often collect international revenue directly from non-domestic collecting societies, and not through their local collecting society. Small independent record producers and performers tend to collect their international revenue through their local collecting society.

15.4. Performers' societies

Based on the assumption that collectively managed income of record producers is approximately equivalent to that of performers (see section 16.2), it can be inferred that the collectively managed income of performers would equal that of producers. Alternatively, older data can be used to extrapolate the collectively managed income of performers.

Table F.4.1: main performer's societies and joint producer-performer societies (marked in grey) in the music sector

Member State	Society
AT	LSG
BE	URADEX
BG	PROPHON
CZ	INTERGRAM
DE	GVL
DK	GRAMEK DK
EE	EEL
EL	ERATO
EL	APOLLO
ES	AIE
FI	GRAMEX FI
FR	ADAMI
FR	SPEDIDAM
HU	EJI
IE	RAAP
IT	IMAIE
LT	AGATA
LV	LaiPA
NL	NORMA
NL	SENA
PL	STOART
PL	SAWP
PT	GDA
RO	CREDIDAM
SK	OZIS
SK	SLOVGRAM
SL	Zavod IPF
SW	SAMI
UK	PPL

15.5. Private copying levies

Table F.5.1: Levies collected (in million €) by major EU authors' music societies

	2009
Austria	
Belgium	1.9
Czech Republic	4.1
Denmark	0.7
Finland	1.9
France	55
Germany	10.8
Greece	1.5
Hungary	
Italy	13.2
Latvia	
Lithuania	0.2
Netherlands	3.3
Portugal	0.7
Poland	1.1
Slovakia	0.1
Spain	
Sweden	1.6
Total	**96.1**

Source: Replies to the Commission's consultation of collecting societies of 17 December 2010.

Table F.5.2: Levies collected (in million €) – data submitted by authors' music collecting societies

Million EUR	**2007**	**2008**	**2009**
PRIVATE COPY LEVY	145.4	112.6	96.1
TOTAL REVENUE	3875.7	3957.5	3913.7
% PCL IN TOTAL	3.8%	2.8%	2.5%

Source: Replies to commission's consultation of collecting societies of 17 December 2010

Table F.5.3: Aggregate revenues in Europe from Copyright levy schemes

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Aggregate revenues (m €)	172.6	291.3	376.5	567.8	562.2	548	549.4	526.3	414.9

Source: "Private Copying and Fair Compensation: An empirical study of copyright levies in Europe", Martin Kretschmer, October 2011.

15.6. Reprography

Table F.6.1: Royalty collection and distribution in the field of reprography by Member State; million EUR (source: IFFRO)

Million EUR, 2009 (Total amount:)	AT	BE	DE	DK	EL	ES	FI	FR	HU	IR	IT	LU	NL	PT	RO	SI	SW	UK
collected for all licensing	22.500	26.003	560.141	33.650	2.660	24.467	24.710	40.350	1.353	1.232	4.475	0.392	14.420	0.009	0.275	0.348	15.950	70.378
collected for reproduction licensing	0.000	24.311	492.599	32.750	2.660	24.185	13.179	40.350	1.353	1.232	4.475	0.355	14.420	0.009	0.275	0.348	15.950	70.378
collected nationally for reproduction licensing	7.249	23.733	487.070	32.589	2.637	23.641	13.126	37.720	0.246	1.232	3.488	0.311	13.909	0.009	0.275	0.348	15.318	58.133
received for licensing from other RROs world-wide	6.900	0.637	10.293	0.161	0.024	0.546	0.053	2.630	0.000	0.511	0.987	0.044	0.511	0.000	0.000	0.000	0.632	12.245
distributed to national rightholders	8.400	24.081	63.410	26.152	1.483	18.064	9.940	31.900	1.109	0.554	2.027	0.000	27.196	0.000	0.000	0.000	13.287	57.455
distributed to foreign RROs	1.750	1.609	7.200	3.669	0.000	1.023	1.148	2.700	0.000	0.398	0.196	0.000	3.660	0.000	0.000	0.000	1.217	6.662
distributed from all licensing	20.650	25.690	182.883	32.710	1.483	19.087	11.088	34.600	1.109	0.966	2.084	0.000	30.856	0.000	0.000	0.000	14.504	64.117

Table F.6.2: Royalty collection and distribution in the field of reprography; million EUR (source: IFFRO)

Million EUR, 2009 data[a]	**TOTAL EU[b]**	**TOTAL non-CISAC[c]**
Total amount collected for all licensing :	843.314	632.217
Total amount collected for reproduction licensing :	738.829	577.828
Total amount collected nationally for reproduction licensing :	721.035	555.227
Total amount received for licensing from other RROs world-wide :	36.174	25.762
Total amount distributed to national rightholders :	285.056	224.302
Total Amount distributed to foreign RROs :	31.232	22.852
Total amount distributed from all licensing :	441.826	334.235

[a] UK 2010 data

[b] EU IFRRO members: AT: Literar-Mechana; BE: REPROBEL; DE: VG Bild-Kunst, Verwertungsgesellschaft Bild-Kunst AND VG WORT, Verwertungsgesellschaft WORT; DK: COPY-DAN Writing; EL: OSDEL, Greek Collecting Society for Literary Works; ES: CEDRO, Centro Español de Derechos Reprográficos; FI: KOPIOSTO; FR: CFC, Centre Français d'exploitation du droit de Copie; HU: HARR, Hungarian Alliance of Reprographic Rights; IR: ICLA, The Irish Copyright Licensing Agency; IT: AIDRO, Associazione Italiana per i Diritti di Riproduzione delle Opere dell'ingegno AND SIAE, Società Italiana degli Autori ed Editori; LU: luxorr, Luxembourg Organization for Reproduction Rights - luxorr, asbl; NL: Stichting Reprorecht; PT: AGECOP, Associação para a Gestão da Cópia Privada; RO: CopyRo, Societate de Gestiune Colectiva a Drepturior de Autor; SI: SAZOR GIZ; SW: Bonus , Bonus Presskopia; UK: CLA, The Copyright Licensing Agency Ltd. (2010 data)

[c] Minus AIDRO (IT), KOPIOSTO (FI), COPY-DAN Writing (DK), Literar-Mechana (AT) and VG WORT (DE). For DE, however, VG Bild-Kust is a CISAC member. Share of VG Bild-Kust calculated on the basis of the share of collected income of VG WORT (VG WORT collected 434.38 m out of 560.14 total Germany) => only 22% of DE income is collected by VG Bild-Kust.

15.7. Resale Right

Table F.7.1: Resale Right: Number of artists benefiting and revenues from the resale right in Europe.

2010	Living artists		Deceased artists		Total	
	Number benefiting	**Revenues (EUR)**	**Number benefiting**	**Revenues (EUR)**	**Number benefiting**	**Value (EUR)**
Austria	38	110045			38	110045
Belgium	133	81461	380	472862	513	554323
Bulgaria						
Cyprus						
Czech Republic						651103.51
Denmark	931	297000	963	560000	1894	857000
Estonia	2		9		11	3931
Finland						189888
France	829[a]	1812394	1195[a]	5035395	2054	6847789
Germany					1021	3427103
Greece						
Hungary		6119		55918		62037
Ireland						
Italy						
Latvia		3117.6		4676.40		7794
Lithuania						1417
Luxembourg						
Malta						
Netherlands					58	104511
Poland						
Portugal		8644		16956	26	25600
Romania						
Slovakia[b]	6	972.6	44	23268.19	50	22295.59
Slovenia						
Spain		94812.3		68414.57		163226.87
Sweden						1145202
UK					966	2695510
TOTAL	**1110**	**2414566**	**1396**	**6214222**	**6631**	**16868776**

[a] only ADAGP
[b] provisional data

Source: Replies to the Consultation on the implementation and effect of the Resale Right Directive (7 January – 11 March 2011).[217]

[217] http://ec.europa.eu/internal_market/copyright/resale-right/resale-right_en.htm

15.8. Audiovisual producers (cable retransmission)

Table F.8.1. Cable retransmission income for audiovisual producers from AGICOA

Member State	All revenue streams, 2010 (million USD)	Share per Member State	Cable retransmission 2010 (million EUR)	Share per Member State (2006)
Austria	318.20	1.92%	0.74	0.88%
Belgium	478.10	2.88%	14.56	17.35%
Bulgaria	10.90	0.07%	0.10	0.12%
Cyprus	7.40	0.04%	0.00	0.00%
Czech Rep.		0.00%	0.00	0.00%
Denmark	391.20	2.36%	3.87	4.62%
Estonia	4.70	0.03%	0.09	0.10%
Finland	139.80	0.84%	0.00	0.00%
France[218]	3 069.70	18.49%	23.20	
Germany	3 128.70	18.84%	16.38	19.52%
Greece	70.70	0.43%	0.00	0.00%
Hungary	57.20	0.34%	0.70	0.84%
Ireland	172.80	1.04%	6.38	7.61%
Italy	1 306.20	7.87%		
Latvia	4.50	0.03%	0.06	0.07%
Lithuania	6.50	0.04%	0.10	0.12%
Luxembourg	5.10	0.03%	0.55	0.65%
Malta	0.00	0.00%	0.00	0.00%
Netherlands	683.70	4.12%	26.27	31.30%
Poland	320.90	1.93%	5.53	6.59%
Portugal	123.60	0.74%	1.17	1.40%
Romania	12.40	0.07%	1.67	1.99%
Slovakia	12.00	0.07%	0.22	0.27%
Slovenia	6.80	0.04%	0.45	0.54%
Spain	1 075.00	6.47%	3.09	3.69%
Sweden	484.40	2.92%	1.99	2.37%
UK	4 712.80	28.38%		
Grand Total	16 603.30	100.00%	107.12	100.00%

Source: Screen Digest (all revenue streams); AGICOA annual reports. AGICOA income per Member States is based on AGICOA annual reports from 2006. Amounts for 2010 are calculated on the basis of the overall collections reported by AGICOA in 2010, distributed by territory according to the data for 2006. In some cases, producers receive royalties from their respective national collecting societies, in addition to income received from AGICOA. The overall amount of collections from the cable retransmission right on behalf of audiovisual producers is accordingly higher than the amounts collected by AGICOA.

[218] Figures for French collecting society PROCIREP, which is not included in AGICOA revenues. Accordingly, France is not counted in the share of cable retransmission income per Member States, which is based on AGICOA data.

15.9. Collectively managed income overall

Table F.9.1: Income per rightholder type

	Source	Collections (million EUR)
CISAC societies	table F.1.1	4 482
Additional reprography income	table F.5.2	632
Artists resale right*	table F.6.1	17
Total Authors and successors in title		5 131
Performers	Annex 17.3	459
Record producers	table F.2.1	459
Film producers*	table F.7.1	107
Total		6 156

* Data for 2010

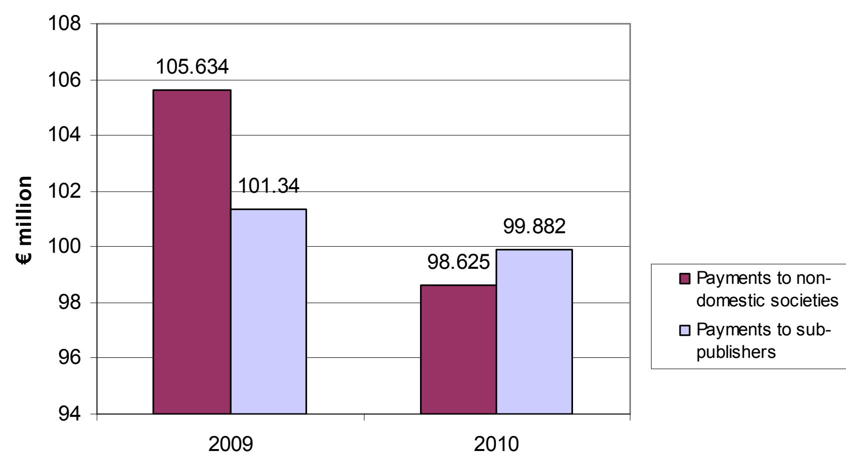
16. ANNEX G: CROSS BORDER ROYALTY FLOWS

Table G.1. Intra EU royalty flows relative to collections for some major authors' societies

€ 000'	AUME	GEMA	KODA	LATGAA	OSA	PRS	SABAM	SIAE	SPA	STIM	Total
Received from EU	2 687.00	41 491.00	5 913.68	283.12	1 707.29	107 046.81	10 228.93	21 880.11	1 225.92	33 210.87	225 674.72
Paid to EU	4 792.00	57 754.63	26 639.95	1 279.23	3 802.03	15 933.53	60 363.83	27 979.15	3 275.14	8 739.69	210 559.17
Total Collected	24 015.00	823 007.00	82 464.00	4 072.03	32 376.21	763 821.77	193 000.00	486 485.02	37 771.25	144 024.51	2 591 036.79

Societies selected on the basis of available data for 2010 (annual reports) and 2008 (European Parliament, Collecting Societies and Cultural Diversity in The Music Sector (2009), for PRS, GEMA and SIAE). Note that the flow of royalties between societies does not represent the entirety of cross-border flowers, as some non-domestic rightholders collect income directly from foreign societies or via a local sub-publisher (see e.g. table G.2.). This is especially the case for mechanical rights in musical works. Collecting society AUME only administers reproduction rights, while other societies administer performing rights or performing rights and mechanical rights together. All collecting societies represented in the table manage authors' rights in musical works, but some societies represented also manage rights in other types of works (e.g. LATGAA, SIAE).

Table G.2. Illustration of non-domestic income paid to sub-publishers, compared to payment to non-domestic societes, for GEMA (source: GEMA annual report 2010)



EN EN

17. ANNEX H: TRANSPARENCY: ACCOUNTING, REPORTING AND PERFORMANCE INDICATORS

17.1. Annual reporting and accounting

Table H.1.1: Annual reporting of collecting societies active in online music licensing

	CMO	WEB	Annual report online[a]	Administrative and other deductions[b]	Sectors represented	Rightholders represented	Turnover (€m)
AT	AKM	Nat/EN	2010 Nat/ 2009 EN	11.24%	MU	18559	86.2
AT	Austro-Mechana	Nat	2010 EN	[e]	MU	20000	24.0
BE	SABAM	Nat/EN	2010 FR	14.2%	MU,L,D, AV,AGP	36340	193
BG	MUSIC AUTOR	Nat/EN			MU		
CZ	OSA	Nat/EN	2010 Nat/EN[d]	18.23%	MU	6834	32.4
DE	GEMA	Nat/EN	2010 Nat/ 2009 EN	14.7%	MU	64778	863
DK	KODA	Nat/EN	2010 EN	11.3%	MU	36500	82.5
EE	EAU	Nat			MU, D, AV,AGP		
EL	AEPI	Nat/EN			MU	11000	28.0
ES	SGAE	Nat	2010 Nat/ 2008 EN		MU,D,AV	100108	341.2
FI	TEOSTO	Nat/EN	2010 Nat/EN	13.1%	MU	25106	58.4
FR	SACEM	Nat/EN	2010 EN/FR	15.38%	MU	137000	819.6
HU	Artisjus	Nat/EN	2008 Nat/EN[d]	21.4% A 4% C	MU,L,AGP		47.5
IE	IMRO	EN	2010 EN	12.4%	MU	6000	38.1
IT	SIAE	Nat/EN	2009 Nat[d]		MU,L,D, AV,AGP	85000	605
LT	LATGA-A	Nat/EN	2010 Nat/EN	19.1%	MU,L,D, AV,AGP	5027	4.3
LV	AKKA-LAA	Nat			MU,L,D, AV,AGP		
NL	BUMA-STEMRA	Nat/EN	2010 EN	12.1% BUMA 23.1% STEMRA	MU	20000	176
PL	ZAIKS	Nat			MU,L,D, AGP		
PT	SPA	Nat			MU,L,D, AV,AGP		37.7
RO	UCMR-ADA	Nat	2010 Nat		MU		
SE	STIM	Nat/EN	2010 Nat/EN	11.3%	MU	64874	145.8
SK	SOZA	Nat/EN	2010 Nat/EN	19.54%	MU	1924	9.2
SV	SAZAS	Nat	2010 Nat		MU		15.5
UK	PRS for Music	EN	2009 EN	10%	MU	80297	710

[a] last checked in September 2011
[b] Deductions: A = administrative, C = cultural
[c] Sectors: MU = music, L = Literary, AV = Audiovisual, AGP = Visual arts, D = Dramatic
[d] accounts not published online
[e] 50% of private copying levies goes to cultural funds

17.2. Distributions

Table H.2.1: Distribution rules and payments periodicity

	Online distribution key	Periodicity of payments
AT	Royalty income (of each registered use = full census) above a certain threshold is distributed	Every 3 months
BE	Treating foreign and domestic members in the same way	On a "semestrial" basis
CZ	Streaming: 75% P, 25% M Downloading: 25% P, 75% M	Every 6 months
DE	Streaming: 2/3 P, 1/3 M Downloading: 1/3 P, 2/3 M	Online every 6 months CELAS: every month
DK	Based on actual documentation for each exploitation of each work	Distribution frequencies vary for different distribution areas
EL	Streaming: 75% P, 25% M Downloading: 25% P, 75% M	Every 6 months
ES	Based on the repertoire sales reports provided by the ISPs	Every 3 months (influenced by irregularities of payments by the ISPs)
FI	According to internal distribution rules	Every 3 months
FR	Streaming: 2/3 P, 1/3 M Downloading: 1/3 P, 2/3 M	Every 3 months
IR	Rules set on a provider by provider basis	11 payments a year to direct members; every 3 months to affiliate societies
IT	Streaming: 75% P, 25% M Downloading: 25% P, 75% M Intermediate: 50% P, 50% M	Every 6 months
LT	In accordance with the law	Every 3 months to domestic rightholders; every 12 months to foreign rightholders
NL	Per track or per stream basis; development of online distribution keys is work in progress	Online every 12 months
NO	line by line distribution made possible by thorough reporting from customers	Every 3 months to own members; every 6 months to sister societies; national distributions every 12 months
PL	Streaming: 65% P, 35% M Downloading: 35% P, 65% M Intermediate: 50% P, 50% M	Depending on a way of exploitation
PT	Streaming: 75% P, 25% M Downloading: 25% P, 75% M	Every 3 months
SE	On the basis of music reports	Online every 3 months
SK	Per analogy with all repertoire announcements processed from any other usage	Online every 12 months
UK	Streaming: 75% P, 25% M Downloading: 25% P, 75% M Interactive streaming: 50% P, 50% M	Performing: every 3 months; Mechanical: mostly every month
P = performing M = mechanical		

Source: Replies to Commission's consultation of CS of 17 December 2010

18. ANNEX I: DATA PROCESSING AND DATABASES

The licensing of musical works on a multi-territory basis for online services requires the extensive use of data processing capabilities. This is chiefly because the scale of reported uses of music is considerable. For instance, one collecting society processed 20 million lines of data for a single online service (Spotify).[219] Another society reported three million downloads from a single major service provider in 2010, and that it processed the equivalent of three billion acts (downloads or streams).[220] There is evidence that online service also enable more choice for consumers than other business models (e.g. broadcasts or CD sales): this translates into more works being accessed and processed by societies, but in many cases generating less revenue (the so-called "long tail" effect). According to one society, online services reported the use of more than 670000 different musical works in 2010. For a major download service, 94% of downloads concerned tracks which had been downloaded less than 50 times.[221] Without adequate automated processes, the processing of those uses would not be economically viable.[222]

The traditionally territorial nature of collective licensing of musical works also explains the need for accurate databases and processing capabilities. Collecting societies have traditionally administered licences on a territorial basis. Their databases accordingly covered primarily their own territory. In addition, collecting societies have traditionally licensed the entire repertoire in their national territories. This means that the risks of conflicts as to who owns works in a given territory were minimal, as no other society was licensing the same type of rights in the same territory. Inaccurate data was only relevant to the distribution of income to rightholders and other collecting societies. It was largely invisible to users. Multi-territory licensing on the other hand has brought at least two new challenges: (i) databases must be multi-territorial and (ii) databases of societies and licensors must be consistent and coherent. I.e. if two collecting societies claim to own the same work, a user will be invoiced twice for the same work. Currently, users and rightholders report that existing databases still show numerous duplicates and other inconsistencies.

While necessary for online uses, automated data processing also has significant benefits for the administration of licences. It can be used for the reporting of uses from users to licensing entities, for the invoicing of those uses to users by licensing entities, and for payments to rightholders. This yields several benefits. Users can expect more accurate invoicing, fewer conflicting invoices and lower costs, as the reporting of uses, even to several licensors, becomes automated. Rightholders can expect more accurate and faster payments, and get precise information on how, where and against what returns their works are used.

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219 STIM Annual Report 2010, p. 17

220 SACEM Annual report 2010, p. 12 and 27.

221 *Idem.*

222 According to one estimate, an automated match would cost on average €0.02, while a match requiring a manual intervention would cost €14. It is estimated that for 100% share of a work, a collecting society collects in the region of €0.08 per work downloaded, see e.g. "Two steps closer to a global copyright database", in Summary of CISAC's World Copyright Summit #3, Brussels, June 7 & 8, 2011, http://www.cisac.org/CisacPortal/initConsultDoc.do?idDoc=22436, p. 37.

18.1. From reporting uses to paying rightholders

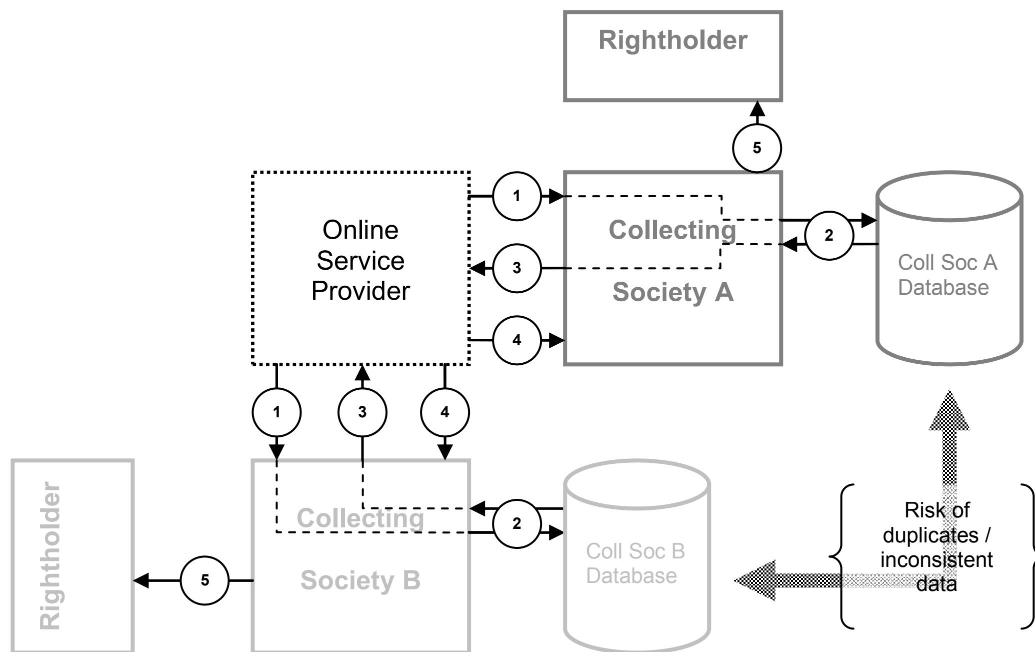

Table I.1: Simplified music reporting, invoicing and distribution process

The process by which music uses are reported, invoiced, paid by online service providers (OSPs) and distributed to rightholders can be summarised according to the table above.

First, the online service provider reports usage of musical works to the society, i.e. information on how many tracks have been downloaded or sold. It is in theory possible that a user reports to a licensor only the shares of works which that licensor holds. The service provider could report to collecting society A only works which A has authority to licence. However, in general, online service providers obtain music files and corresponding information from record producers (e.g. iTunes has made the attribution of IRSC – a unique identifier for a recording - a precondition to a recording being sold on its service). They do not have access to any information enabling them to identify the underlying musical works. Accordingly, in practice, the OSP generally reports back to the collecting society the use of tracks of recorded music (typically IRSC, title, performer). Automated processes for reporting are in use. For instance DDEX is a reporting format available free of charge and which is used by many licensors (e.g. CELAS, GEMA, PAECOL, PRS for Music, NCB, SABAM, SACEM, SGAE). The drawbacks of this approach remains that it is dependent on accurate information on the recording being reported, and that the licensor is likely to receive information which ultimately concerns works which he does not have the authority to licence. Thus CELAS, licensing works of EMI publishing, might process information which is also relevant to works belonging to Sony ATV.

Second, the collecting society or licensor "matches" the information provided by the OSP to the share of works it has authority to licence. The collecting society or licensor must be able to match information on the record to information on the underlying works, and then to match those works to the rights, territories and work shares it controls. I.e. for a multi-territorial licence, the collecting society or licensor must hold the relevant information for all the

territories it licences. Further, it must have the ability to match recording information to information pertaining to works. Licensors or societies concerned have access to information on works and their ownership, because rightholders they represent provide them with such information – e.g. by registering their works. However, the societies or licensors do not have the same level of access to information on recordings – they do not represent record producers or performers. Finally, the main difficulty with the "matching" process is that, despite the development of tools to minimise such occurrences, there can be inconsistencies between the databases of collecting society A and the databases of collecting society B. Typically, it may be that each society claims 75% of the same work.

Thirdly, on the basis of the reports provided by the OSP and of its database, the society or licensor then invoices the OSP. Where an inconsistency described above occurs, the user is likely to receive an invoice of 150% for a same work. Moreover, where one licensor invoices on a yearly basis, and another on a monthly basis, the user will only realise this overlap on receiving the last "invoice". In all likelihood, the user will have already paid the first licensor when he is presented with a second invoice.

Fourthly, the OSP pays the collecting society or licensor the amount invoiced. If the user has received conflicting invoices, he may have agreed a process with the licensors to resolve such errors and reconcile the conflicting invoices. Some societies and licensors use a dispute reporting facility to deal with such occurrences. For instance, ARMONIA, CELAS, GEMA, SACEM, SACEM/DEAL, PRS for Music and PAECOL use the so-called "Claim Confirmation & Invoice Details" (CCID) to facilitate the process.

Fifthly, on the basis of the information processed (usage reports, matching, possible resolution of conflicts), the licensor or collecting society pays the rightholder.

18.2. Underlying data and current database systems

The setting up of automated processes is relatively complex due to the large number of works and rightholders involved. The precise number of copyright protected musical works registered with collecting societies is not known, some suggesting there are around 13 million works in the world, other that there are as many as 50 million.[223] While circa 500,000 new works may be registered by collecting societies each year,[224] many works are rarely or never used (the industry term "active works" refers to those works that are used). Matters are further complicated by the fact that there are numerous owners of different shares in a single musical work – which may have one or more composers, one or more lyricists, one or more arrangers (which may or may not qualify as authors) and one or more publishers. There can be as many as 15 rightholders in a single work.

Traditionally, collecting societies have operated their own databases, separately developed and implemented, and generally using a work code or identifier which is specific to the

[223] See e.g. "Two steps closer to a global copyright database", in Summary of CISAC's World Copyright Summit #3, Brussels, June 7 & 8, 2011, http://www.cisac.org/CisacPortal/initConsultDoc.do?idDoc=22436, p. 69. Major EU collecting societies reported a total of more than 18 million works registered (which, for some, includes works other than musical works), see Annex F, table F.1.8.

[224] E.g. according to the SACEM Annual report 2010, close to 690 000 new works were added to the world repertoire in 2010.

society. However, a number of international codes are also used, in particular for the purposes of exchanging information between collecting societies.

The most widely used **identifier for musical works** is the ISWC (international standard work code). It is an ISO standard, developed by CISAC, and which allows for the attribution of a unique identifier by designated local or regional numbering agencies. In Europe, these local or regional agencies are local collecting societies. Each society/local number agency is appointed to attribute an ISWC number to musical works created be authors which are their members (on the basis of the authors' record in the IPI database, see *infra*). When an author changes his society, his new society is responsible for the attribution of an ISWC to his newly created works.

The ISWC number is recorded with metadata including (i) one original title for the work, (ii) all the creators of the work (composers, authors, arrangers, translators etc.) identified by their IPI numbers. Neither the ISWC nor its associated meta-data indicate the shares of composers or copyright owners of the work or the date or place where the work was initially published.

A central ISWC validation centre is operated for CISAC and references 26 million unique ISWC codes.[225]

In order to identify rightholders, the IPI (Interested Party Information) format is often used by CISAC societies. It is administered by Swiss collecting society SUISA. It provides information on the name of rightholders, nationality, and information on the rights they hold or have entrusted to a collecting society.

The industry generally acknowledges that the data on works ownership is not sufficiently accurate – some users arguing that they receive double invoices, and that they cannot be expected to process data provided on excel spreadsheets, and some societies arguing that their rights are not always clearly excluded from licences from other societies. A number of initiatives have been put forward to address the issue.

In 1998 CISAC created "CIS-Net", which uses IPI and ISWC to allow societies' databases to interoperate to some extent. "CIS-Net" is a distributed database: each society within the network has its own proprietary database. Through CIS-NET, societies are allowed to give other societies of view of their databases, and to view the databases of other societies. Today, 74 contributing societies and 101 user societies are participating in CIS-Net and are covering a global population of 50 million works, but is estimated there are still inaccurate records.

Collecting societies PRS for Music and STIM created a joint venture, ICE (International Copyright Enterprise), which records multi-territory ownership data for their repertoires. ICE is now reported to include 15 million works. Amongst other benefits, ICE allows the two societies to reconcile the data in their respective repertoires and the catalogues of some Anglo-American publishers, ensuring that there are no inconsistencies or duplicates. ICE aims to provide an "authoritative" database: a record is authoritative when the ownership information is provided by the rightholder.

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[225] See e.g. http://www.wipo.int/meetings/en/2011/wipo_cr_doc_ge_11/pdf/collective.pdf. The database is administered by FastTrack and referred to as "Common Search Index". CISAC has invested €1.65 million in the creation of the ISWC identifier over the last decade. As there are around 24.8 million works in the ISWC, the cost per work amounts to less than €0.07 per work.

In full awareness of the need for a comprehensive database, a group of stakeholders started work on the Global Repertoire Database[226] (GRD), which would be an authoritative comprehensive multi-territory information about the ownership of musical works, and would be openly accessible to all interested parties (authors, users, collective managers, publishers, etc.). The working group comprises eight companies,[227] and in June 2011 Cisac decided to join the working group.[228] The GRD working group has recommended that ICE, the joint venture between PRS and STIM, should be the technology partner, and that Deloitte should be project manager.

[226] http://www.globalrepertoiredatabase.com/

[227] Amazon, EMI Music Publishing, iTunes, Nokia, PRS for Music, SACEM, STIM, Universal Music Publishing.

[228] The main issues CISAC is concerned with are: 1) account should be taken of CIS-Net and existing databases; 2) governance: who is in charge of the database; 3) financing: the creation of the GRD should not create any extra burden to the societies but should only re-deploy current funds for maintaining existing databases; 4) data ownership and privacy: CIS-Net is not a public database due to complex privacy laws around the world.

19. ANNEX J: MUSIC PUBLISHING

Table J.1: Major music publishers' market share

	2008	2009	2010
EMI Music Publisher	18.3	19.3	19.7
Sony/ATV	11.7	12.3	12.5
Universal Music Publishing Group	23.2	22.9	22.6
Warner Chappell	14.9	14.4	13.9
Total	68.1	68.9	68.7

Source: Music & Copyright[229]

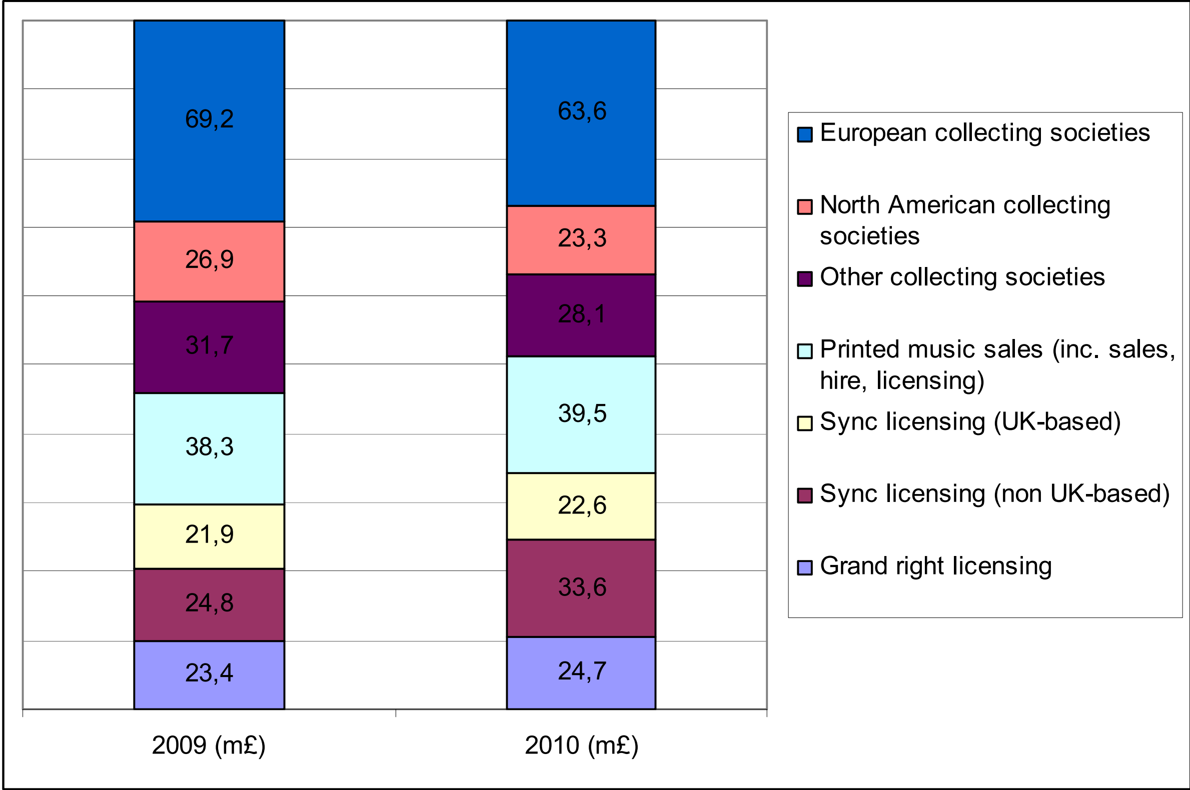
Table J.2: Major record producers' market share

	2008	2009	2010
EMI	11.6	12.2	12.4
Sony Music Entertainment	19.5	20.9	20.8
Universal Music Group	28	27.2	28.0
Warner Music Group	14.7	15.0	14.6
Total	73.8	75.3	75.8

Source: Music & Copyright

[229] http://musicandcopyright.wordpress.com/2011/03/23/universal-music-group-reasserts-its-recorded-music-dominance-in-2010/

Table J.3: Main income streams of UK publishers (excluding income for PRS)



Source: Adding up the Music Industry 2010, PRS Economic Insight, August 2011.

Grand rights are generally the rights to publicly perform a work, e.g. typically an opera or classical music performance by an orchestra; sync or synchronisation rights are the right to use a musical composition for an audiovisual production. Print music consists of the sale or sheet music (of musical works and arrangements thereof) and folios, the reprinting of lyrics in books or other publications, and the rental of sheet music (e.g. for orchestras).

20. ANNEX K: LICENSING PRACTICES FOR ONLINE USE OF MUSIC

Table K.1: Repertoire that had been licensed on a pan-European basis to a major online service, up to December 2010.

Repertoire	Licensor(s)
SGAE (ES)	SGAE or Armonia
SPA (PT)	SGAE or Armonia
SACEM (FR)	SACEM or Armonia
PRS for music (UK)	PRS for music
IMRO (IR)	Choice from PRS for music, SACEM
TEOSTO (FI)	TEOSTO / NCB
STIM (SW)	STIM / NCB
SIAE (IT)	SIAE or Armonia
GEMA (DE)	GEMA

Source: Replies to commission's consultation of collecting societies of 17 December 2010.

Table K.2: Licensing of publishers' rights

Publisher	Licensing Entity
Sony ATV	SGAE (Sony ATV Latin repertoire)
	PAECOL/GEMA (Sony ATV non-Latin repertoire)
Universal	SACEM/DEAL
EMI	CELAS (joint-venture, GEMA and PRS for music)
Warner Chappell	PEDL: choice from PRS for music, SACEM, BUMA, GEMA, STIM, SABAM, SGAE
Peer Music	SGAE (Peer Music Latin repertoire)
	PRS for music (Peer Music non-Latin repertoire)
IMPEL	PRS for music

Table K.3: Rights available from some pan-European licensing entities (2010)

Licensing organisation	Participants		Rights / repertoire	
	Publishers	Collecting societies	Reproduction	Communication to the public
CELAS	EMI	PRS, GEMA	Non-BIEM[a]: EMI works	Non-BIEM: EMI works
			BIEM: n.a.	BIEM: n.a.
PAECOL	Sony ATV	GEMA	Non-BIEM: Sony ATV works	Non-BIEM: Sony ATV works, excluding PRS for music works
			BIEM: GEMA works, IMRO works	BIEM: GEMA works
PEDL	Warner Chappell	PRS for music, SACEM, BUMA, GEMA, STIM, SABAM, SGAE	Non-BIEM: Warner Chappell	Non-BIEM: Warner Chappell works, excluding PRS for music works
			BIEM: n.a.	BIEM: n.a.
ARMONIA	Universal Peer Music (Latin) Sony ATV (Latin)	SACEM, SIAE, SGAE, SPA	Non BIEM: SONY ATV and PEERMUSIC (latin repertoire) works, Universal works	Non-BIEM: Universal, SONY ATV and PEERMUSIC (latin repertoire) works, excluding PRS for music works
			BIEM: SACEM, SIAE, SGAE, SPA works	BIEM:SACEM, SIAE, SGAE, SPA works

[a] BIEM is the international organisation representing mechanical rights societies. BIEM repertoire refers to repertoire of predominantly all continental collecting societies. Non-BIEM repertoire refers to Anglo-American repertoire.

21. ANNEX L: IMPLEMENTATION OF THE COMMISSION RECOMMENDATION OF 2005 AND OVERVIEW OF NATIONAL REGULATORY FRAMEWORKS

22.1 Implementation of the Commission Recommendation of 2005

The **Commission Recommendation** 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services[230] constituted an initial attempt to improve the licencing of copyright and related rights for the online exploitation of music. As recital 8 of the recommendation explained, "*[i]n the era of online exploitation of musical works [...] commercial users need a licensing policy that corresponds to the ubiquity of the online environment and which is multi-territorial*." It further stated that it was "*therefore appropriate to provide for multi-territorial licencing in order to enhance greater legal certainty to commercial users in relation to their activity and to foster the development of legitimate online services [...]*." In addition to providing for a new licencing policy, this Recommendation set out some general principles on governance, transparency and accountability of collecting societies as regards their the relationship with right-holders and commercial users.

The **impact** of this Recommendation has, however, been moderate. First of all, it was coldly received by the **European Parliament**. In a resolution of 13 March 2007,[231] the European Parliament challenged the value of the Recommendation: "*whereas it is unacceptable that a 'soft law' approach was chosen without prior consultation and without the formal involvement of Parliament and the Council, thereby circumventing the democratic process, [...]. 1. Invites the Commission to make it clear that the 2005 Recommendation applies exclusively to online sales of music recordings, and to present as soon as possible – after consulting closely with interested parties – a proposal for a flexible framework directive to be adopted by Parliament and the Council in co-decision with a view to regulating the collective management of copyright and related rights as regards cross-border online music services [...]*."

Secondly, concerning the **stakeholders** reception of the 2005 Recommendation, a monitoring exercise undertaken by the Commission in 2008[232] showed that the taking-off of **EU-wide licencing** was slow. Shortly after the release of the 2005 Recommendation large rightholders, and more particularly major publishers, withdrew the cross-border management of their digital repertoire from the system traditionally offered by collecting societies and set up several new licencing platforms for the cross-border management of their on-line rights.[233] The largest four music publishers transferred the management of some of their rights, for EU-wide licencing, to newly created entities: CELAS,[234] PEDL,[235] DEAL,[236] PAECOL[237] and

[230] OJ L 276, 21.10.2005, p.54.

[231] European Parliament Resolution of 13 March 2007 on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC) (2006/2008/INI), P6_TA(2007)0064, OJ C 301E, 13.12.2007, p. 64.

[232] Monitoring of the 2005 Music Online Recommendation, 7.2.2008. Available at: http://ec.europa.eu/internal_market/copyright/management/management_en.htm#monitoring

[233] See Violaine Dehin, 'The Future of Legal Online Music Services in the European Union: A Review of the EU Commisison's Recent Initiatives in Cross-Border Copyright Management', European Intellectual Property Review 2010, v. 32, No 5, p. 220, 228. See also Monitoring of the 2005 Music Online Recommendation, 7.2.2008, p. 5.

[234] CELAS (Central European Licensing and Administration Services) was created by GEMA (a German collecting society) and PRS for Music (PRS for Music is the brand name of the operational alliance

PEL.[238] Until 2010, the withdrawals were initiated by major publishers only and were limited to mechanical rights of Anglo-American repertoires.[239] Only recently, some independent publishers have entered into similar schemes following an initiative lanched by PRS for Music (UK): IMPEL.[240]

Despite the creation of the new licencing platforms, the first EU-wide end-user licencing contract was only signed in January 2008, more than 3 years after the publication of the Recommendation.[241] Since then, more EU-wide licences have been granted.[242] However, as presented in the problem definition section of this impact assessment, the market has not developed enough and most initiatives for cross-border licencing systems stemmed from major publishers only.[243]

The 2008 report on the monitoring of the 2005 Recommendation prepared by the Commission services outlined that stakeholders had reported various obstacles in setting-up EU-wide licensing arrangements: i.e. litigation between collecting societies would impede progress (e.g. they questioned other societies' mandate to license their repertoire on an EU-wide basis) and the question of the identification of works to be licenced. As outlined in the problem definition section of this impact assessment, different obstacles to multi-territory licensing remain: e.g. multi-territory licencing remains subject to legal uncertainty and it is demanding

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between two UK collecting societies: MCPS and PRS). CELAS is a legal entity set up to represent EMI Music Publishing's Anglo-American and German repertoire for online and mobile uses in 40 European countries. See: http://www.celas.eu/

235 Warner/Chappel Music, the publishing arm of the Warner Music Group, created a system of Pan European Digital Licencing (PEDL) with 6 collecting societies: BUMA-STEMRA (NL), PRS for Music (UK), SABAM (BE), SACEM (FR), SGAE (ES) and STIM (SE). Through this system, the participating collecting societies are able to offer EU-wide digital licences covering Warner/Chappell's Ango-American repertoire. Under the PEDL initiative, Warner/Chappel Music is granting non-exclusive rights in its catalogue to those collecting societies which comply with a set of common standards intended to ensure efficient and transparent management of rights. The PEDL initiative remains open for other collecting societies to join at a later date. See: http://www.warnerchappell.com/pedl/pedl.jsp

236 DEAL (Direct European Administration and Licencing) was crated by Universal Music Publishing Group with the French collecting society SACEM, covering the repertoire of Universal Music. See: http://www.sacem.fr/cms/site/en/home/about-sacem/documentation/2009-press-releases/universal-music-publishing-group-and-sacem-announce-name-of-pan-european-licensing-model-as-well-as-a-variety-of-pan-european-deals-with-major-internet-companies

237 PAECOL (Pan-European Central Online Licencing) is a subsidiary of German collecting society GEMA created for the management of the SONY/ATV Anglo-American repertoire. See: https://www.gema.de/en/gema/organization/paecol-gmbh.html

238 PEL (Pan-European Licencing Initiative of Latin American Repertoire) manages the Latin repertoire of SONY/ATV. PEL is managed by Spanish collecting society SGAE.

239 Cf. Violaine Dehin, *op. cit*., p. 229.

240 Independent Music Publishers' European Licensing (IMPEL) is a collective of independent publishers who have joined together to license their Anglo-American mechanical digital rights on a pan-European basis. IMPEL has chosen PRS for Music as its partner society to license and administer the participating publishers' rights on its behalf, and has the full support of the Music Publishers Association. IMPEL began operations on 1 Jan 2010. Currently, 16 publishers have joined IMPEL. Additionally, PRS for Music also manages the Anglo-American mechanical digital rights of peermusic, Chrysalis and Imagem Music alongside the IMPEL rights. See: http://www.prsformusic.com/impel/Pages/default.aspx

241 A contract signed by CELAS with mobile operator Omnifone, covering the 'MusicStation' download service operated by the latter. This contract allowed MusicStation to provide access to EMI music repertoire for digital exploitation in Europe.

242 Cf. Violaine Dehin, *op. cit*., p. 228.

243 3 collecting societies, SACEM (FR), SIAE (IT) and SGAE (ES) also joined forces in the Armonia project: http://www.armoniaonline.eu/

and costly (for example as regards the processing of data linked to the works used). Hence, the impact of the 2005 Recommendation has been limited.

The **governance, transparency and accountability** provisions of the 2005 Recommendation also attracted initial interest from stakeholders. Music publishers (represented through ICMP/CIEM[244]) and collecting societies representing authors (represented through GESAC[245]) issued in July 2006 a "*Common Declaration on Governance in Collective Management Societies and on Management of On-line Rights in Music Works*"[246] (hereinafter, the "Common Declaration"). The Common Declaration made an express reference to the Commission Recommendation and stated that "*ICMP/CIEM and GESAC have agreed to move forward in successive steps, within a defined time-frame, on a certain number of issues relating to the governance of all societies in the European Union managing music rights in music works on a collective basis on behalf of rights holders, i.e. authors, composers and music publishers […]*". The Common Declaration provided for some general principles on membership in collecting societies, representation on board of directors of collecting societies, general meeting of members of collecting societies as well as on transparency and accountability of collecting societies to right holders.

Beyond this Common Declaration, authors' societies member of CISAC[247] also adopted in 2008 the Professional Rules for Musical Societies and for Visual Arts Societies and in 2009 the Professional Rules for Dramatic, Literary and Audiovisual Societies[248]. These documents set minimum quality standards on governance and membership, transparency, licensing, collections, documentation and distribution. The Professional Rules also include provisions for the settlement of disputes between authors' societies and their members or sister societies.

Concerning the collecting societies dealing with the reproduction rights, IFRRO[249] published a voluntary code of conduct in 2007[250] setting the standards of service that rightholders and users could expect to receive when dealing with reproduction rights organisations.

The table L.22.1 below provides a comparison of the 2005 Recommendation and some of these initiatives. This table shows that the scope of the self-regulation efforts does not fully correspond to that of the Recommendation.

Concerning practice, compliance problems remain. For instance, as regards the Common Declaration, ICMP/CIEM and GESAC committed to "*immediately encourage their respective members to commence the implementation of the points agreed in this Common Declaration within the next twelve months, e.g. by requesting from their national authorities the necessary modification of the relevant applicable laws*." However, in 2008, ICMP/CIEM and GESAC recognised that many collecting societies were still not in compliance with the principles of the Common Declaration.[251] Indeed, neither the Common Declaration, nor the CISAC and

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[244] ICMP is the world trade association representing the interests of the music publishing community internationally. See: http://www.icmp-ciem.org/

[245] GESAC is the European Grouping of Societies of Authors and Composers. See: http://www.gesac.org/

[246] http://www.gesac.org/eng/positions/download/ICMPGESACDeclaration_final_EN_070706.pdf

[247] International Confederation of Societies of Authors and Composers.

[248] http://www.cisac.org/CisacPortal/listeArticle.do?numArticle=1030&method=afficherArticleInPortlet

[249] International Federation of Reproduction Rights Organisations.

[250] http://www.ifrro.org/content/ifrro-code-conduct-reproduction-rights-organisations

[251] Cf. Monitoring of the 2005 Music Online Recommendation, 7.2.2008, p.8.

IFRRO initiatives include a formal monitoring mechanism involving any type of sanctioning in case of non-compliance.[252]

Evidence provided to the Commission services, as explained in the problem definition section of this impact assessment, continues to show that indeed problems remain (see also table L.22.1).[253] This shows the limits of both the soft law approach and the self-regulatory efforts to enforce principles in this area.

The impact of the Commission Recommendation on **Member States legislation** has also been limited, thus contributing the slow motion observed in this area so far. As regards multi-territory licencing, the problem remains that the national legal frameworks (see section 22.3 of this Annex, below) applicable to collecting societies are designed for licencing activities which take place on a national basis, resulting in considerable uncertainty (see the problem definition section of this impact assessment). As regards the governance, transparency and accountability provisions, some Member States have recently amended their legislation to improve their rules on these issues, but this is not the case in all Member States. Section 2.2 of this Annex shows some of the features of a selected sample of Member States. As regards dispute settlement (cf. §15 of the Recommendation, which is addressed at Member States), only a few Member States (UK, DE, AT, DK) have specialised dispute resolution mechanisms regarding tariffs and licencing conditions.

In any event, as regards the **scope** of the 2005 Recommendation, it should be further noted that it only applied to collecting societies managing rights in the music sector. Therefore, as regards the governance, transparency and accountability of collecting societies, only some collecting societies were concerned. While the music sector accounts for the vast majority of funds managed by collecting societies (see above Annex F), a large number of collecting societies managing funds outside that sector were left unaffected by the Recommendation.

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252 The CISAC Professional Rules include a complaint mechanism within CISAC so that a collecting society can inform CISAC if another collecting society is not respecting those Rules. The type of sanction that CISAC could enforce against a collecting society in case of non-compliance with those Rules is unclear.

253 IMPALA, the Independent Music Companies Association, explains that small record labels are facing serious difficulties in obtaining public performance, broadcast and other revenues that are due to them in Europe. To this end, it published a code of conduct encouraging record company collecting societies to improve their governance and transparency standards. See: http://www.impalamusic.org/info_01_issuecoll_socs.php

TABLE L.22.1 – 2005 Commission Recommendation and self-regulatory initiatives

2005 Commission Recommendation	ICMP-GESAC Common Declaration	CISAC Professional Rules for Musical Societies[254]	IFRRO Code of conduct	Identified problems
§3 Rightholder's free choice of collecting society.	§5(b) Rights holders will be free to elect the CMS of their choice to manage their online rights (or to manage their rights directly) as decided by them, in conformity with the categories of online exploitations defined below, and to change from one society to another the administration of those rights which they decide to have collectively managed.	§9 Each Member Society shall at all times […] (a) be open to creators and publishers of all nationalities.	§2.1 Reproduction Rights Organisations (RROs) have open representation for all eligible rightsholders in accordance with applicable national and supranational laws, including competition law.	In a number of member states, it is reported that music publishers are not allowed to be members of collecting societies.
§5(a) Rightholder's freedom to determine the online rights to be entrusted for collective management.	See §5(b) above. §5(c) establishes new categories by form of exploitation (interactive and non interactive exploitation). The rightholder's freedom needs to fit into those categories.	-	-	Difficulties are reported as regards the application and practical implementation of the new categories (beyond existing GEMA categories) established in the ICMP-GESAC Common Declaration.
§5(b) Rightholder's freedom to determine the territorial scope of the mandate.	See §5(b) above.	-	-	
§5(c)(d) Rightholder's right to withdraw online rights and transfer rights to another	See §5(b) above.	§9 Each Member Society shall at all times […] (c) permit a creator and publisher to terminate his affiliate agreement	-	The right to withdraw is difficult to exercise in some cases because of the lengthy notice periods: cf. Spanish

254 Version adopted by the general assembly of CISAC in June 2010.

collecting society.		with such Member, provided that such Member may impose reasonable conditions in relation to the termination of such agreement.		Competition authority report.
§6 information to users and rightholders by collecting societies on repertoire, representation agreements, territorial scope of mandates and applicable tariffs.	§4. Collecting societies will inform right holders of the repertoire represented, the territorial scope of the mandates granted, and on existing reciprocal agreements.	-	§1.2 RROs provide information about their operations that is clear and easy to understand §2.2. RROs ensure that their dealings with their constituents are transparent by publicising and explaining their operations, practices and procedures.	Not enough detailed information. Cases of inaccurate or "double" invoicing for users who can be billed twice by different licensors for the same work. Licensors' lack of accurate ownership data encourages service providers, as explained above, to meet the repertoire gap with a national licence which is tailored as an insurance against any claims in works not already licensed. Furthermore, as a consequence of deficient electronic data exchange, some users are receiving invoices from some licensors with significant delays, and some rightholders are experiencing even longer delays in receiving their payments.
§7 collecting society's notice to users and to other collecting societies on changes to the repertoire.	*[Unclear if covered by §4.]*	*[§ 18 of the Professional Rules require the collecting societies to keep documentation on the scope of its repertoire.]*	§4.1.3 RROs explain clearly the source and content of their repertoire.	
§9 granting of licences to users on the basis of objective criteria and without any discrimination among users.	-	§17 Each Member shall: […] (b) grant licences on the basis of objective criteria, provided that a Member shall not be obliged to grant licences to users who	Values: RROs maintain fair, equitable, impartial, honest, and non-discriminatory relationships with rightsholders, users and	

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		have previously failed to comply with such Musical Society's licensing terms and conditions; §17 Each Member shall: […] (d) not unjustifiable discriminate between users.	other parties; §4.1.1 RROs manage their relations with copyright users and their representatives efficiently and equitably.	
§10 equitable distribution of royalties to rightholders.	-	§8 Each Member shall at all times […] (e) distribute licensing income (less reasonable deductions) to creators, publishers and sister societies on a fair an non-discriminatory manner.	§3.1.3 RROs collect and distribute remuneration in a diligent, efficient and transparent manner; §5.1 RROs distribute remuneration received to rightsholders: 5.1.1 efficiently and expeditiously; 5.1.2 approximating actual use as far as possible; 5.1.3 transparently, by publicising distribution plans which explain the manner and frequency of payments with sufficient detail; and 5.1.4 in accordance with applicable national and international laws.	Poor handling of collected royalties (see problem definition). It is reported that some societies place additional burdens on non-domestic rightholders or apply distribution rules which are not favourable to non-domestic rightholders: i.e. some societies' distribution processes put foreign rightholders at a disadvantage to claim their rights. For instance there have been cases where the distribution was based on the salaries received by the rightholders in the country of the collecting society in the previous year.
§11 deductions from royalties to be specified in contracts and statutory membership rules.	-	-	§5.3 RROs deduct from collections amounts of which they inform rightsholders as appropriate for their expenses and operating costs which: […] 5.3.2. accord with and are authorised by applicable statutes	In the past, it has been reported that some societies apply additional deductions (the so-called social and cultural "CISAC deductions") only with respect to distributions to foreign CS and not to their own

			and by national laws.	members.
§12 collecting societies to inform rightholders of the deductions made.	-	§13 In each Calendar Year, each Member shall make available to each of its Affiliates: […] (c) a clear explanation of the purpose and the amount of all Deductions which it makes from the monies due to such Affiliate;	§5.3 RROs deduct from collections amounts of which they inform rightsholders as appropriate for their expenses and operating costs which: 5.3.1. are proper and reasonable and in proportion to their actual efforts and services delivered; […] §5.5 RROs deduct from collections, if authorised by national law and/or their statutes and/or distribution plan rules so to do, allocations for social and/or cultural purposes; and whenever they do so, the authorisation for, as well as the amount and nature of the allocation, is clearly explained to the rightsholders concerned. RROs avoid discrimination on grounds of nationality or otherwise.	There are instances reported of collecting societies which would not give full access to amounts deducted in respect of social and cultural deductions
§13(a) equal treatment of all rightholders in relation to the management service.	-	§9 Each Member Society shall at all times […] (b) refrain from discriminating between creators and publishers or between sister societies in a manner which is legally unjustifiable or which cannot be objectively justified.	§3.1.1 RROs manage their relationships with rightholders efficiently, equitably and impartially.	There are still occurrences of discrimination between voting members of societies and other rightholders. E.g. see decision 200 of 8 April 2011 of the Slovenian Competition Protection Office against the Slovenian Society of Composers, Authors and Publishers for Copyright

				Protection (SAZAS).
§13(b) fair and balanced representation of rightholders in the internal decision making process	§2(a) Music publishers, as members, will be eligible to Boards of directors, and will have, as a minimum, at least one-third of the seats dedicated to music rights holders on the Board. §3 General meetings of the members of collecting societies or any equivalent bodies will be called at least once a year and music publishers will have a fair and balanced representation in the voting rights at such meetings of members.	§9 Each Member Society shall at all times […] (d) (where the board is composed of creators and publishers) maintain a fair balance on its board between creators on the one hand and publishers on the other hand.	-	It is reported that, in practice, in some authors societies (e.g. in EL, LT, RO and SI) there is no representation of music publishers in the boards. It is also claimed that publishers do not have voting rights in authors societies in some countries (e.G. EL and PL). It is also reported that publishers may not be chair of the board in certain cases (e.g. in DK). It is also reported that some music collecting societies would fail to comply with the one third rule (in the Common Declaration) as regards board membership (e.g. in BG, HU, IT, LV, PL and RO). Collecting societies (CS) which have entrusted other CS in other MS with the representation of their repertoire in those MS (i.e. through reciprocal representation agreements) are often prevented from participating in the decision-making process of the societies that accepted the representation, irrespective of the income generated by that repertoire.
§14 annual information to	§4. Collecting societies will	§13 In each Calendar Year, each	*[§3.1.4 RROs explain clearly*	Out of 27 major national CS,

rightholders on licences granted, applicable tariffs and royalties collected and distributed.	report regularly to all rights holders they represent, whether directly or under reciprocal representation agreements, on any licences granted, on applicable tariffs, and on royalties collected and distributed.	Member shall make available to each of its Affiliates: […] (b) a summary of its domestic and international Licensing Income in respect of the fiscal year which immediately precedes such Calendar Year; […] and (d) a clear explanation of its distribution rules.	*and regularly the basis of their operation.]*	nine do not make annual reports available online; eight do not have any financial statements available online and five only have incomplete or simplified financial statements online. In practice, this means that rightholders cannot obtain a verifiable indication of the income that 13 out of 27 collecting societies have distributed in a year. Essential benchmarks for the performance of societies (other than administration costs) are often not available from annual reporting documents: for several major societies information on how royalties are collected, the amount of royalties distributed in the year, the time taken to distribute royalties or the proportion of royalties which remain undistributed after a number of years, is not available. Very few collecting societies provide an indication of cross border royalties flows (e.g. how much is collected abroad, from which societies, and how much is remitted abroad).

22.2 Latest developments in national regulation as governance, transparency and accountability of collecting societies.

National legislation provides examples of provisions that have been judged appropriate to deal with perceived problems regarding the financial management by collecting societies as well as their relationship with rightholders and users. This section will present some of these recent examples in the following areas: financial management (collection, handling and distribution of royalties), transparency (financial reporting) of the collecting societies, governance of the collecting societies (participation of members in the decision making process) and dispute resolution.

Financial management: collection, handling and distribution of royalties

Collecting societies manage significant amounts of funds pending distribution, which may take time.[255] While many laws seem to acknowledge that the societies only hold money which does not belong to them, on behalf of rightholders, few legislators have drawn the full conclusions from this.

Belgium, however, has included in its legislation strict rules regarding the handling of income not-yet-distributed to rightholders. In particular, these rules aim to clarify that such income is not the property of the collecting society. The result is that societies must distinguish their own assets and revenues from other income received on behalf of rightholders. These assets and that income must be held in separate bank accounts and accounted for separately. In addition, the Belgian law provides that those funds should not be used to fund the society, and not be used for speculative purposes.[256] Furthermore, the assets of the society itself are in some cases preserved from certain acts: the society cannot grant loans, credit or provide security.

Transparency by collecting societies: financial reporting

Many Member States require some form of financial reporting from collecting societies (this is certainly the case when incorporated as limited liability companies).

However, comparability of data is not ensured. Indeed, general accounting standards may be ill-adapted for this purpose: one reason is that collecting societies, while being entrusted with rights under a variety of contractual or legal instruments (assignment, mandates, etc.) are generally understood to act on behalf of members and process rights and funds on their behalf.

The French experience suggests that there is merit in ensuring that additional rules are set out so that the reporting framework applicable to collecting societies provides more added value. The supervisory authority overseeing collecting societies in France estimated that added value of those additional rules as follows:

- they facilitate choice and control by rightholders (e.g. they allow them to assess the performance of their society, compare it with others, understand how their income is

[255] Few national laws provide a meaningful deadline for the distribution of income to rightholders.

[256] In the Netherlands a recent draft law submitted to parliament on the supervision of collective management organisation administering copyrights and related rights was also foreseeing some limitation on the type of investments that a collecting society could undertake.

calculated, and effectively participate in a informed manner in the decision making process), by users and sister collecting societies, as well as supervision of collecting societies;

- they allow industry-wide trends to be visible, as well as comparisons between collecting societies;

- They are applicable to all the documents to be communicated by the collecting societies to rightholders, statutory auditors, and supervisory authorities, and they eliminate inconsistencies between those reports;

- they allow for easier readability of the money flows in collecting societies and the drawing up of performance indicators (used by the supervisor, e.g. ratio between money collected and money distributed, money collected and administration fees etc.).

- they to some extent allow for certain accounting wheezes to be weeded out (e.g. societies using non-distributable income or financial income to fund administrative costs, or capital gains, etc.).

Thus the French supervisor drew up its own reporting lines and reconstitute the information where possible. It drew lines in particular for:

– rights collected (directly or from another society), amounts available and rights used,

– rights allocated to rightholders (which benefit the rightholder in the course of the year: here SACEM for instance considered that once money was attributed to rightholders, but not yet paid, such money was allocated);

– management costs (some societies did not clearly distinguish between outgoings such as management costs and payments to rightholders) and financing of management costs and its various sources (fee on collections and/or distributions, membership fees, financial income, other revenues – one society funded its administrative costs on the basis of non-distributable income),

– administrative deductions (those to cover the society's costs and those made to cover the costs of another society, those made on amounts collected and those made on amounts distributed),

– cultural and social funds,

– cash flow and financial income (including the use of financial products).

In other Member States, additional information is made available in the annual management report that accompanies the annual accounts. For example:

– for each income line: (i) the amounts collected; (ii) costs (AT) or more specifically, direct costs attributed to collection, and indirect costs attributed to collection (BE); (iii) the amounts attributed (reparties) to rightholders, the amounts distributed to rightholders, the amounts remaining to be distributed (BE, AT);

– the amounts due by rightholders for management services (AT, BE: supported by the financial data);

– the entire resources of the collecting society, the rights collected, and the correspondence with their usage.

– information on social or culture funds (FR, AT).

Governance of collecting societies: participation of members in the decision-making process

Rules foreseeing the participation of their members in the governance of collecting societies are relatively general, and in most cases they would be subject to the appreciation of supervisory authority. Often these rules rely on the assumption that members of collecting societies are in fact partners or associates. Such members should have at the minimum voting rights in the general assembly, and the power to designate the governing bodies of the societies.

Members may take part in the functioning of the collecting society by (i) having the right to vote on certain issues, or (ii) by becoming part of the governing bodies of the collecting societies.

While many national laws provide an "umbrella" clause which does not distinguish between these two modes of participation,[257] this is not the case in other Member States which provide for more explicit rules:

– (i) In Romania, decisions pertaining to methods for collecting and distributing remuneration (and other important decisions) must be approved in the general assembly, as well as the annual report. In Greece, the view of rightholders must be expressed at least annually and "taken into account" in particular in relation to remuneration and distribution methods.

– (ii) Representation in governing bodies: In Belgium, members are entitled to be represented in the governing bodies of the collecting society; in Spain, the management is composed of members and in Portugal, the governing bodies of the societies must be formed by members.

– There may also be rules aiming to ensure the best possible manner for members to exercise their rights. Thus French law provides for an elaborate notification mechanism and most national laws (closely mirroring company law) require that some documents are available or communicated to members prior to the general assembly; in UK, the MMC required that writer members could exercise their right to vote and speak and the general assembly by proxy, in order to facilitate votes.

There are however problems, as outlined above, regarding the participation of music publishers in the decision-making process of some collecting societies.

[257] In AT, in their statutes, the collecting societies should ensure that beneficiaries are involved in an appropriate manner in the decision making. In Portugal, there is a general principle of "democratic organization and management" and "participation of associated or cooperative members" in the activities of the collecting societies.

Dispute Resolution

Some Member States provide for specific dispute resolution systems to settle potential disputes between collective societies on the one hand and collecting societies, users, user associations or rightholders on the other. Such dispute resolution systems include:

– mediation (e.g. AT, CZ, ES, PT, PL)[258]: In some cases mediation is envisaged to solve disputes (AT, PT) whereas in others it intends to assist the parties in the negotiation of agreements/contracts (CZ, ES).

– arbitration (e.g. AT, DE,[259] ES, PT, RO, EL)[260]: the arbitration systems often focus on the matter of tariffs negotiations or disputes between collecting societies and users rather than on potential conflicts between collecting societies and rightholders;

– special courts (AT, UK, DK): some Member States provide for a specific Tribunal dealing with copyright issues. Apart from disputes arising from the negotiation of general contracts, which must be referred to arbitration, in AT controversies related to the collective management of rights must be submitted to the Copyright Senate. The Copyright Senate rules on appeals against decisions of the supervisory authority, on the payable rates for the grant of a usage right, on disputes between parties arising from a general contract, amongst others. The Copyright Senate is composed of three judges and its decision has the same effect than an ordinary judicial settlement.

Other MS' legislations (e.g. BE, FR, HU) do not seem to provide specific alternative resolution mechanisms. Further, specific disputes are being tackled by other instances such as competition authorities, especially as regards the setting of the tariffs.

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258 Apart from AT, which establishes a general mediation system covering all kind of disputes between on the one hand a collecting society, a user organisation or a rightholder, and a collecting society on the other hand, national laws (CZ, DE, ES, PT, PL) provide for mediation mechanisms to tackle specific issues linked to collective management, namely: the negotiations of contracts (CZ, ES), tariffs (PT), already approved tariffs and cable retransmission (PL).

259 DE has a sort of hybrid system combining aspects of arbitration and of ordinary litigation. The decisions taken by the arbitration board are enforceable once they have been signed by the parties. This aspect clearly differentiates arbitration from judicial litigation. On the other hand, its mandatory character at the request of one of the parties, as well as the fact that the rules governing the procedure are laid down by the Ministry of Justice, reaffirms the hybrid character of the German arbitration system.

260 As in the case of mediation, arbitration mechanisms solve disputes arising from specific situations relating to the collective management of rights: general contracts (i.e. those concluded between collecting societies and user associations) (DE, AT) or the obligation to pay royalties (DE, EL). In ES and PT, a general arbitration clause allows arbitrators to adjudicate any disputes among collecting societies, between collecting societies and rightholders, between collecting societies and users or user associations.

22.3 Overview of national regulatory frameworks

	1. AT
Law	Bundesgesetz über Verwertungs-gesellschaften 2006 (the latest amendment: Federal Law Gazette I No 50/2010 (NR: GP XXIV RV 611 AB 761, p. 70. BR: 8327 AB 8338, p. 786.)
Supervision	Permanent supervision and authorisation granted by the "Aufsichtsbehörde für Verwertungsgesellschaften", an authority under the Ministry of Justice. The decisions of the supervision authority may be appealed before the "Urheberrechtssenat", an independent tribunal. Only judges may be members of that tribunal, its president has to be a judge of the Supreme Court.
Transparency of accounts	Annual financial statement and a detailed annual report (figures on membership, administered rights, revenues, administrative costs, cultural deductions and distributed royalties), examined by an independent auditor. The auditor has to inform the supervision authority of any irregularities or shortcomings.
Relations with members	CMOs are obliged to conclude a contract with rightholders at their request; they must act efficiently, effectively and proportionately in managing their members' rights. Distribution keys must be settled and non-arbitrary. Distribution must be as accurate and comprehensible as is reasonably possible. Performance and broadcasting rights in works of greater cultural significance have a higher weighting than those in works of lower cultural significance. Original works have a higher weighting than adaptions of works. Balanced representation between different interest groups. CMOs must make the following documents available to their members: -operating licence; - organisational rules; - general contract conditions; - distribution rules; - rules for payments from social and cultural institutions; - annual reports.
Relations with users	CMOs must grant licences on reasonable terms, in particular a reasonable tariff. In case of disagreement on the tariff, the licence is deemed to be granted when the user pays the undisputed part of the tariff and deposits the rest at a bank or at court. Obligation on CMOs to give information whether they are authorised to license the envisaged use of a specific work or other subject matter. CMOs must publish on their website: - a list of their members, mentioning possible restrictions of their mandate as regards content or territory; - a list of the framework contracts concluded with user organisations; - a list of tariffs. Encouragement to set up framework contracts with rules on tariffs which are deemed to be part of each individual contract between the CMO and a user.
Dispute Settlement	Disputes over tariffs as well as disputes arising out of framework contracts between CMOs and user organisations may be brought before an independent tribunal. If a CMO and a user organisation cannot agree on setting up a framework contract, each of them may ask the tribunal to set up a binding framework regulation with the same effect. Upon request the supervisory authority may act as a mediator in disputes among collecting societies and in disputes between collecting societies and their members or user organisations.

	2. BE
Law	Law of 30 June 1994 regarding copyright and related rights (with amendments, esp. amending Act of 10 December 2009 on the status and control of collecting societies (Moniteur Belge 23/12/09)
Supervision	A supervisory authority is set up in the Federal Ministry for the Economy. Its overall attributions are to ensure that societies comply with the law and with their own bylaws. It has powers of discovery, receives copies of annual reports, accounts, auditors' reports. It may eventually take steps for the authorisation of the society to be withdrawn. In certain cases, it can take actions to record acts giving rise to fines, initiate judicial proceedings or propose a settlement to the society. Every year the "Service de Controle" publishes an activity report on CMOs.
Transparency of accounts	Accounting and audit requirements aim to supplement the rules applicable under company and other general laws. Societies must have an adequate accounting structure. Detailed rules on accounting are to be set out by royal decree, after consulting auditors, accountants and collecting societies. The financial and accounting situation of collecting societies is controlled by an independent external auditor. The auditor must ensure that the society has adequate administrative and accounting structures, and internal controls. The auditor may of his own initiative flag certain problems to the society, copying the 3Service de Controle3. Management must account for its policy in the annual management report as required by company law, supplemented by: - For each income line: (i) the amounts collected; (ii) direct costs attributed to collection, and indirect costs attributed to collection; (iii) the amounts attributed (reparties) to rightholders, the amounts distributed to rightholders, the amounts remaining to be distributed - Supporting financial data, - The amounts due by rightholders for management services, supported by the financial data. - The entire resources of the collecting society, the rights collected, and the correspondence with their usage.
Relations with members	CMOs have an obligation to manage right of rightholders in a fair and non-discriminatory , and to accept them as members (which participate in the decision-making process) on the basis of objective criteria. Rightholders can choose the territories and categories of rights they grant to a CMO, and may withdraw their rights at 6 months' notice. Distribution of royalties within 24 month (if longer justification is required), money collected must be placed on a separate account, and special rules apply to the allocation of non-distributable income. Obligation to provide rightholders at their request information including annual accounts as approved by the general assembly, the list of administrators, the reports to the general assembly of the board and of the auditor, the overall amount, certified by the auditor, of the remuneration, expenses and advantages to administrators, the up to date tariffs of the company, the use of culture funds or non-distributable income.
Relations with users	CMO must have rules on the adoption of tariffs and publish updated tariffs on its website Users may consult at the premises or in writing the entire repertoire of CMO, or have their questions answered within 3 weeks time.
Dispute Settlement	There are no specific rules on disputes between societies and users. In some specific areas, specific procedures may apply (e.g. cable retransmission).

3. BG	
Law	Law on Copyright and Related Rights (the latest amendment: SG No. 25/25.03.2011, effective 25.03.2011)
Supervision	The Minister of Culture supervises and controls the activities of collecting societies; maintains register of such organisations; approves the amount of remuneration collected by the societies; the Minister can request information on activities related to management of rights. The Minister can issue recommendations; mandatory instructions and remove the collecting society from the register.
Transparency of accounts	CMO must submit to the Minister of Culture a certified copy of its annual financial statements and a report on its activity during the past year.
Relations with members	CMO may not deny membership to any person who is an owner of rights that the society administers. Distribution rules must be proposed by an elected governing body of the society and adopted by the general assembly of members; distribution of income to rightholders (notwithstanding whether they are members of the organization or not) after deduction of the administrative costs and/or social and cultural deductions must be done in accordance with the bylaws on distribution.
Relations with users	Tariffs are approved by the Minister of Culture. Tariffs must take into account the manner of use of the works and their importance in view of the income from the respective uses; users from a same category must be treated equally, except in cases where it may be proved that an exception is required. The representative organisations of users should be involved in tariff setting, when this is practically possible (where not possible, the Minister organises a public consultation). If there is no agreement on tariffs, the Minister appoints a five-member expert commission for each specific case. The approved amounts of remuneration shall be published on the website of the respective organisation. Until the amounts of remuneration are approved, negotiation and payment of the remuneration shall be made according to the effective amounts of the remuneration. In the absence of such an effective amount, the remuneration shall be paid upon a mutual agreement of the parties and shall be transferred to an escrow account.
Dispute Settlement	Mediation: In case of a dispute between CMO and users in relation to the conclusion or implementation of a contract, each of the parties may propose to resolve the dispute through mediation. The mediator shall assist in the negotiations and may make proposals to the parties. If in resolving a dispute related to collective management the mediator made a proposal in writing to the parties and within a period of one month of receiving it neither of them made a written objection, the proposal is considered accepted. The agreement reached in the course of mediation shall bind the parties to the dispute. The start of a mediation procedure shall not restrict the right of each of the parties to refer the dispute to court. The start of a mediation procedure shall suspend pending court proceedings until its termination. .

4. CY

Law	Copyright law 59/1976 (amended in 2002)
Supervision	Not mentioned in the law.
Transparency of accounts	Not mentioned in the law.
Relations with members	Not mentioned in the law.
Relations with users	Not mentioned in the law.
Dispute Settlement	For any rights: Mediation procedure before the "Competent Authority" appointed by the Minister of Commerce and Industry.

5. CZ

Law	Act No. 121/2000 Coll., on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the latest amendment: 168/2008: ZÁKON ze dne 22. dubna 2008, kterým se mění zákon č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů (autorský zákon), ve znění pozdějších předpisů)
Supervision	The Ministry of Culture is also a supervisory authority, with generally defined powers: the Ministry is entitled to require all the relevant documents and information necessary for its supervision, to investigate the breaches of legal obligations and to impose the duty to remedy the existing defects. It may impose fines. It grants and revokes the authorisation for collecting societies. CMO obligation to submit annual report and audited accounts.
Transparency of accounts	CMO has an obligation to perform double-entry accounting, have annual closing accounts audited, and submit the closing accounts together with the auditor's report to the Ministry. An annual report on activities and economic management, comprising also the annual profit and loss account and auditor's report is also required; it shall contain a full and fair description of all decisive facts and shall be made available to the represented rightholders.
Relations with members	CMOs must draft allocation schedule, including the way of distribution and rules for the payment of the collected remuneration, and excluding any arbitrary action during the distribution, and respecting the principle of support of culturally significant works and performances. CMO obligation to represent rightholders on equal terms.
Relations with users	Conclude contracts on reasonable and equal terms with users - contracts must ensure, among others, that the amount and way of payment of remuneration is set pursuant to law on the basis of the number of persons to whom the work is communicated. Information on repertoire on request Make public the proposed amount of tariffs or the way of calculating tariffs for the respective ways of exploitation of the work. Consult relevant users, on their request, while proposing tariffs or methods for calculation of tariffs.
Dispute Settlement	The mediator may intervene upon request in the context of negotiations of collective or cumulative agreements.

6. DK	
Law	Consolidated Act on Copyright (No. 202 of February 27th, 2010)
Supervision	The Minister of Culture Minister may demand to be supplied with all information about collection, administration and distribution of the remuneration for private copying.
Transparency of accounts	Not mentioned in the law.
Relations with members	Not mentioned in the law.
Relations with users	Not mentioned in the law.
Dispute Settlement	In certain cases, the Copyright Licensing Tribunal has jurisdiction: Extended collective licensing: the Tribunal may lay down all the terms of the said license agreement, including terms relating to remuneration; Compulsory licences: the Tribunal may lay down the remuneration due to rightholders; Cable retransmission: the Tribunal can grant the necessary permission and lay down its conditions ; Public performance of musical works: if an organisation approved to licence public performances of musical works proposes unreasonable terms, the Copyright License Tribunal may, at request of the user, lay down the conditions for the performance;

7. EE	
Law	Republic of Estonia Copyright Act of 11 November 1992 (latest amendment: 31.05.2006 entered into force 30.06.2006 - RT I 2006, 28, 210)
Supervision	No specific provisions in the law.
Transparency of accounts	No specific provisions in the law.
Relations with members	Exclusivity of CMO representation General Assembly adopts decisions on: collection, distribution and payment of fees and other issues relating to the common interests of members; proportionate distribution of collected remuneration subject to the actual use of the works after deducting from the fees the percentage jointly determined by the members of the organisation to cover administrative expenses. Members shall have access to regular and complete information concerning all activities of the organisation and the use of their works and the remuneration to be obtained by them. The same rules apply to foreign authors and holders of related rights as to Estonian authors and holders of related rights.
Relations with users	CMO has the right to obtain necessary information concerning the use of works and objects of related rights from all persons in public law and private law.
Dispute Settlement	For any rights: Mediation procedure before the Copyright Committee (Ministry of Culture)

8. FI	
Law	Copyright legislation 2010: Copyright Act No. 404, of July 8, 1961 (Amendments up to 31.10.2008/663 included) Copyright Decree (Decree No. 574, of April 21, 1995)
Supervision	Minister of Education (supervision limited to administration of resale right and private copying)
Transparency of accounts	No specific provisions in the law.
Relations with members	No specific provisions in the law.
Relations with users	Tariffs are set by law for resale right and private copying.
Dispute Settlement	Arbitration for certain rights only: Remuneration for broadcasting and public performance of phonograms, remuneration for cable retransmission, remuneration for the application of copyright exceptions and public lending of works (section 54)

9. FR	
Law	Code de la proriété intellectuelle (version consolidée au 1 janvier 2012)
Supervision	The minister of culture: a new CMO must submit its planned statutes and bylaws to the Ministry of Culture. The Minister of Culture may bring an action before the courts if he believes the proposed CMO would be adequate. The court must assess the professional abilities of the founders, the material and human resources they intend to devote to the collection of rights and the exploitation of their repertoire, and the conformity of their statutes to applicable regulation. An established CMO must communicate its annual accounts and any changes to its statutes or distribution rules to the Minister. The minister may also request any document relating to the management of rights and contracts of the society with third parties. In case of breach of the applicable regulatory framework, the minister may bring an action before the courts for the dissolution of the collecting society. Special Commission for the Control of collecting societies: located in the Cour de Comptes (an administrative jurisdiction independent from government), its mission is to verify the accounts and the management of collecting societies and their subsidiaries. It has wide powers to gather information (L. 321-13 II) but no powers to adopt sanctions or remedies. The Commission present an annual report to the government, the Parliament and the General Assemblies of the collecting societies (L. 321-13 III)..
Transparency of accounts	The CMO must appoint an independent statutory auditor. Detailed accounting standards are laid down under decree.
Relations with members	The partners or associates (i.e. members) in a collecting society must be rightholders or their successors in title. A group of partners representing at least a tenth of the members of the collecting society may require the appointment of an expert to investigate and report on some management activities (L. 326-6)(the general under company law requires members controlling 10% of the capital). Societies must operate a fund for cultural purposes, funded by non-distributable income (and by 25% of sums collected from remuneration from private copying). The attribution of these sums is decided by a two-thirds majority of the general assembly and is subject to a special report of the society concerned and of its statutory auditor to the Ministry for Culture (L. 321-9). Information of rightholders: with the caveat that a member may not receive information on the amounts received by another rightholder (L. 321-5), rightholders are entitled to information as provided under applicable civil law (1855 C.Civ.): the right to receive at least once a year the books and documents of the society, and to ask written questions to the society which must be answered within a month. Any members may at any time request (i) a list of the representatives of the society, (ii) an account, for the previous five years, of amounts collected and distributed, with deductions such as administrative fees, and (iii) the amounts accruing to him over the past 12 months, resulting from contracts with users, and how this amount is determined (R. 312-2). Any member may, in the two months leading up to the General assembly approving the annual accounts, request information: annual accounts, reports of bodies of the societies and of auditors, proposed resolutions to be put to the vote, the overall amount of remuneration paid to most paid executives (i.e. the top ten, or the top five for societies with less than 100 employees), a list of placements and their average interest rate, a table of bodies in which the society owns shares, information on the main categories of users, their numbers and the amounts paid during the year..
Relations with users	CMOs shall hold available for potential users the complete repertoire of the French and foreign rightholders they represent.
Dispute Settlement	No general dispute settlement body. Ad hoc rules for certain areas, e.g. cable retransmission disputes; a special committee can propose tariffs remuneration for the broadcasting and public performance of phonograms.

10. DE	
Law	Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten (Urheberrechtswahrnehmungsgesetz) vom 9. September 1965 (Last amended by Article 2 of the Law of 26 October 2007, I 2513)
Supervision	Patentamt. Permanent supervision. Right to revoke authorisation.
Transparency of accounts	An annual financial statement, an annual statement of profit and loss and an annual report. The financial statement and the annual report are examined by an independent auditor and have to be published within eight months after the end of the accounting year (plus the result of the audit).
Relations with members	CMOs are obliged to conclude a contract with rightholders at their request. CMOs' distribution keys must be settled, non-arbitrary and included in their statutes. Works and performances of greater cultural significance have a higher weighting than those with lower cultural significance.
Relations with users	CMOs must grant licences on reasonable terms. Tariffs and tariff amendments must be published In case of a disagreement on the tariff, the licence is deemed to be granted when the user pays the undisputed part of the tariff and deposits the rest. Users may ask CMOs whether they are authorised to license the envisaged use of a specific work or other subject matter. CMOs are obliged to set up framework contracts with users' organisations that have a significant number of members.
Dispute Settlement	For any rights: Mediation procedure before the Arbitration Board at the Patents and Trademarks Office. The Members of the Arbitration Board have to be qualified to exercise the functions of a judge. The Arbitrations Board has to make a settlement offer within a year. If the dispute concerns the conclusion or the amendment of a framework contract, the settlement offer has to contain its content. In most cases, disputes involving collecting societies may only be taken to court after a mediation procedure.

11. EL	
Law	Law 2121/1993 Copyright, Related rights and Cultural Matters, as amended by law no. 2121/1993 as last amended by Law no. 3057/2002 (article 81) and by Law 3207/2003 (article 10 par. 33) and by Law 3524/2007
Supervision	The Ministry of Culture approves the establishment of CMO; it supervises the operations of collecting societies to ensure that they comply with the provisions of the law. It has powers to impose fines if CMO which fails to comply with its duties (those set in the law and in bylaws).
Transparency of accounts	Each collecting society shall, when requested, submit its accounts to the Ministry of Culture for inspection, as well as any other information that is necessary for the effective monitoring of its operations. Except when a collecting society is a non profit organisation, its accounts shall be subjected to inspection by statutory auditors .
Relations with members	Obligation to represent rightholders. Transfer of rights/power of attorney for maximum three years, in writing. Possibility to abrogate the agreement with 3 month notice and good grounds. The principles governing the distribution of remuneration to rightholders and the proposed dates and manner of distribution are submitted for the approval to the Ministry of Culture. Provide rightholders/members with all relevant information concerning the activities of CMO. Obligation to consult annually with the rights holders concerning rules used to determine levels of remuneration, the methods used for the collection and distribution of remuneration and any other matter pertinent to the administration and/or protection of their rights. Distribution shall be effected at least once annually and shall to the highest possible extent be proportionate to the actual use of the works. Fix a percentage of the remunerations collected to cover expenditures of the CMO and inform members.
Relations with users	A collecting society may not refuse to conclude a contract with a user without good reason Users have to make available to the collecting society the list of used works and the frequency of use.
Dispute Settlement	User organisations and collecting societies or the Minister of Culture (subject to agreement by the parties) may choose an arbiter to determine the amount of remuneration to be paid. Before finally deciding on the remuneration due the arbiter may order the user to make a down payment. An arbiter thus appointed shall have exclusive competence to settle the disagreements. The decisions of the arbiter shall be equitable. Any dispute between the collecting societies and the users regarding the remuneration payable by the user to the collecting society may be referred to arbitration. The arbitrators are appointed from the list drafted every two years by the Copyright Organization. It is compulsory to take into account the opinion of the collecting societies and the users when drafting the said list.

12. HU	
Law	Act No. LXXVI of 1999 (Copyright Act), last amended 5th December 2011.
Supervision	Permanent supervision by the Hungarian Intellectual Property Office. It verifies whether the conditions of registration (there is an obligatory registration of CMOs) are still met and whether the provisions of the statutes, distribution rules and other internal regulations are not contrary to the provisions of the copyright legal regulations in force. For supervision purposes, the CMO shall make the following documents available to the Office: its statutes, its organisational and operational rules, its membership rules, a list of the members of its administrative and representative bodies, its distribution rules, its annual report, and its representation contracts concluded with foreign CMOs. The Office has power to impose sanctions in case the conditions of registration are not met or the copyright laws and regulations are infringed. A government decree establishes the detailed rules applying to the supervision of collective management societies.
Transparency of accounts	CMOs are required to perform double bookkeeping and to prepare a non-simplified annual report in accordance with the Act on Accounting; an auditor shall review its annual report. CMOs are required to indicate, among others, the following in the given business year besides the data provided for in specific other legislation: - the the distributable and non-distributable royalties for each type of work or subject matter and economic right; - the amount of deducted administration fee for each type of work or subject matter, economic right and title; - the amount of royalties to be distributed to another CMO for each type of work or subject matter, economic right; - collected membership fees; and - the support received.
Relations with members	Obligation to accept members who prove eligible for admission according to the criteria laid down in the statutes. CMO shall publish the following information on its website: (a) its statutes, (b) its organisational and operational rules, (c) its regulations on membership, (d) the tariffs it applies, (e) its distribution rules, (f) its annual report, (g) the list of its members and rightholders represented thereby, and the organisations with which it has concluded a contract on representation CMO shall, regardless of whether the rightholders are members of the organisation or not, allocate its revenues achieved by the management of rights and mitigated by the justified handling fee among the rightholders concerned according to its distribution rules. No deduction shall be made from the royalties to be allocated among the rightholders, with the exception set out in the payment obligations ordered by legislation or court or official decision. The handling fee may be justified, if it is necessary for performing the collective management of rights, is beneficial for the rightholders affected and is incurred in the course of normal and reasonable management..
Relations with users	Obligation to establish annually tariffs and other terms and conditions of use, which apply equally to all users without unjustified distinction, subject to approval of the Minister responsible for justice. Prior to its approval, the Minister must consult with major users and their representative organisations. Obligation to publish tariffs and other conditions of use in the HU Official Gazette (until the approval of new tariffs old tariffs are in force).
Dispute Settlement	Mediation Board (certain provisions of Act on Arbitration apply) in cases relating to, among others, disputes concerning cable retransmission, the remuneration to be paid and the conditions of the use between the user and the rightholder or between the users and their representative organizations (by common agreement of the parties); application of technical protection measures. The objective of the procedure before the Mediation Board is the facilitation of an agreement between the parties. Possibility of tacit agreement. The decision of the Mediation Board is appealable to the relevant courts.

13. IE	
Law	Copyright and Related Rights Act 2000, Copyright and Related Rights (Register of Copyright Licensing Bodies) Regulations, 2002 (S.I. No. 463 of 2002)
Supervision	A licensing body must be registered with the Controller of Patents, providing the following information: the name and address of the entity, the names of the chairperson and other members of the board or officers, the memorandum and articles of association, details of the nature and of the licensing schemes managed, details of the scales of charges or proposed charges to be levied and the class or classes of rightholders represented. Users may refer proposed or operational licences or licensing schemes to the Controller of Patents.
Transparency of accounts	
Relations with members	
Relations with users	
Dispute Settlement	In relation to certain uses of phonograms, a user may refer to the Controller for the determination of the remuneration to be paid. The user must pay to the CMO an amount he considers reasonable. Where parties cannot agree on the terms of a licence, they may request the Controller to decide the terms and conditions of a licence or licensing scheme. Licensing schemes proposed by a CMO may be referred to the Controller by an organisation representing users. Refusals to licence may be referred to the Controller In determining reasonable terms for a licence or licensing scheme, the Controller shall have regard to the availability and the terms of other schemes, or the granting of other licences, to other persons in similar circumstances, and the controller shall ensure that there is no unreasonable discrimination between licensees, or prospective licensees.

14. IT	
Law	Law No. 633 of April 22, 1941 on the Protection of Copyright and Rights Related to its Exercise Law, Law of 9 January 2008, n.2 "Provisions concerning the Italian Society of Authors and Publishers", Decree of the President of the Council of Ministers, countersigned by the Minister of Culture and the Minister of Economy and Finance, dated December 11, 2008 (GU n. 65 19th march 2009)
Supervision	CMO are supervised by the Presidency of the Council of Ministers, the Ministry of Culture, and the Ministry of Economy and Finance. The supervision shall be carried out after hearing the Minister of Economy and Finance on issues under his competence.
Transparency of accounts	Obligation to approve annual budget submitted to the supervising Authority.
Relations with members	The exclusive powers of SIAE shall not prejudice the right of the author or his successors in title to exercise directly the rights afforded them by the Law. The limits and the methods of distribution shall be determined by the regulations.
Relations with users	
Dispute Settlement	In some cases, a join committee (Commissioni paritarie) representing SIAE and users may act in relation to certain licence or authorisation agreements.

15. LV	
Law	Copyright Law of April 6, 2000 (consolidated version with the latest amendment of 6 December 2007)
Supervision	Ministry of Culture – powers not specified apart from granting and revocation of authorisation.
Transparency of accounts	CMO publish their annual reports in the Official Gazette of the Government of Latvia
Relations with members	CMOs have an obligation to: - provide a report on the use of a work, performance, and other activities when paying out remuneration to holders of copyright and of related rights; - royalty payments in proportion to the use of works; regularity of payments, after deduction of the administrative fees.
Relations with users	CMOs should agree with the users of works regarding the amount of remuneration, procedures for payment and other provisions with which licences are issued.
Dispute Settlement	Arbitration procedure exclusively for solving conflicts concerning remuneration for cable retransmission.

16. LT	
Law	Law on Copyright and Related Rights 18 May 1999 No VIII-1185 Vilnius (the latest amendment of 19 January 2010 – No XI-656)
Supervision	An "institution authorised by the government" (Ministry of Culture) supervises CMOs. This institution must supervise that CMOs perform adequately the functions and duties set to them by the law. The Ministry may obtain any information necessary to determine whether CMOs are compliant with the law and their own statutes.
Transparency of accounts	Financial statements and an audit report of the CMO for the previous financial year, approved by the general meeting (conference) must be furnished to the supervisory authority on request.
Relations with members	CMOs may not discriminate between foreign rights owners and LT citizens or residents Decisions concerning the methods and rules for the collection and distribution of the remuneration, the amount of deductions , as well as other important aspects of collective administration of rights are taken by the general meeting of the members of a CMO (the conference). Distribution of royalties in the most proportionate manner possible to actual use of works Members have the right to receive "regular exhaustive information" on all the activities of the CMO, exploitation of their works, remuneration collected and remuneration due
Relations with users	Users have right to receive information on authors or owners of related rights represented; and on agreements concluded with foreign organisations
Dispute Settlement	If CMO and user cannot agree on royalty rates, either party may request mediation. Mediation is provided by the Council of Copyright and Related Rights which is appointed by the Ministry, composed of representatives of rights holders, users, CMOs and independent experts. The Council may also be called upon by the common request of CMOs and users to settle disputes concerning exploitation of works or objects of related rights as well as infringement of copyright and related rights .

17. LU	
Law	Loi modifiée du 18 avril 2001 sur les droits d'auteur, les droits voisins et les bases de données Règlement grand-ducal du 30 juin 2004 concernant les organismes de gestion et de répartition des droits d'auteur et des droits voisins
Supervision	Copyright Commissioner, designated by the Minister of Economy, enforces the provisions of the law. He has access to books and records of the CMO. The Commissioner may attend meetings of CMOs. The CMO must provide any document or information useful to the mission of the Commissioner. CMOs provide to the Commissioner their annual accounts and shall inform him of any proposed changes to statutes or rules governing the distribution. CMOs are supervised by one or more auditors, who have the status of Public Accountant, member of the Association of Accountants, or auditor, member of the Institute of Auditors.
Transparency of accounts	CMO obligation to submit accurate and complete information about the income received on the national territory and on the distribution of amounts collected between the different categories of right holders.
Relations with members	Obligation to manage rights recognized by law at the request of the holders of these rights, to the extent that it complies with its statutes. With the exceptions provided by law, CMO can not prevent right holders to entrust management of one or more modes of exploitation of their rights to another CMO of their choice or to ensure the individual management. CMO adopt objective and non-discriminatory distribution rules. Distribution of royalties no later than twelve months after the year of collection. Members have right to obtain, within one month from the date of their request a copy of (among others) the following information: 1 ° the annual accounts approved by the General Assembly, 2 ° the updated list of persons exercising the functions of director, manager or any other function conferring the power to bind the CMO, 3 reports made at the general meeting by the board of directors or the management or the statutory auditors, 4 ° the resolutions proposed at the general meeting and all information on candidates for the Board administration or management, 5 ° updated tariffs, 6 ° the overall amount, certified by the auditors, of the flat fees or management fees for the previous year, 7 ° the amounts collected on the national territory for the previous year.
Relations with users	CMOs have to maintain an updated list of represented authors and their rights. This list can be consulted by users. Tariffs - CMOs negotiate rates for the use of works of rights holders represented by them with users or entities representing the interests of users. Failing agreement on tariffs within a reasonable time limit not exceeding four months from the beginning of negotiations, CMOs establish general regulation of tariffs based on objective and non-discriminatory criteria.
Dispute Settlement	Possibility to have recourse to mediation in case of disagreement concerning the transfer of rights or a licence. Mediator can make proposals which are deemed to be accepted if there is no opposition within three month.

18. MT	
Law	Copyright Act XIII of 2000 (as amended by Acts VI of 2001 and IX of 2003) Subsidiary Legislation 415.01 on the Control of the Establishment and Operation of Societies for the Collective Administration of Copyright Regulations.
Supervision	A Copyright Board (consisting of a chairman and two other members appointed by the Minister responsible for copyright issues). CMO must furnish any information that is necessary to determine whether or not the operation of the collecting society conforms to the statutes of the organisation and to the provisions of the law and whether or not the appropriate fulfilment of the functions of the collecting society is ensured
Transparency of accounts	Submission of the yearly balance sheet, annual report and auditor's report concerning the operation of the collecting society to the Board.
Relations with members	Decisions about the methods and rules of collection and distribution of royalties and about other aspects of collective administration shall be taken by the rightholders or by the bodies representing them. Distribution should be done, as much as is possible and practicable, in proportion to the actual use of works. Members have the right to obtain full and detailed information about all the activities of the collecting society that concern the exercise of their rights Foreign rightholders should enjoy the same treatment as members
Relations with users	Proposed tariff for all royalties to be collected; refusal to approve the collecting society by the Board if it it considers that the proposed tariffs are unacceptable. The basis for calculating the tariffs shall normally be the monetary advantages obtained from exploitation of the protected work, as well as the proportion of the utilisation of the work in the total exploitation.; the category and nature of the user involved, including the type of business in the case of a commercial venture, as well as any religious, cultural and social elements involved. Tariffs are published in the official Gazette. An approved tariff shall be effective until a new tariff is approved (every two years). Obligation to provide information on: - repertoire represented; - system of collection and distribution of fees and equitable remuneration; and - tariff of all royalties to be collected by the collecting society that are in current use.
Dispute Settlement	The Copyright Board, staffed by ex-members of the judiciary, has jurisdiction only to hear complaints regarding the cable retransmission and rebroadcasting (refusal to deal or unreasonableness of terms).

19. PL	
Law	Act of 4th February 1994 on copyright and related rights (the latest amendment of 8 July 2010, OJ 2010, Nr 152, item 1016)
Supervision	Minister competent for culture (no detail specification what such a supervision entails in practise) Minister has the power to grant and to revoke authorisation
Transparency of accounts	Obligation to prepare an annual report on the activities and annual accounts together with the opinion of the external auditor. All documents are send to the minister competent for culture and published on the collecting society website.
Relations with members	Obligation to provide equal treatment of members; CMO may not, without important reasons, refuse to undertake the management of copyright or related rights; management exercised in accordance with statute. No rules on royalty distribution.
Relations with users	Tariffs: fixed tariffs in certain cases; procedure before the Copyright Law Commission; publication of tariffs (by the Commission not collecting society). Any party may appeal the decision of the Commission to the court within a 14 days deadline. The appeal blocks the application of the tariffs. If there is an important change of facts which form the basis to agreeing tariffs, each party to the proceedings can apply to the Commission for a change of tariffs. Transparency of repertoire: no provisions in the law
Dispute Settlement	Voluntary mediation Disputes concerning already approved tariffs and disputes concerning contracts between collecting societies and cable operators can be decided in mediation proceedings. Mediation is voluntary. The President of the Copyright Law Commission selects the mediator from the list of Commission's arbitrators (Copyright Law Commission is composed of thirty arbitrators representing different stakeholders: collecting societies, societies of creators, performers and producers, users' trade organisations); parties can however choose another person from the list. The mediator can present the solution to be agreed by the parties. They have three month to refuse the proposed solution – if they don't, the solution is deemed accepted. Provisions of the Code on civil proceedings on mediation apply accordingly.

20. PT	
Law	Lei n.° 83/2001 de 3 de Agosto (Entidades de gestão colectiva do Direito de Autor e dos Direitos Conexos)
Supervision	Permanent supervision: Minister of Culture, through the IGAC. IGAC has power to revoke registration.
Transparency of accounts	CMOs are obliged to prepare and approve an annual financial report and the annual planned budget. Statutes shall comprise the principles and rules of the distribution system and the way to control economic and financial management.
Relations with members	Obligation to accept all rightholders. The maximum duration of the contracts is 5 years (automatically renewable). The representation of rights holders results from the simple registration as a beneficiary of the services. The contract cannot oblige to entrust the management of all forms of exploitation of existing and future works.
Relations with users	CMOs must inform interested parties about the represented works as well as about the conditions and prices for the use of any work, service or product they are responsible for. Respect of transparency and non-discrimination principle.
Dispute Settlement	The conflicts between CMOs and their members or collaborators and third parties can be submitted for arbitration to the Mediation and Arbitration Commission (whose members are designated by the Ministry of Culture). The Commission may intervene under certain conditions over disputes in relation to tariffs and acts and contracts of CMOs. Its decisions can be appealed to the competent Court.

21. RO	
Law	Law on Copyright and Neighbouring Rights (No. 8 of March 14, 1996) (consolidated version with the latest amendments of 03.08.2006)
Supervision	Permanent supervision of the Romanian Copyright Office - RCO (which is coordinated by the minister of culture and religious affairs) RCO has various functions - among others: - endorses the establishment and supervises the operation of the CMOs - controls the operation of the CMOs and establishes the measures of abiding by the law or applies sanctions,
Transparency of accounts	CMOs must publish annual statement of balance covering: - amounts not distributed - amounts collected by categories of users - withheld amounts - management costs - amounts distributed by categories of owners CMO present to the General Assembly and RCO annual report of the auditing commission. Any member may request access to detailed information on amounts distributed to him; and in the 30 days before the General Assembly detailed audit information including individual employees' salaries, bank accounts, and balance sheets
Relations with members	The mandate of collective management of the economic copyrights or neighbouring rights shall be given by written contract, by the owners of rights. Each owner of rights that has entrusted a mandate to the CMO is entitled to own vote within the general meeting. CMOs have an obligation to manage rights on request, within the limit of its object of activity. Decisions on methods and rules for collection and distribution are to be made by members within the general assembly. Administration costs may not exceed 15% of annual collections. Members have right to access information on any aspect of collection and distribution. Remuneration must be distributed to members within 6 months of collection. Proceeds from investments of non-claimed and non-distributed remunerations shall be distributed to members and shall not become income proper to the CMO;
Relations with users	CMO's communicate to the public information on: a) categories of owners of rights that they represent; b) economic rights that they manage; c) categories of users and other categories of natural and legal persons that have payment obligations of compensatory remuneration for private copy towards owners of rights; d) normative acts on the grounds of which they operate and collect the remunerations due to owners of rights; e) modalities of collection and persons responsible for this activity, on local and central level; f) working hours. CMO publish on their website: a) the statute; b) the list of the members of the central and local management bodies, composition of the internal commissions and the list of the local managers; c) the annual statement regarding the balance of the non-distributed amounts, the amounts collected by categories of users or payers, the withheld amounts, the cost of management and the amounts distributed by categories of owners; d) the annual report; e) information on general meeting, for example: date and place of the convening, agenda, drafts of the decision and the adopted decisions; f) other data necessary to the members for information purposes. To start negotiating standard agreements and tariffs, CMO must get agreement from the Romanian Copyright Office on "methodologies". These methodologies are negotiated

	within a commission established by the Copyright Office, and constitute of representatives of CMOs and user associations. Negotiations should be completed within 45 days from the date of establishment of the commission. The parties' agreement regarding the negotiated methodologies is published in the Official Gazette.
Dispute Settlement	Arbitration procedure The initiation of the arbitration procedure can be requested from the Romanian Copyright Office when: - a party could not agree common views to present to the other party - both parties could not agree on methodologies - CMOs could not agree upon the conclusion of a protocol for the distribution of the remunerations and for the establishment of the fee due to the sole collector. The parties may appeal the arbitration decision to the Bucharest Court of Appeal that shall pronounce itself on the case, in civil panel. The solution of the Court of Appeal is final and binding, is submitted to the Romanian Copyright Office and published in the Official Gazette of Romania.

22. SK	
Law	Copyright Act No. 618/2003 of 4th December 2003
Supervision	Permanent supervision by the Ministry of Culture. CMO must inform the Ministry of any changes to its practices (as submitted in the authorisation application); and the Ministry may request information at any time. Ministry has the power to impose fines if CMO fails to comply with duties; and powers to revoke authorisation
Transparency of accounts	CMO obligation to submit by 30 June annual report and audited accounts - annual report shall be "exhaustive and true description of all decisive facts and (…) be made available to all rights holders"
Relations with members	Requirement to represent Slovak nationals and residents. Obligation to represent rightholders on equal terms.
Relations with users	CMO must conclude agreements on equitable and equal terms. CMO must publish tariffs. CMO has right to supervise implementation of contracts.
Dispute Settlement	CMO or user may refer disputes on the remuneration to the courts. When determining the remuneration, the courts shall have regard to the type of rights administered; manner and extent of use thereof; duration of protection; and the requirement that licensing shall be done on equitable and equal terms.

23. SI	
Law	Copyright and related rights Act of 30 March 1995 (as last amended on 15 December 2006)
Supervision	Minister of Economy ("competent authority" in law). Permanent supervision – authority may at any time request reports on business matters and inspection CMOs books. CMOs must submit all changes to statutes and tariffs , copies of licensing agreements, agreements with foreign CMOs, resolutions and annual reports. The authority may revoke authorisation in event of non-compliance.
Transparency of accounts	Within six months following the end of each accounting year, the CMO shall adopt or acquire annual reports and audits, detailing remuneration collected, and distributions; operation of the CMO; and implementation of agreements with foreign CMOs.
Relations with members	Obligation on CMO to contract with EU citizens. Maximum term of contract = 5 years. Legal provision for exclusive mandate (author may not individually manage his rights). Distribution may not be arbitrary. Members may receive annual financial report and report of supervisory board. 1/10 members may demand inspection. Supervision by members.
Relations with users	Obligation of repertoire transparency. Tariff agreed commercially between CMO and user or – if this is not possible – by Copyright Board. Law provides elements to be taken into account in determining tariff. CMO/user agreements must be published.
Dispute Settlement	Within 4 months of beginning of negotiations either CMO or user may refer tariff dispute to the Copyright Board. The Board may fix provisional tariff for duration of proceedings. Decisions may be appealed to Supreme Court. Mediation may be requested by CMOs and users for disputes concerning cable retransmission.

24. ES	
Law	Law on Intellectual Property of 12 April 1996 (as amended by Law 25/2009 of 22 December and Law 2/2011 of 4 March, amongst others).
Supervision	Ministry of Culture (responsible for ensuring compliance with the obligations and requirements laid down in the Law). Power to grant and revoke authorisation. CMO obligation to submit annual report and audited accounts.
Transparency of accounts	Within the 6 months following the close of each financial year, the CMO draws up a balance sheet and an account of activities which are audited by legally competent accountants.
Relations with members	CMO statute specify, where appropriate, the various categories of owners of rights for the purposes of their participation in the management of the entity; membership contract might not exceed five years but may be renewed indefinitely; neither the administration of all forms of exploitation nor the global administration of all future works or productions may be imposed as obligations
Relations with users	CMOs are obliged to: - contract with any person who so requests, unless there is justification for not doing so, to grant non-exclusive authorizations, on reasonable terms and subject to remuneration - lay down general tariffs to determine the remuneration payable for the use of its repertoire If parties fail to reach agreement, the corresponding authorization shall be considered granted if the applicant pays subject to reservations, or lodges with a judicial officer, the amount charged by the administration entity in conformity with the general tariffs.
Dispute Settlement	An Intellectual Property Mediation and Arbitration Commission at the Ministry of Culture exercises the mediation and arbitration regarding disputes related to the collective management of intellectual property rights. As a mediator, it offers mediation in the negotiation of contracts as regards the collective rights management. Also, regarding authorisations for cable distribution of broadcasting emissions, the Commission may mediate in case that the parties fail to reach an agreement. As arbitrator, it solves conflicts between collecting societies, between collecting societies and rightholders, and between collecting societies and user associations, broadcasters or cable distributors and may fix fees replacing the general tariffs.

25. SE	
Law	Act on Copyright in Literary and Artistic Works (Act 1960:729 of 30 December 1960 as amended up to April 1, 2009) Act on Mediation in Certain Copyright Disputes (Act 1980:612, as amended by Act 2005:361)
Supervision	No specific provisions in the law.
Transparency of accounts	No specific provisions in the law.
Relations with members	No specific provisions in the law.
Relations with users	No specific provisions in the law.
Dispute Settlement	A mediation (requested through petition to the Government) concerning: - agreements to be concluded under extended collective licensing - cable retransmission rights - disputes concerning the making of copies

26. NL	
Law	Wet van 6 maart 2003, houdende bepalingen met betrekking tot het toezicht op collectieve beheersorganisaties voor auteurs- en naburige rechten (Wet toezicht collectieve beheersorganisaties auteurs- en naburige rechten)
Supervision	Only certain type of societies are authorised, i.e. those mentioned in the law or licensed to perform a public task (but there is no limitation on the number of collecting societies). Collecting societies which manage rights by law are subject to supervision, as well as a number of other large societies. The supervising authority for collecting societies (CvtA), founded in 2003, is composed of three members appointed by the Ministry of Justice, in consultation with the Minister for Education, Cultural Affairs and Science and the Minister for Economic Affairs. Its attributions are mainly to ensure that all the requirements imposed on collecting societies by the Act are observed. The CvtA's powers include the power to attend board meetings, inspect the society, give advice, and may impose fines or issue a cease and desist order (Art. 18-19). The Supervisory College must ensure that CMOs: - provide sufficient transparency to right holders and commercial users - are competent to exercise their duties - distribute royalties collected fairly and in conformity with the relevant rules - take sufficient account of the needs of commercial users - provide right holders with an adequate dispute resolution system - act in a non-discriminatory manner The written agreement of the Supervisory College is needed for any amendment to CMOs' statutes; for the dissolution of a CRMO; for the appointment of an accountant; for the establishment or adaptation of model contracts with rightholders for the management of their rights, or any other model contracts relevant to the exercise of CRMOs' functions. The members of the Supervisory College may access to CMOs' offices and may participate in the AGMs, and meetings of the members and of the Boards of CRMOs. They also have access to all books and data records of CMOs and any other information necessary to the exercise of their supervisory duties
Transparency of accounts	The society must grant rightholders and parties liable for payment a sufficient insight into its general and financial policy, under the control of the supervisory authority. The supervisory authority may appoint and auditor at the cost of the CMO.
Relations with members	The CMO must have proper arbitration procedures in place for rightholders. It must lawfully distributes the fees collected, in accordance with its distribution rules.
Relations with users	The CMO must take full account of the interests of users; it must treat like cases in the same way.
Dispute Settlement	The supervisory authority, at least once a year, gives user representatives the opportunity to be heard. Users may apply to the Supervision Board where the relevant arbitration procedures have been exhausted. The Board may give non-binding advice to the parties in order to settle the dispute.

27. UK	
Law	Copyright, Designs and Patents Act 1988
Supervision	Users may refer proposed or operational licences or licensing schemes to the Copyright Tribunal.
Transparency of accounts	
Relations with members	
Relations with users	Users may refer proposed or operational licences or licensing schemes to the Copyright Tribunal
Dispute Settlement	In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to: (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and (b) the terms of those schemes or licences, and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

22. ANNEX M: OVERVIEW OF LICENSING IN THE US

22.1. Copyright licensing

In the US, **mechanical/reproduction rights** are subject to a statutory licence. This means that any person can serve a notice of intention on the copyright owner and use the work a rate fixed by the Copyright Royalty Board (e.g. $ 0.0175 per minute to make and distribute a record of a song).

Mechanical rights are in practice often licensed by the "Harry Fox Agency" on behalf of publishers (this allows improved collections, auditing of record companies, as well as different deals including payment schedules and "rate" deals with record companies, at a lower rate than the statutory rate, for instance for mid-price records, budget records or compilation records). Publishers are usually paid quarterly.

The statutory licensing scheme for reproduction rights was extended by Congress in 1995[261] to cover the reproduction rights involved in the **digital distribution** of a song (referred to as "Digital Phonorecords Deliveries" or DPD). The provision allows record producers to obtain a compulsory licence for acts of digital distribution and sub-licence the online service provider. In practice, this means that a record producer can grant an all-inclusive licence to a service such as iTunes (the licence will include the rights in the musical work, in the performance and in the record). The record producer is then responsible for paying the amounts due to the owner of the copyright in the musical work.

Performing rights are generally licensed through collecting societies, known as "performing rights organisations". Such PROs include ASCAP, BMI and SESAC. ASCAP and BMI operate under so-called anti-trust "consent decrees". These decrees, regularly updated, impose conditions for the activities of ASCAP and BMI. In particular, BMI and ASCAP may not require an exclusive mandate from their members in the US.

Online rights for the digital distribution of musical works involve the reproduction right and/or the performing right to varying degrees:

Downloads: it is now established that in the US a download involves the reproduction right only.[262] This means that download service providers such as iTunes or AmazonMP3 do not require a licence from ASCAP or BMI. They only have to clear the mechanical rights.

Webcasting: i.e. non-interactive streaming. In the US, the ephemeral reproductions carried out by broadcasters are subject to an exception (section 112). This means that traditional broadcasting does not require a licence of the reproduction right. All that is needed is a licence covering the performing rights. Webcasters also make similar "ephemeral recordings" on the servers from which they are streaming music. They argue that this should also be considered an ephemeral recording. In practice, it seems that webcasters are not required to obtain a licence for the reproduction right, a licence covering the performing rights licence is accordingly sufficient.

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[261] Digital Performance Right in Sound Recordings Act of 1995.

[262] *U.S. v ASCAP* (in re Realnetworks), 485 F. Supp. 2d 438, 443 (S.D.N.Y. 2007): "in order for a song to be performed, it must be transmitted in a manner designed for contemporaneous perception". The US Supreme Court declined to hear the case in July 2011 (no. 10-1337).

Interactive streaming: publishers argue they are entitled to a share of revenue (mechanical rights) but have not reached an agreement. The rates for various interacting streaming services (Rhapsody, Yahoo!, MySpace etc.) have been set by the Copyright Royalty Board, a rate setting body. That rate is an overall rate which includes: mechanical (subject to compulsory licensing) and performing rights. The mechanical rate is what is left after other rightholders have taken their shares.

Tethered downloads: the PROs argue that performing rights are due, a claim which is resisted.

22.2. Performing rights organisations

22.2.1. Membership provisions under the consent decrees

The **non-exclusivity of mandates from rightholders to PROs** are an essential feature of the consent decrees. Rights cannot be entrusted to a PRO (BMI or ASCAP) on an exclusive basis.

The decrees also aim to govern the relationship between a PRO and its members. For instance, the ASCAP consent decree governs rules governing distribution of revenues, voting rights, surveys of performances, and dispute resolution mechanisms for members. It was, however, amended in 2001, because the rules were considered too detailed, costly and ineffective in preventing ASCAP from exercising market power. The current provisions are as follows:

– ASCAP is required to admit to **membership** any writer or publisher who meets certain minimal criteria;

– In relation to **distribution of revenues** to its members: ASCAP is required to conduct an objective survey or census of performances of its members' works, and to **distribute its revenues based primarily on performances of its members' works**. ASCAP is under obligation to disclose to a member information sufficient for that member to understand how its payment was calculated. ASCAP is not required to use any particular formula or rules in distributing its revenues. Nor is ASCAP to provide notice to or obtain the consent of the Department or the Court before making changes to its distribution formula and rules;

– ASCAP may not restrict the ability of a member to **withdraw** from ASCAP at the end of any calendar year. In particular, ASCAP must distribute revenues to a withdrawing member for performances occurring through the last day of the member's membership in ASCAP, may not reduce the value it attributes to departing members' works, and may not prohibit the member from transferring compositions to another PRO because of pending license agreements between ASCAP and any users. This provision is intended to ensure that members can switch to a competing PRO without suffering financial penalties.

22.2.2. User's rights under the consent decrees

– Non-discrimination between (*typical*) users;

– Offering users a choice between several licences, in particular between blanket licences[263], per-programme[264] and per-segment[265] licences;

[263] Non-exclusive licence that authorises a music user to perform ASCAP music, the fee for which does not vary depending on the extent to which the music user in fact performs ASCAP music.

- ASCAP is required to maintain an up-to-date system for tracking music use related to per-program and per-segment licences;
- Streamlined determination of reasonable fee between ASCAP and users, including Court's intervention in a fee dispute;
- ASCAP has to make available to the public information about the compositions contained in its repertoire, so that music users can more easily determine which PRO administers which rights and is under obligation to respond to users' requests for information about whether a particular work is in ASCAP repertoire.

22.2.3. Impact on licensing

The consent decrees, and in particular the obligation imposed on ASCAP and BMI to manage rights on a non-exclusive basis, have helped the emergence of alternative forms of licensing to exist alongside collective management. Two such alternative forms of licensing have emerged:

Source licensing occurs when a producer effectively obtains all requisite rights from rightholders.

This has been the case for mechanical rights which are not collectively managed in the US. The record companies often control rights of singer/songwriters or obtain a significant discount on the rate. They can then licence the product for other uses – they have often done so for use of the recorded music in videos (for mechanical rights) and now do so for digital downloads.

Source licensing also applies to right to perform in theatres music used in films. The film producer can obtain a licence from the authors or publishers of the music and distribute the film in theatres without the need for the film theatre to obtain an additional licence from a PRO[266].

Direct licensing is when the author or the publisher grants a licence directly to the user. Some authors who have retained control over their rights may licence directly. Publishers may licence if their contracts with authors allow them to do so. They rely on contractual clauses assigning rights to them or allowing them to grant licences on behalf of the author. These arrangements also aim to ensure that once the direct licence is granted, the work can no longer be licensed to the same user by the collecting society.

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[264] Non-exclusive licence that authorises a broadcaster to perform ASCAP music in all of the broadcaster's programs, the fee for which varies depending upon which programs contain ASCAP music not otherwise licensed for public performance.

[265] Non-exclusive licence that authorises a music user to perform any or all works in the ASCAP repertory in all segments of the music user's activities in a single industry, the fee for which varies depending upon which segments contain ASCAP music not otherwise licensed for public performance.

[266] *Alden-Rochelle, Inc. v. ASCAP*, 80 F. Supp. 888 (S.D.N.Y. 1948): ASCAP was preventing its members from licensing performing rights to film producers. Film producers would obtain a "synchronisation licence" and film theatres would be obliged to obtain an additional licence from ASCAP for the performance of the music in public. The court found that no efficiency justification for separate licensing of the synchronisation and performing rights and issued an injunction prohibiting ASCAP from licensing movie theatres.

In *BMI v DMX*[267], a commercial user, DMX, obtained approximately 550 licences from publishers, covering approximately 40% of the repertoire of BMI. In such cases, the PRO must grant users "carve out blanket licences" (Adjustable Blanket Fee Licence or ABFL). The ABFL must be adjusted to take into account the rights which have been licensed directly from the rightholder, and the rate reduced accordingly.

[267] *BMI v DMX*, No. 08 Civ. 216 (S.D.N.Y. July 14, 2010).

23. ANNEX N: SUMMARY AND ANALYSIS OF IMPACTS OF OPTIONS ON TRANSPARENCY AND CONTROL IN COLLECTING SOCIETIES

23.1. Summary of impacts of Option A1* - Status quo:

Impact on IM	(-) MS could introduce rules on G&T but the approach and standards would vary. (-) CS could agree on common codes of conduct to cover issues such as participation in the decision-making process, financial reporting standards, rules on handling of funds, etc. Any improvement in G&T standards would depend on the willingness of CS to abide by these standards. (-) As a result, different operating conditions for CS would persist.
Impact on rightholders	(-) Rightholders would continue to have limited influence on the decision-making process of CS. (-) Rightholders would lack sufficient information on financial management and cross-border royalty flows and would not be in a position to exercise the necessary control over CS (including over the handling of rightholders income). (-) Inefficiencies in royalty payments (including cross-border) would persist.
Impact on CS	(-) CS would continue to operate under very divergent standards. (-) Lack of trust in the cooperation between CS would continue. (-) No incentives for CS to raise their standards or to increase the efficiency of their operations.
Impact on users	(-) Users would continue to have to cope with different applicable transparency and accountability standards in MS causing problems in the licensing process.
Cultural diversity	(-) Existing inefficiencies of CS combined with rightholders' lack of confidence would continue to negatively impact on the licensing of rights, on rightholders income and thus on cultural diversity.
Compliance costs	(~) This option is neutral as it does not impose any requirements.
Effectiveness	This option is ineffective in fulfilling the objectives.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

23.2. Option A1 – Status quo

23.2.1. Impact on the Internal Market

Retaining the status quo would not solve the problems as described in Section 3.1. Significant divergences in Member States' approaches to collective rights management would persist, having a negative impact on the licensing process and availability of cultural goods and services. Rightholders would still lack sufficient information on cross-border royalty flows and would not be in a position to exercise the necessary control over collecting societies.

Under this option it would be for the Member States or collecting societies themselves to come up with solutions to these problems. As seen recently in the case of Belgium, France, and Poland[268], Member States could introduce various rules on governance and transparency but the approach and standards would vary from Member State to Member State.

Collecting societies could also try to agree on common codes of conduct which would be applicable to all collecting societies or to certain categories of collecting societies and which would go beyond the existing codes of conduct[269] to cover issues such as: participation in the decision-making process, financial reporting standards, rules on handling of funds, etc. However, the adoption of new codes of conduct by collecting societies would not necessarily lead to the improvement in governance and transparency standards. This improvement would depend on the willingness of collecting societies to abide by these standards.

[268] In Belgium, Law of 10 December 2009, amending, to the extent the status and the control of collecting societies is concerned, Law of 30 June 1994 (MB 23/12/09); in France, Law n°2006-961 of 1 August 2006; in Poland, Law of 8 July 2010, Amending Law on copyright and related rights OJ 152 (2010) item 1016.

[269] See Section 3.1.

23.2.2. Impact on rightholders

Existing inefficiencies of collecting societies such as limited influence on the decision-making process, insufficient access to information on financial management and little oversight over collected royalties would continue. If nothing were done to improve the observance of essential governance and transparency standards, rightholders would not be in a position to exercise necessary control over CS and their mistrust and lack of confidence would continue. The inefficiencies in royalty payments (including cross-border) would persist to the detriment of rightholders.

23.2.3. Impact on collecting societies

Some societies would continue to operate under significantly lower transparency and governance standards than others. This would not create the trust needed in the cooperation between societies. There would be no incentives for societies to improve/raise their standards or to increase the efficiency of their operations.

23.2.4. Impact on commercial users

Users would continue to have to put up with differing operating conditions and different applicable transparency standards in the EU Member States. Nothing would be done to improve insufficient transparency and accountability standards and the related problems in the licensing process.

23.2.5. Impact on cultural diversity

Existing inefficiencies of collecting societies combined with rightholders mistrust and lack of confidence would continue to have a negative impact on the licensing of rights, rightholder income and therefore on cultural diversity in Europe.

23.2.6. Compliance cost

This option would not entail any additional compliance cost for Member States or collecting societies.

23.2.7. Effectiveness

This option does not impose any new requirements and consequently is ineffective in fulfilling the objectives (see the baseline scenario).

23.3. Summary of impacts of Option A2* - Better enforcement:

Impact on IM	(+) Regulatory oversight of the existing principles based on the Treaty would improve. (-) Differences in operating conditions for CS would persist.
Impact on rightholders	(+) Rightholders would be better informed as regards the fundamental rules stemming from existing principles. (-) Rightholders would continue to have limited influence on the decision-making process of CS. (-) Rightholders would lack sufficient information on financial management and cross-border royalty flows and would not be in a position to exercise the necessary control over CS (including over the handling of rightholder income). (-) Inefficiencies in royalty payments (including cross-border) would persist.
Impact on CS	(+) Standards of operation of CS would improve but only to a limited extent. (-) Lack of trust in the cooperation between CS would continue. (-) No incentives for CS to raise their standards (beyond the limited catalogue of rules) and to increase the efficiency of their operations.
Impact on commercial	(+) Users would be better informed as to their rights in relations with CS. (-) Transparency and accountability standards would be better observed but would remain limited in

users	scope and thus the related problems in the licensing process would persist.
Impact on cultural diversity	(-) Existing inefficiencies of CS combined with rightholders lack of confidence would continue to have a negative impact on the licensing of rights, on rightholder income and thus on cultural diversity.
Compliance cost	(-) There would be costs arising from awareness raising meetings (EC and relevant national authorities) on specificities concerning the operations of CS as well as from their closer monitoring.
Effectiveness	This option could potentially improve the conditions (for rightholders to exercise oversight over the CS and its financial management), depending on the extent and uniformity of enforcement in the MS. The limited personal and material scope of these principles would reduce the effectiveness of this option.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

23.4. Option A2 – Better enforcement

23.4.1. Impact on the Internal Market

This option would improve the regulatory oversight of the existing principles based on the Treaty. As the enforcement action could not be based on all principles resulting from the 2005 Recommendation, its impact would be limited. Similarly to the 'status quo' option, significant divergences in Member States' approaches to collective rights management would persist, having a negative impact on the level of trust that rightholders have in collecting societies, the licensing process and hence the availability of cultural goods and services. Rightholders would still lack influence on the decision-making process and sufficient information on financial management and consequently could not exercise the necessary control over collecting societies. As with the previous option, it would be for the Member States or collecting societies themselves to come up with solutions to the identified problems.

23.4.2. Impact on rightholders

The fundamental rules concerning the non-discrimination of members on the basis of their nationality, place of residence or establishment, and prohibiting collecting societies from imposing on their members obligations which are not absolutely necessary for the exploitation of copyright, would be subject to improved regulatory oversight. This would create legal certainty for rightholders. However, similarly to the situation under the 'status quo' option, existing inefficiencies of collecting societies such as limited influence on the decision-making process, insufficient access to information on financial management and little oversight over collected royalties would continue. Problems with royalty payments would persist to the detriment of rightholders (as rightholders would not be able to exercise effective control over the functioning of societies).

23.4.3. Impact on collecting societies

Due to the limited impact of the enforcement action standards of operation of collecting societies would improve but only to a limited extent – the rules of operation, governance and transparency requirements would still significantly differ. There would be more pressure on collecting societies to comply with the limited catalogue of rules but there would be no incentives for them to raise their standards beyond this limited catalogue, and limited incentives to increase the efficiency of their operations.

23.4.4. Impact on commercial users

Users would be better informed of the principles governing their relations with collecting societies due to regulatory oversight and continuing enforcement of these principles. Transparency and accountability standards would be better observed but would remain limited in scope and thus the related problems in the licensing process would persist.

23.4.5. *Impact on cultural diversity*

Similarly to the 'status quo' option, existing inefficiencies of collecting societies combined with rightholders mistrust and lack of confidence would continue to have a negative impact on the licensing of rights, rightholder income and therefore on cultural diversity in Europe.

23.4.6. *Compliance cost*

The Commission and relevant national authorities would have to hold a series of 'awareness raising' meetings during which specificities concerning the operation of collecting societies would be discussed. Relevant national authorities would have to more closely monitor the operation of collecting societies.

23.4.7. *Effectiveness*

This option has the potential to improve the conditions for rightholders to exercise oversight over the collecting societies and their financial management. The effectiveness however depends on the extent and uniformity of enforcement in the MS, in particular with respect to regulatory oversight. The limited personal and material scope of these principles would reduce the overall effectiveness of this option (e.g. the 2005 Recommendation is only applicable to cross-border collective rights management in relation to online music services).

23.5. Summary of impacts of Option A3* - Codification of existing principles:

Impact on IM	(+) Minimum common G&T framework would be established in all MS. (-) Insufficient control over the functioning of CS and little oversight over financial management (collection and distribution of royalties) could continue.
Impact on rightholders	(+) More legal certainty and visibility of rules would strengthen the position of rightholders. (+) Rightholders would have more information allowing them to choose CS based on their efficiency and the level of observance of the codified rules. (+) Better enforceability of the rules would be achieved, *inter alia*, via dispute resolution mechanism. (-) General level of principles on membership and representation would not empower rightholders to influence the decision-making process in CS (including in order exercising control over the handling of rightholders income). (-) Rightholders would lack sufficient information on financial management and cross-border royalty flows and would not be in a position to exercise the necessary control over CS. (-) Inefficiencies in royalty payments (including cross-border) would persist.
Impact on CS	(+) Codified rules would result in an incentive for CS to act more efficiently to make their offer attractive to rightholders which would also improve the level of trust between CS but due to the limited scope of the existing principles: (-) the incentive to act more efficiently would be limited, (+) The establishment of a dispute resolution mechanism would raise standards of services but would also (-) add costs, limited in the long run.
Impact on users	(+) More legal certainty and visibility of rules would strengthen the position of users. (+) Users would gain access to information on CS' repertoire, existing reciprocal representation agreements, the territorial scope of CS mandates for that repertoire and the applicable tariffs (if set in advance) which would bring more predictability into the licensing process. (+) Better functioning of CS could result in better services and better dispute resolution to users but due to the limited scope of the existing principles efficiency gains could be limited.
Cultural diversity	(+) CS which are more efficient in terms of maximising the exploitation of rights, maximising revenue collection and minimising the costs associated with rights management would positively impact on the revenues of artists and thus cultural diversity.
Compliance cost	(-) MS would have to bear costs of transposition and enforcement of the codified principles and (-) additional costs related to the setting up of the dispute resolution mechanism for commercial users unless MS already have dispute resolution mechanisms for commercial users in place. (-) CS would have to bear costs related to the setting up of the dispute resolution mechanism for rightholders.
Effectiveness	This option would ensure effective enforcement (e.g. dispute resolution, administrative or judicial enforcement) of the existing principles and would respond to some of the problems identified in section 3.1. General principles of membership and representation however may not be able to guarantee that

	rightholders can effectively exercise their rights and control the royalty flows. The lack of transparency would not improve the situation of domestic and foreign rightholders. The limited material scope of these principles also restricts the effectiveness of this approach.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

23.6. Option A3 – Codification of existing principles

23.6.1. Impact on the Internal Market

The codification of the principles set out in the 2005 Recommendation, the principles that have emerged from the case law of the Court and from the Commission's decisions would ensure the introduction of a basic governance and transparency framework in all Member States. A certain degree of harmonisation would be achieved although insufficient control over the functioning of collecting societies and little oversight over financial management (collection and distribution of royalties) could continue.

23.6.2. Impact on rightholders

Codification of the existing principles would strengthen the position of rightholders by confirming the existing principles and introducing a legal obligation as to the set of currently non-binding principles included in the 2005 Recommendation. The fact that the rules would be codified would make them more visible and understandable for rightholders which in turn would raise awareness among rightholders as to the application of these principles.

Rules on membership and representation would stay general, confirming the non-discriminatory treatment of rightholders and their fair and balanced representation in the internal decision-making bodies. There would be no detailed rules on such matters like participation in the decision-making process, representation of rightholders in the governing bodies, accountability of rights managers. The general level of codified principles would not empower rightholders to exercise effective control over the functioning of societies.

The principle of 'rightholder choice' and the right to withdraw rights would be reaffirmed which would give rightholders the required flexibility to give their rights to the society of their choice and the possibility to change the society.

As far as the distribution of revenues and the handling of rightholders' income are concerned, the general nature of codification would not allow members to have sufficient information and control over the financial operations of the society (especially with regard to investments and the handling of income).

Rightholders would have access to basic information such as applicable tariffs and royalties collected and distributed. They would not, however, have access to the detailed financial accounts of collecting societies and would not be able to assess the financial soundness of societies and their diligence in handling royalties. Rightholders would not be in a position to exercise the necessary control over collecting societies. Inefficiencies in royalty payments (including cross-border) would persist.

The combined effect of the above described rules (and in particular of those regarding transparency, rightholder choice and the right to withdraw rights) would be that rightholders would have more information allowing them to choose collecting societies based on their efficiency and the level of observance of the codified rules.

The dispute resolution mechanism would provide a tool for rightholders to ensure enforceability of these rules. Such a mechanism would offer rightholders the opportunity for an early, informal resolution of disputes.

23.6.3. Impact on collecting societies

Collecting societies would have to adapt their articles, membership terms, internal procedures and the licensing process to the codified principles.

Due to raised standards of transparency, better control of rightholders over collecting societies and codified rights of rightholders to choose collecting societies and to withdraw their rights, collecting societies would have an incentive to act more efficiently to make their offer attractive to rightholders. This would improve competition between collecting societies and could have a substantial impact on the management of rights which do not require local presence, such as online rights. At the same time, it should be noted that the incentive to act more efficiently would be limited due to the limited scope of the existing principles and lack of rules on rightholders' rights with regard to financial operations of collecting societies.

The establishment of dispute resolution mechanisms both for rightholders and for commercial users would also raise standards of services offered by collecting societies. The establishment of a dispute resolution mechanism for rightholder members would mean additional costs on the part of collecting societies. However, as alternative dispute resolution mechanisms tend to be cheaper than administrative or judicial proceedings, in the long term the cost of setting up such a mechanism could be offset by savings made due to a lower number of administrative or court cases.

23.6.4. Impact on commercial users

More legal certainty and visibility of rules would strengthen the position of users. Codification of the general principles applicable to the relationship between collecting societies and users as regards issues such as fair treatment in the licensing process, and right to access information on repertoire and applicable tariffs, together with the setting up of a dispute resolution mechanism, would be beneficial to users as it would bring more predictability into the licensing process. The overall impact of the codification of transparency and governance rules should be the improvement of the functioning of collecting societies (although, as mentioned above, to a limited extent) which could have an indirect impact also on users as the more efficient a society the better service it should provide to users.

23.6.5. Impact on cultural diversity

The codified governance and transparency standards would encourage collecting societies to be more efficient in their management of rights. The more efficient collecting societies are in terms of maximising the exploitation of rights, maximising revenue collection and minimising the costs associated with rights management, the more money goes to rightholders allowing them to continue work on their contributions to European cultural diversity.

23.6.6. Compliance cost

Member States would have to bear costs related to the transposition of the codified principles as well as the cost of ensuring their enforcement - including the costs related to the setting up of a dispute resolution mechanism for commercial users. These costs would depend on the system of dispute resolution chosen by a Member State:

- mediation (this system would entail remuneration for mediator's work);

- arbitration (under this system the cost would probably be higher as it would normally involve more than one arbiter); or

- tribunal (if this system were chosen, the cost would involve salaries for qualified judges and a secretariat, fees for premises and operating expenses).

For cost reduction purposes but also in order to ensure consistency of the decisions, it would seem reasonable to have one such mechanism per Member State. It has to be noted that the majority of Member States already have dispute resolution mechanisms for commercial users in place and could therefore build on the existing structures. In addition, the compliance costs must be seen in relation to efficiency gains which would be achieved through this option.

23.6.7. Effectiveness

This option would ensure effective enforcement (dispute resolution and judicial) of the existing principles and would respond to some of the problems identified in the problem definition. General principles of membership and representation however may not be able to guarantee that rightholders can effectively exercise their rights and control the royalty flows. The lack of transparency would not improve the situation of domestic and foreign rightholders. The limited material scope of these principles also restricts the effectiveness of this approach.

23.7. Summary of impacts of Option A4* - Beyond codification: a governance and transparency framework for collecting societies

Impact on IM	(+) Rules on governance and transparency (including financial reporting obligation and rules on the handling of funds) would be established for all CS. (+) Comparable rules would improve the cooperation between CS.
Impact on rightholders	Positive impacts of Option A3 plus: (+) Rightholders would gain access to annual accounts and other reports of CS and hence (+) would gain detailed oversight over collection, distribution and application of any deductions from rightholders' income and other financial operations of CS as well as (+) access to a wider scope of information for the benchmarking of the performance of CS (+) that would enable them to control the financial management (incl. trace the cross-border royalty flows between the various societies) and assess the impact of operating costs and deductions on their royalties. (+) Higher level of rightholders' trust would be created thanks to the obligatory audit of the annual accounts. (+) Rightholders would have a say on key decisions of CS (incl. handling of rightholders income) through participation in the decision-making process. (+) Accountability of right-managers to members of CS would oblige the managers to operate transparently and efficiently. (+) Rules on the handling of funds including the separation of societies' and rightholders' assets, accounting revenues and costs per revenue stream and the minimum prudential standards with respect to the activities and conditions of operation of CS would increase the confidence of rightholders.
Impact on CS	Positive impacts of Option A3 plus: (+) In the long term new governance and transparency rules would incentivise CS to become more efficient as rightholders would have access to a wider scope of benchmarking information. (+) Better control for CS cooperating with other CS on the basis of reciprocal agreements (tracing cross-border royalty flows, deductions applied to these flows, etc.). (-) CS would have to bear short term costs of adapting accounting methods, financial reporting, auditing policy, internal structures, information policy and investment policy to comply with the new rules.
Impact on users	(+) Coherent governance and transparency framework would improve the functioning of CS which would have an impact on users as the more efficient a society the better service it should provide to users.
Cultural diversity	Positive impacts of Option A3 plus: (+) Small rightholders and individual creators would not only have the option to choose to entrust their rights to another CS, but would also be able to have a clear view on the functioning of their CS and the means of participating in its governance in an informed manner. This is an important aspect for those individual creators which value the proximity of their "local" society and which are attached to their local creative sector.

Compliance cost	(-) Apart from the costs described under Option A3, MS would have to bear the cost of transposition of the additional G&T standards as well as the cost of ensuring their effective enforcement. (-) CS would have to bear the cost of applying new rules for handling of funds (no data is available for estimation of these costs), financial reporting and audit (the overall cost is estimated at approximately €4.1 million on average for all EU CS per year and at, depending on the size of CSs, on average €5,300 per small, €14,100 per medium-sized and €46,700 per large and the setting up of dispute resolution mechanisms for rightholders and users (as in Option A3). **Compliance costs are analysed in more detail in Annex P.**
Effectiveness	This option is very effective as it provides rightholders with the means to control the management of their royalties by the CS and improve the conditions of exercising membership rights in the CS. Sub-option A4a would be less effective as some of the practical requirements that allow the exercise of rights and the accountability of managers would be left to self-regulation. Sub-option A4b implies a "one-size-fits-all" approach that would not allow MS and CS to implement the EU requirements in a way that is the most practical in the relevant society.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

23.8. Option A4 – Beyond codification: a governance and transparency framework for collecting societies

23.8.1. Impact on the Internal Market

This option would create a governance and transparency framework (including financial reporting obligation and rules on the handling of funds) applied by Member States to the local collecting societies. It would therefore introduce the same basic conditions for all EU collecting societies as their activities would be regulated in a similar manner in all Member States. It is expected that comparable rules would improve the cooperation between collecting societies. Under sub-option A4a the final outcome would depend on the content of the European code of conduct and the number of societies that would adhere to it. Sub-option A4b would have the same positive impact on the internal market as the main option as it would lay down a detailed set of rules regulating G&T in collecting societies.

23.8.2. Impact on rightholders

In addition to the impacts of codification of general principles as described under Option 3, rightholders (including rightholders who are not members of collecting societies but are represented on the basis of reciprocal agreements concluded by various collecting societies) would benefit from greater transparency as they would have access to the annual accounts of collecting societies and other reports prepared in a uniform format adapted to the nature of collective rights management. Rightholders would obtain a detailed oversight over collection, distribution and other financial operations of collecting societies. They would gain access to a wider scope of information for the benchmarking of the performance of collecting societies such as cost-income ratios, the level of deductions, the proportion of royalties which remain undistributed after a number of years, the time taken to distribute royalties. Hence, the rightholders would obtain a tool to verify whether their rights are managed in an efficient and responsible manner.

For rightholders whose rights are being managed on the basis of reciprocal agreements by collecting societies established in various Member States, the comparability of financial information that would be achieved by introducing the uniform reporting format would be of crucial importance. They would be able to trace the cross-border royalty flows between the various societies and assess the impact of operating costs and deductions on their royalties.

The obligatory audit of the annual accounts would provide rightholders with confidence that the annual accounts drawn up by collecting societies reflect a true and fair view of the societies' assets, liabilities and financial position. This would create a higher level of trust among rightholders.

The rules on the participation of rightholders in the decision-making process would mean that rightholders would have a say on matters such as the distribution rules, the application of any deductions from their income and the investment policy (such as use of proceeds from investments and use of non-distributable income). Introducing accountability of right-managers to their members would oblige the managers to operate transparently and efficiently.

The introduction of rules on the handling of funds including the separation of societies' and rightholders' assets, the obligation to account for revenues and costs separately for various revenue streams and the minimum prudential standards with respect to the activities and conditions of operation of collecting societies would increase the confidence of rightholders as to the fact that their assets are managed in a responsible manner providing for the security of their income.

In short, this option would ensure transparency, accountability and protection for individual rightholders which should substantially raise their level of trust in collecting societies. The overall impact of the comprehensive transparency and governance rules should be the improvement of the functioning of collecting societies which would have an impact also on rightholders as, the more efficient the society, the better service it provides to rightholders and the better chance of obtaining timely and appropriate revenue.

Under the sub-option A4a the area of rightholders' participation in the decision-making process, rules on accountability of managers, complaints handling, etc. would be elaborated in the stakeholder-driven process and their impact on rightholders would depend on the level of ambition and compliance with the potential code of conduct. Sub-option A4b would have the same positive impact on rightholders as the main option as it would lay down a detailed set of rules as regards their rights in relation to the collecting societies.

23.8.3. Impact on collecting societies

Apart from the impacts of codification of general principles and the setting up of a dispute resolution mechanism as described under Option A3, in the short term collecting societies would be faced with costs concerning the implementation and compliance with the new rules. They would have to adapt their financial reporting to comply with the requirements on annual accounts and other reports, would have to draft such accounts and reports every year and would have to appoint an auditor to review the accounts. They would also have publish (e.g. by making available on their website) their articles, membership terms, their annual accounts and reports, the auditor's opinion. They would also have to make a broader range of information available to their members. In addition, they would have to adapt their internal structure to comply with the new governance rules and adapt their investment policy to comply with the requirement to separate their own assets from rightholders' assets and with minimum prudential standards.

In the long term it is expected that the new governance and transparency rules would incentivise collecting societies to become more efficient as rightholders would have access to a wider scope of benchmarking information such as cost-income ratios, the level of

deductions, the distribution ratio and the time of the distribution. This, in turn, would enhance competition between collecting societies (at least as far as the management of rights that does not entail a local presence is concerned) which could have an impact on the reduction in administrative costs.

The new transparency rules would also benefit those collecting societies cooperating with other societies on the basis of reciprocal agreements as they could trace cross-border royalty flows, deductions applied to these flows, etc. and therefore better control the interest of their members.

Under sub-option A4a, collecting societies would be invited to participate (either directly or via their umbrella organisations) in the stakeholder dialogue and to draft the code of conduct. Further needs of adjustment could result from adherence to such codes of conduct (the need to adjust articles, membership terms, internal decision-making process, etc.). Additional costs would result from the obligation to appoint and reimburse an independent third party to carry out monitoring/reporting on the code as well as from the periodical review process. Sub-option A4b would require the most investment from collecting societies as they would be required to abide to a detailed set on organisational and transparency requirements.

23.8.4. Impact on commercial users

Even though option A4 does not entail additional specific rights for users in comparison to Option 3, the overall impact of the coherent governance and transparency framework should be the improvement of the functioning of collecting societies which could have an indirect impact also on users as the more efficient a society the better service it should provide to users.

23.8.5. Impact on cultural diversity

This option is the most conducive to benefiting all rightholders. Small rightholders and individual creators would not only have the option to choose to entrust their rights to another collecting society, but would also be able to have a clear view on the functioning of their collecting society and the means of participating in its governance in an informed manner. This is an important aspect for those individual creators which value the proximity of their "local" society and which are attached to their local creative sector.

23.8.6. Compliance cost

Apart from the costs described under Option A3, related to the implementation of the codified principles and the setting up of a dispute resolution mechanism, Member States would have to bear the cost of transposition of the additional governance and transparency standards as well as the cost of ensuring their effective enforcement.

Detailed information on the compliance cost of Option A4 is presented in Annex P.

Under sub-option A4a the Commission would have to set out core issues and requirements to be discussed by collecting societies in the stakeholder dialogue. In case of the adoption of the code of conduct, the Commission would have to review its compliance with these core issues and requirements. Sub-option A4b would bring about the highest compliance costs for collecting societies as they would be required to implement a detailed set on organisational and transparency requirements.

23.8.7. Effectiveness

This option is very effective as it provides rightholders with the means to control the management of their royalties by the collective society and improve the conditions of exercising membership rights in the societies.

Sub-option A4a would be less effective as some of the practical requirements that allow the exercise of rights and the accountability of managers would be left to self-regulation. Sub-option A4b implies a "one-size-fits-all" approach that would not allow Member States and collecting societies to implement the EU requirements in a way that is the most practical in the relevant society.

24. ANNEX O: SUMMARY AND ANALYSIS OF IMPACTS OF OPTIONS MULTI-TERRITORY LICENCES FOR ONLINE USE OF MUSICAL WORKS

24.1. Summary of impacts of Option B1*:

Impact on the IM	(-) Fragmented licensing practices across the single market.
Impact on users (online services)	(-) Complex articulation of various multi-territory and territorial licences. Some licences would lack flexibility. (-) Lack of clarity as to who owns repertoire and risk of double invoices for the same works from different licensors.
Impact on consumers	(-) Patchy and uneven access to services across the EU.
Impact on rightholders	(-) Loss of potential revenue from multi-territory exploitation. (-) Inaccurate or slow distributions, or costs of IT investments deducted from their income.
Impact on CS (incl. reciprocal agreements)	(-) Investments in new infrastructures for multi-territory online licences which may not be sustainable, or licensing without adequate infrastructure. (-) No impact on existing reciprocal representation agreements and the current situation (lack of transparency, asymmetry)
Cultural diversity	(-) No access to multi-territory licensing (or access under less favourable conditions) for less commercially attractive repertoire.
Compliance costs	This option would not lay down any requirements.
Effectiveness	This option is ineffective in fulfilling the objectives.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

24.2. Option B1 - Status Quo

24.2.1. Impact on the Internal Market

If nothing were done, the Internal Market would remain fragmented: rights licensing for online services would remain complex and the roll out of online services across Member States would remain patchy. New emerging online services would continue to struggle with multiple licensing practices, operating at a different geographic scope (national or multi-territory) and at a different level of aggregation (repertoire specific or multi-repertoire).

24.2.2. Impact on online services

Commercial users wanting to launch multi-territorial and multi-repertoire services will continue to face unnecessary levels of complexity and costs when clearing rights.[270] If nothing were done, the emergence of new services or the expansion of existing online commercial music services would continue to be hampered by the lack of responsiveness of collecting societies in certain jurisdictions. Users would continue to receive overlapping invoices from the various licensors, some data[271] suggests that this concerns between 10% and 30% of royalties invoiced to users.

[270] It is estimated that around 30 licences are needed to clear the authors' rights required to launch a service across the EU.

[271] Data submitted in confidence to the European Commission.

24.2.3. Impact on consumers

Consumer access to online music services will continue to be patchy and unevenly spread. Many users will only provide commercial services where they have a clear business case, sometimes avoiding smaller markets where the incremental cost of obtaining additional licences outweighs expected income.

Based on current trends, consumers in Bulgaria, Cyprus, Estonia, Hungary, Lithuania, Latvia, Romania, Greece, Luxembourg Malta and Slovenia would have access to few online services.[272]

24.2.4. Impact on rightholders

A reticence, or technical inability, to monetise music online, and a concomitant lack of new service launches and of music services in certain Member States would deprive rightholders from revenue they could otherwise earn, while revenue from "physical" sales will continue to decline (see Annex E, table E 1.4).

Societies would, in some cases, continue to lack the technical ability to process multi-territory, multi-repertoire licences. Their repertoire would be cut-off from the market for multi-territory services, or would be licensed without adequate technical support. In both cases, this would lead to lost revenues for rightholders (lost opportunity, or inaccurate and delayed payments). Other societies would invest heavily in "upgrading" their systems[273] even though the value of their repertoire makes such an investment unsustainable.[274] Such investments are possible because other income streams cross-subsidise online activities, and varying levels of governance and transparency means that rightholders cannot always know or control such investments. As a result, significant costs will be passed on to rightholders.

24.2.5. Impact on collecting societies (incl. reciprocal agreements)

Small and medium sized societies would continue to experience difficulties in licensing their rights on a multi-territory basis. To some extent, they would continue to grant multi-repertoire licences limited to their domestic territories, on the basis of remaining reciprocal agreements with other societies. Larger collecting societies would continue their efforts to licence their rights directly on a multi-territory basis. All collecting societies would continue to be active in the administration of rights other than online rights (e.g. licensing broadcasts, public performances, etc.).

As regards reciprocal representation agreements, following the CISAC decision, they should not be agreed in a systematic and coordinated manner between each collecting societies. This means that societies have tended to renegotiate their bilateral agreements on a bilateral (and confidential) basis, and that it is difficult to get a clear picture of what form such renegotiated agreements take. However, is seems that some societies have renegotiate reciprocal

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272 Out of a sample of 17 mainstream services at the end of 2011, three or less are available in those Member States: see Annex D.

273 The 2010 consultation attempted to analyse the state of all the existing databases and the financial requirements for their updating and modernisation. The information received was minimal. However, according to a session at the 2011 World Copyright Summit, SACEM (FR) indicated that it had already invested €71 million in IT systems over eight years to ensure that it could deliver pan-EU licensing.

274 In 2009, the total collections for EU societies for online uses amounted to approximately 80 million Euros - see Annex F, table F.1.5. (questionnaire responses, 81.8€m). The vast majority of societies in the EU collected less than €10m in 2009 from online uses of musical works.

agreements in an attempt to gain greater accountability and transparency from the society licensing their rights. Some societies are thus increasingly challenging the previously "systematic" approach to reciprocal agreements; on the other hand, other societies consider that reciprocal agreements remain the most effective means of organising licensing activities and are keen to maintain traditional reciprocal agreements. It is also clear that part of the repertoire of major publishers is no longer injected into collecting societies through reciprocal agreements. Publishers inject their catalogue directly with a licensing entity, and also allow smaller societies to licence their catalogue to local users, for example by allowing the chosen licensing entity to conclude sub-agency agreements with local collecting societies.

If nothing were done, it is unclear in whether the conclusion of reciprocal agreements would remain. The catalogues of publishers (at least online mechanical rights) would continue to remain outside of the scope of reciprocal agreements. In the relationship between societies, those societies that grant multi-territory licences would, if their multi-territory licensing practices are commercially successful, continue to attempt to renegotiate more demanding reciprocal agreements; while other societies would resist this approach and attempt to minimise the licensing of rights outside of reciprocal agreements.

However, reciprocal agreements concerning "off line" rights would remain unaffected.

24.2.6. Impact on cultural diversity

Smaller collecting societies might not succeed in cross-border licensing as their own repertoire – while culturally significant – has a lower commercial value than repertoire that is popular across cultural boundaries. With multi-territorial licensing being extremely costly and complicated, large commercial users may prefer to do licensing deals only with larger collecting societies and the mainstream repertoire. This will have a direct negative impact on the availability of culturally diverse repertoire outside national borders.

24.2.7. Compliance costs

The administrative burden placed on collecting societies in relation to their online activities would not significantly change and would result mainly from their obligations under the current national legal framework in relation to governance and transparency.

24.2.8. Effectiveness

As described in the baseline scenario, the lack of policy intervention would mean that the existing problems in the online licensing market would persist.

24.3. Summary of impacts of Option B2:

A reasonable number of "passport-entities" would be expected to emerge without, however, leading to a single monopoly.[275] "Passport entities" would be expected to be able to attract a broad share of European repertoire. This aggregation would be driven by market forces, that is, the choice of rightholders of a particular "passport entity". It would build upon the current level of aggregation and market trends[276]. The number of licensing entities which would

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[275] Agreements between CS remain subject to competition law; thus if they lead to the emergence of a monopoly, they would be considered anti-competitive.

[276] Some CS already entrust their rights to other CS for the purpose of MT licensing of online services: this is currently the case for the Irish society IMRO (whose rights are licensed by the UK society PRS) and

emerge as a result of this option cannot be predicted with certainty but – in view of the high(er) standards required to engage in MT licensing and the possibility for societies to tag along repertoire - it should be substantially lower than today.

CS would have a strong incentive to entrust their rights to a "passport entity" and members of CS would be in a position to take this strategic decision and it is in their best interest that MT licensing opportunities are explored, in order to maximise their revenues. Some CS may not wish to sustain the investments required to license on a MT basis and to aggregate repertoire. This may depend, *inter alia*, on the size and the position of the CS in the market. It is a choice that may change over time. In any event the right to "tag on" their repertoire to the repertoire of a "passport entity" and to have it licensed on the same terms as the repertoire of the "passport entity" should guarantee both access to the market and adequate licensing terms for all CS repertoires. This approach would also facilitate the emergence of players ("passport entities") that are able to respond to the high(er) demands of MT licensing and which will be competing for rightholders and ready to conclude licences, including with innovative services, in order to maximise their revenues. CS already aggregating repertoires will have to accept the authorisation by other CS under reasonable terms. Rightholders' representatives also expect increased transparency. Finally, this option would simplify transactions (lower number of licences will have to be negotiated and concluded) and improve the quality of licensing services (e.g. better identification should solve problems such as double invoices), as well as improve legal certainty. All of these are key demands by commercial users. Mono-territorial licensing of online music rights will remain unaffected.

The main impacts of this option*:

Impact on the IM	(+) Legal certainty and common rules for this specific type of licensing across the EU. (+) "Passport entities" aggregate repertoire for multi-territory licensing.
Impact on users (online services)	(+) Better licencing services from "passport entities", especially for new, innovative services. (+) Aggregated repertoire would be more easily available. (+) Right to "tag on" repertoire (including less "mainstream") likely to lead to its availability in licences from "passport entities". (+) Local users would still be licensed by a local society.
Impact on consumers	(+) More services (including more innovative services) launching in more EU MS. (+) Larger breadth of repertoire (including less "mainstream" ones) available in more MS.
Impact on rightholders	(+) Rightholders benefiting from best performing "passport entities" (yielding faster payments and lower administration costs). (+) Less "main stream" repertoires are given access to the services of the "passport entity" of their choice.
Impact on CS (incl. reciprocal agreements)	(+) Choice and legal certainty as to whether to comply with rules or to use the services of a "passport entity". (+) Clear requirements would enhance trust and confidence between CS and promote the voluntary aggregation of rights for MT licensing. (-) Compliance costs for CS which want to become "passport entities". (-) This method of granting MT licenses does not require reciprocal agreements. They would continue to exist as CS could continue to grant mono or multi-repertoire licences in their domestic market.
Cultural diversity	(+) Less "mainstream" repertoires would become available on a multi-territory basis.
Compliance costs	(-) MS need to implement rules and provide for sanctions and remedies. (-) CS need to comply with rules or can choose the less costly option of using the services of a "passport entity".

for the Portuguese society PTA (whose rights are licensed by the Spanish society SGAE). Similar trends can be seen in the Nordic countries.

Effectiveness	This option would be effective achieving the objectives both in terms of facilitating the aggregation of repertoire and licensing on a MT basis as well as of increasing legal certainty.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

24.4. Option B2 – European Licensing Passport

24.4.1. Impact on the Internal Market

The establishment of requirements governing multi-territory licensing would enhance trust and confidence between collecting societies and promote voluntary cooperation for the delivery of multi-territorial licences. The rules would, for the activities covered, alleviate legal uncertainty and ensure common rules for all collective licensors across the EU.

24.4.2. Impact on online services (commercial users)

The requirements would aim to stimulate the voluntary aggregation of repertoire, combined with a level of service in line with the demands of commercial users.

A reasonable number of passport holding licensors would thus facilitate the task of users in securing licenses, and reduce their transaction costs, without, however, them having to deal with a single monopoly. Entities bearing the passport would be expected to be able to attract a broad share of European repertoire. This aggregation would be driven by market forces, that is, the choice of rightholders (individual rightholders, publishers, societies) of a particular passport holder. The passport would thus encourage and build upon the current level of aggregation and market trends. For instance, some collecting societies already entrust their rights to other collecting societies for the purpose of multi-territory licensing of online services: this is currently the case for the Irish society IMRO (whose rights are licensed e.g. by the UK society PRS) and for the Portuguese society PTA (whose rights are licensed e.g. by the Spanish society SGAE). These collecting societies in order to continue multi-territory licensing in aggregated repertoire would have to comply with the passport requirements. Also, as aggregators they would be subject to the tag-on obligation. Other existing licensing agents that license on a multi-territorial basis and fall within the definition of collecting societies or their subsidiaries would also have to comply with the requirements for multi-territorial licensing. Those that would be outside the scope of the proposal could be in competition for attracting repertoire with the licensing entities operating under passport requirements. Whether they would be in competition as regards users would depend on whether there would be any overlaps in the repertoire offered by passport entities and these agents. Some rightholders (i.e. publishers) which have withdrawn some of their rights from collecting societies suggest they are considering re-entrusting part of their rights to collecting societies that comply with passport requirements and fulfil certain conditions of good governance.[277]

Further, while the number of licensing entities which would emerge as a result of this option cannot be predicted with certainty, societies would have a strong incentive to entrust their rights to a passport entity. First, it is in the interests of their rightholder members that all licensing opportunities, including for multi-territory services, are explored, in order to maximise their revenues. Second, the market value of their repertoire abroad may be

[277] This is to some extent already the case for some rightholders and societies: e.g. CELAS has concluded sub-agency agreements with collecting societies such as KODA (DK), STIM (SE) and TEOSTO (FI), see KODA, Annual Report 2010, p. 7.

comparatively small. As a consequence, they may not be able to sustain the investments required to license on a multi-repertoire basis or even to attract potential licensees. The right to "tag on" their repertoire to the repertoire of a passport entity and to be licensed on the same terms as the repertoire of the passport entity also guarantees both access to the market and adequate licensing terms.[278] This approach would facilitate the emergence of licensing "hubs". The coexistence of licensing hubs and their competition for rightholders would put pressure on all of them to conclude licences, including with innovative services, in order to maximise their revenues. The emergence of such hubs aggregating the repertoire and providing high level services would substantially simplify the current situation characterised by a high number of licensors, limited access to multi-territorial licences, high transaction costs and a low level of legal certainty.

Commercial users would have some certainty as to the licensing standards they can expect at European level. In this respect, there will be greater legal certainty, and possibly trust and confidence in the operational capacities of licensing entities, than a model that relies simply on the competitive pressures exerted by non-exclusive mandates. In particular, the requirement that those involved in multi-territorial licensing identify accurately their repertoire and invoice users rapidly and accurately would increase transparency in the licensing process. It would also contribute to eliminating double invoices. Innovative services could be launched more easily due to the flexibility of licensing terms as CS would not be obliged to follow the terms of prior licences.

Local services will continue to be licensed by a local collecting society.

Finally, the exemption from the passport requirements for services ancillary to radio and TV programmes (e.g. catch-up TV, simultaneous retransmission) provided by broadcasters would mean that this option would have no impact on these services. Without the exemption, broadcasters would have to acquire licences necessary for these services from several "passport entities" which would make the provision of these services more cumbersome.

24.4.3. Impact on consumers

The market-based emergence of passport holders is expected to result in a reasonable number of flexible and responsive licensing entities well equipped to deal with online services, including new innovative online services. This would facilitate the scaling up of existing services to a multi-territory level, as well as the launching of new services, offering more choice of services to consumers. In addition, because all rightholders would have the right to tag on their repertoire to a passport entity, the breadth of repertoire available would be comprehensive. This would give consumers access to a broader choice of music.

24.4.4. Impact on rightholders

This option would give rightholders more choice as to how their rights are licensed. Publishers (directly or through their society) and authors (through their society) would be likely, on a voluntary basis, to aggregate their rights in the best performing passport entities. Rightholders would benefit from the licensing and distributive efficiencies that are generated in well-managed passport entities. In particular, payments would occur rapidly, more accurately and more regularly. Improvements in the licensing and rights management process

[278] Some societies whose repertoire represents a very small share of the world repertoire fear that it will become increasingly possible to launch services without their repertoire.

would also be driven by competition between passport holders to attract the repertoire of other societies and of publishers. Overall, royalty returns to authors are likely to increase.

The obligation to accept other societies' repertoires – if required to do so - would avoid the risk of a two-tier licensing infrastructure emerging (i.e. commercially attractive repertoire being served by a better licensing infrastructure and obtaining more favourable licensing terms than small, local or niche repertoire). Smaller societies would be entitled to entrust their rights to a passport entity, thereby yielding benefits for authors which are members of smaller collecting societies. First, their works would be licensed for multi-territory online uses, increasing their revenues. Second, in doing so, they would rely on the infrastructure of passport holders: their society would not have to undergo the significant investments required to operate a multi-territory licensing service.

24.4.5. Impact on collecting societies (incl. reciprocal agreements)

On the one hand, collecting societies would have to comply with additional rules (compliance costs). On the other hand, those that choose to comply with the rules would be able to attract the repertoire of other societies and will gain in terms of legal certainty. Societies which do not comply with the rules required for the multi-territorial licensing could entrust their repertoire to a passport entity, within a clear legal framework and with confidence that it would be licensed on non-discriminatory terms. Local services will continue to be licensed by local collecting societies. The ability to share some of the back-office tasks (data processing) between collecting societies is important to ensure the cost-effective management of the less "mainstream" niche and local repertoires. Due to the exemption related to broadcasting, CS would continue to license online rights in musical works to broadcasters directly and not through "passport entities".

As regards reciprocal agreements, under this option, passport collecting societies would be granting multi-territory licences in their own repertoire and in the repertoire which other collecting societies have entrusted to them. The granting of licences in this way does not require reciprocal agreements: a society granting licences in its own repertoire does not need any agreement from other societies; and an agreement whereby a passport society licences the repertoire of another is not a reciprocal agreement. Indeed, such an agreement does not aim to put both societies in a position to grant licences in their combined repertoire; it aims to set the terms under which the best placed society (passport society) can licence the repertoire of another society.

However, reciprocal agreements would still be concluded, albeit slightly modified. This is because some users, such as local or small scale users, would still require licences. For such users, the local collecting society is usually best placed to grant licences, as it knows the local market, and as a passport society will not necessarily have an interest in granting direct licences to such users. In order to cater for this scenario, it is likely that collecting societies will still conclude reciprocal agreements, but more limited in scope. I.e. such agreements would cover the right to licence small and local users, and put each local society in a position to licence these users. Reciprocal agreements would also still cover representation of repertoire of other collecting societies for offline uses. This part of the cooperation between collecting societies is not affected by the passport requirements.

24.4.6. Impact on cultural diversity

Small and medium sized societies – some of which have made it clear that they have no interest in providing multi-territory licences – would be guaranteed access to multi-territory licensing through a passport holder. They would be able to entrust their repertoire to a passport holder of their choice, with the confidence that their rights are properly administered on non-discriminatory terms. This way online services would all be able to offer a large repertoire, including local or niche repertoire.

Further, smaller or local users could still be licensed by a local collecting society.

24.4.7. Compliance cost

Member States would need to implement the new rules in their legislation and to provide for appropriate sanctions and remedies against entities which infringe those rules. They would also need to ensure that interested parties have the right to initiate proceedings against such entities.

There would be compliance costs for collecting societies, i.e. the costs of complying with the rules applicable to multi-territorial licensing. These costs might be expected to be important, in so far as entities would be required to invest in IT infrastructure. The added value of these rules is that they will improve the licensing process and encourage societies to entrust their rights to passport entities instead of each investing separately. The total costs for all collecting societies would be reduced as a result.

Detailed information on the compliance cost of Option B2 is presented in Annex Q.

24.4.8. Effectiveness

Option B2 is able to achieve the desired objectives, it is both able to enhance the capabilities of licensors granting licenses for the online use of musical works and create legal certainty. It would therefore improve the market situation and even ensure a vibrant internal market that respects cultural diversity. Moreover, it builds on the existing business model in which CS have an important role to play, hence it would not create additional legal uncertainly. Therefore this option is effective.

24.5. Summary of impacts of Option B3:

This option could improve the ability of publishers[279] to aggregate all the rights needed for the exploitation of musical works on line (i.e. the mechanical and the performing rights) directly across the entire EU both as regards the Anglo-American and the continental repertoire. As explained in Section 2.2, these rights are currently often held in part by the publishers or their agents in part by CS. However, this process would be expected to take some time as publishers would need to obtain the consent of thousands of authors to licence the rights currently exclusively controlled by CS.[280] While this processing is taking place, it is likely to be difficult to identify which licensors are entitled to licence what rights and this would create legal uncertainly. This is likely to be worsened by the current shortcoming in the tools for identification of the repertoire represented by CS.

[279] Direct licences with individual authors are unlikely to be a viable economic proposition.

[280] Moreover, all existing mandates to CS will have to be changed

It is not clear whether this option would reduce the number of licences required for launching a MT online service. It is expected that the user would be able to obtain direct licences from the major publishers[281] and the bigger independent publishers in the first instance but users would still have to acquire licences from CS of the remaining rights (those that the publishers would not have wanted or manage to acquire). The CS licences are likely to be territorially-limited multi-repertoire licences for the "remaining" of the repertoire (the value and viability of mono-repertoire MT licences would had been significantly diminished by the grant of parallel direct licences by major rightholders).

Parallel licensing would have a negative impact on cultural diversity. Creators would be in a weaker bargaining position vis-à-vis major publishers trying to aggregate the rights. Most creators, i.e. smaller rightholders, would receive lower royalties. Moreover, collecting societies' licensing would likely to be limited to mono-territorial licences for the local repertoire whose value would most likely diminish as it would be licensed separately from the more commercially attractive repertoire. In consequence, local, niche and less mainstream repertoires would suffer.

The advantage of parallel direct licences is that they would likely accommodate a variety of online providers' needs (some support this option), as negotiations take place with the repertoire owner directly. Further, this option makes it possible to launch a pan-European service with only the most commercially attractive portions of repertoire, licensed directly. On the other hand, a large number of users seem to base their business models on the offer of a large and varied repertoire which includes not only the international catalogue but also local catalogues. These users would have to take out direct licences and territorially limited licences for the remaining of the repertoire in all MS where their service is available.

As a result of the possibility of direct parallel licensing, CS would be competing with rightholders granting direct licences (if rightholders are not satisfied with the services of a society, they can grant a direct licence). CS would have an interest in reducing the incentives for rightholders to grant direct licences. Such competitive pressures, in the medium term, would be expected to lead CS to develop more efficient licensing practices.

The main impacts of this option:

Impact on the IM	(+) Multi-territory licensing of major repertoire for use throughout the IM.
Impact on users (online services)	(+) More flexible, multi-territory parallel direct licences, especially for new services. (+) Multi-territory parallel direct licences available for major repertoire. (-) Licences for less attractive repertoire likely to be available on a territorial basis from a local CS. (+) Multi-repertoire territorial licences would likely be available for smaller online services.
Impact on consumers	(+) More innovative services launching in more EU MS. (-) Only major repertoire likely to be available from services operating on the basis of parallel direct licences.
Impact on rightholders	(++) For major rightholders, more control over the licensing process, faster royalty payments and lower administration costs. (-) However, the position of most rightholders (smaller rightholders) would deteriorate. (-) Risk of a two-tier licensing infrastructure, with less commercially attractive repertoire (niche or local repertoire) becoming less valuable and more costly to manage.
Impact on CS (incl.	(-) Activities reduced to less attractive repertoire and/or licensing of small services. (+) Incentive for CS to compete with direct licensing by rightholders, i.e. to provide a level of

281 For the 4 major publishers, this would allow the licensing of almost 70% of the rights (in value) in musical compositions (in 4 transactions).

reciprocal agreements)	service which reduces the incentives for rightholders to grant direct licences. (-) Current practice of reciprocal agreements allowing CS to grant (now more limited/less attractive) multi-repertoire licenses to their own territory would continue.
Cultural diversity	(-) Risk of marginalisation of less commercially attractive repertoire. (-) Less revenues for creators.
Compliance costs	(-) MS need to oblige CS to adopt non-exclusive mandates. (-) CS need to adapt their mandates to allow non-exclusivity, and publishers need to review their publishing agreements with authors.
Effectiveness	This option would be effective in ensuring efficient MT licensing for major rightholders and more commercially attractive repertoires but could have a detrimental effect on less commercially attractive repertoire and therefore the vast majority of creators. The two-tier licensing infrastructure could lead to a complex situation in the markets that is unlikely to provide a high level of legal certainty,

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

24.6. Option B3 –Parallel direct licensing

24.6.1. Impact on the Internal Market

This option would likely improve the ability of publishers to be able to licence all the required rights directly across the entire EU. Currently, most publishers licence the rights they control on a multi-territory basis. They would continue to do so, but in the medium term, they are likely to be able to licence the mechanical reproduction rights together with the right of communication to public - rights which are currently often held and licensed by different entities.[282]

As a result of this option, collecting societies would be competing with rightholders granting direct licences – i.e. if rightholders are not satisfied with the services of a society, they can grant a direct licence. Societies would have an interest in reducing the incentives for rightholders to grant direct licences. Such competitive pressures, in the medium term, would be expected to lead collecting societies to develop more efficient licensing practices.

24.6.2. Impact on online services (commercial users)

For multi-territory commercial users licences would be available:

(1) Directly from the owner of the relevant copyright or its licensing agent ("parallel direct licensing"): such repertoire specific licences would be offered by major rightholders (e.g. publishers) in the first instance, as direct licences with individual authors are unlikely to be a viable economic proposition. For the major publishers alone, this would allow the licensing of almost 70% of the rights (in value) in musical compositions in four transactions.[283] In the longer run, it may be feasible for many more publishers to licence their rights directly.[284] However, it would take some time for parallel direct licensing to emerge, because in order to be in a position to

[282] This is because publishers historically control the mechanical reproduction rights in the Anglo-American repertoire, while all EU performing rights and mechanical rights in the continental repertoire (aka BIEM repertoire) are entrusted exclusively to a collecting society by authors. Thus they can only be licensed by, or with the consent of, the requisite collecting society.

[283] I.e. the equivalent of the market share of major publishers, see Annex J, table J.1.

[284] In the U.S., one user has obtained as many as 500 direct licences for a background music service.

licence their entire catalogue, publishers would need to obtain the consent of authors to licence the rights currently exclusively controlled by societies, [285] and

(2) From individual collecting societies. The licences from societies would be either a territorially limited multi-repertoire licence (in their own repertoire and in the repertoire of sister societies that they are allowed to licence under reciprocal agreements, but excluding directly licensed repertoire); or a multi-territory licence in the society's own repertoire (excluding directly licensed repertoire). However, the value and viability of the latter mono-repertoire licences would be significantly diminished by the grant of parallel direct licences by major rightholders, to the detriment of cultural diversity. It is therefore likely that territorial blanket licences will be the norm.

The advantage of parallel direct licences is that they would likely accommodate a variety of online providers' needs (some support this option). Licences negotiated directly between users and rightholders would be expected to feature adaptable licensing terms and tariff grids, as negotiations take place with the repertoire owner or his appointed licensing agent directly. Further, this option may have the benefit of making it possible to launch a pan-European service with only the most commercially attractive portions of repertoire licensed directly. On the other hand, a large number of users seem to base their business models on the offer of a large and varied repertoire which includes not only the international catalogue but also local catalogues. It is also less suitable for those service providers who emphasise the "long tail" character (less hits, but depth of catalogue) of their online services. These users would in effect have to take out direct licences and territorially limited blanket licences in all Member States where their service is available.

For small local users, it is worth noting that a territorial licence covering the entire repertoire will likely be available from their local society. Publishers are likely to leave their rights in societies for such licences. The reasons are twofold. First, their rights would not be locked into a collecting society, as they are under the status quo, as they could continue to license directly in parallel. Second, publishers are not expected to have an interest in licensing small scale or local services directly, because the costs of dealing directly in such licences would exceed their expected returns. These services would accordingly be licensed by societies.

24.6.3. Impact on consumers

The impact on consumers would be potentially positive, if direct licences resulted in more repertoire being made available across the EU. The consumer would have a greater choice of innovative services that rely on specific repertoire for their success. There would be a significant potential for more (directly licensed) internet offerings. On the other hand, the repertoire-specific nature of certain licensing platforms might lead to a reduction in breadth and scope of repertoire that is available from pan-European services. It could be more difficult for consumers to have access to small and niche repertoire, notably cross-border.

24.6.4. Impact on rightholders

Many societies argue that the approach would result in the creation of a "two tier" licensing infrastructure whereby popular repertoire is licensed to online music services directly while

[285] Making the mandates non-exclusive is not the same as granting the publishers the right to licence the rights of authors.

the less popular repertoire is licensed by collecting societies.[286] First, it is argued that the administration costs of collecting societies would remain the same, but would be shared by a smaller number of rightholders with less valuable repertoire. Less popular repertoire would become more costly to manage. Further, the value of that less popular repertoire would most likely diminish, as it would be licensed separately from commercially attractive repertoire. Some of the main organisations representing authors[287] thus argue against non-exclusive licences, claiming that they would lead to lower royalty payments and that authors would be 'compelled' to assign their rights to publishers or to record producers.[288] They prefer their rights to be entrusted to a collecting society over which they can exercise control including on the management of rights.

On the other hand, for repertoire that is licensed directly, some rightholders (several publishers support this option) would be in a position to negotiate deals faster and to choose the best solution for the technical administration of their rights (invoicing, data processing, payments). They could choose to entrust these tasks to a collecting society (which would then act as a technical service provider) or indeed to third party services emerging on the marketplace, as is the case in the U.S. The advantage of this approach would be to improve competition in the provision of such services, giving societies an incentive to improve their services. Moreover, payments are usually made within a month in the case of direct licensing, compared to longer periods otherwise.

24.6.5. Impact on collecting societies (incl. reciprocal agreements)

Collecting societies argue that this option would be detrimental to them. There is a risk that the most valuable repertoire and the online music services which generate the most revenue will be licensed directly and without using the services of collecting societies. This would immediately diminish their turnover and proportionally increase their costs. However, some societies might also be expected to respond by providing more competitive services to rightholders, with the aim of minimising the need or the incentives for parallel direct licences.

Under this option, collecting societies would be granting online licences either (i) to users which are not commercially significant enough to warrant direct licensing by rightholders or (ii) on behalf of rightholders whose works are not sufficiently commercially attractive to warrant direct licensing. The share of collecting societies in multi-territory licensing would thus significantly decrease, i.e. they would collect only a small share of royalties due for online exploitations of musical works.

In such circumstances, the ability of collecting societies to grant multi-territory licences limited to their own repertoire is likely to be undermined. Indeed, the value of such licences will be directly reduced by the direct licences granted by rightholders. It is not clear whether it would be economically viable for societies to grant multi-territory licences in this manner. In the medium run, it is more likely that collecting society will instead conclude reciprocal agreements allowing each one to licence the repertoire of the other. This would ultimately put the societies in a position to grant blanket licences, minus the rights directly licenced. However, there is no reason to believe that these reciprocal agreements would otherwise differ from “traditional” reciprocal agreements. Collecting societies have, so far not agreed to

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[286] In collecting societies, on average, 80% of royalties collected are distributed to the top 20% of high earning rightholders.

[287] GESAC and. the European Composer and Songwriter Alliance, see Annex B.

[288] Emulating the situation in the U.S. where performer-songwriters often licence their compositions to their record company, see Annex M.

conclude agreements allowing each other to licence the repertoire of others on a multi-territory basis, without recourse to a customer allocation clause. Agreements are accordingly likely to remain territorially limited, allowing each society to grant only licences limited to its own territory.

24.6.6. Impact on cultural diversity

Parallel licensing would have a negative impact on cultural diversity. Most creators (i.e. smaller rightholders) would receive lower royalties. Moreover, the direct licensing of popular repertoire risks undermining the solidarity function hitherto played by aggregating popular and less popular repertoire into one 'blanket' licence. The commercial opportunities for the repertoire held by smaller collecting societies might be undermined. The disappearance of this less “main stream” repertoire (e.g. niche or local repertoire) would be detrimental to cultural diversity in Europe.

24.6.7. Compliance costs

Some users and publishers argue that the introduction of "parallel direct licensing" would provide a strong incentive for collecting societies to offer a high level of service to rightholders and users, thus mitigating the need for burdensome and detailed regulation. The main burden for collecting societies would be to adapt their licences and tariff structures to reflect rights which have been directly licensed (adjustable fee). Collecting societies would also have to adapt their existing mandates from rightholders to strike out the exclusivity clause.

Member States would need to adjust their legislation to oblige societies to manage rights on a non-exclusive basis. Publishers would also be expected to adapt their contracts with authors in order to obtain the right to licence their rights directly.

24.6.8. Effectiveness

This option would be effective in ensuring efficient multi-territory licensing for major rightholders and more commercially attractive repertoires. At the same time it would have a detrimental effect on less commercially attractive repertoire. The two-tier licensing infrastructure could lead to a complex situation in the markets. This option is unlikely to provide a high level of legal certainty.

24.7. Summary of impacts of Option B4

At first sight, this option provides a degree of legal certainty in the IM by ensuring that the local CS in the country of origin of the service grants a licence covering the whole of the EU repertoire (thanks to the extended effect under the local law). Besides the difficulties associated with the identification of the country of origin, the main risk associated with this option is that it will lead to publishers and some CS to opt out from the extended licences in all MS. The result is likely to be the "pulling out" of all commercially valuable repertoire from many of the CS in the EU. Accordingly, in some MS it would be more difficult to obtain a licence from a local CS (which has seen many opt-outs and/or has limited technical abilities to administer MT licences) than in others.

The high likelihood that the aggregation would not materialise because of large scale "opt-outs" will mean that commercial users would still need to get a number of licences from

rightholders and CS (as under the baseline scenario) as well as an extended licence from the society in their country of origin.

Furthermore, significant discrepancies in the efficiency of CS would persist across the EU, in particular as there will not be a need to precisely identify repertoire to grant a license (all repertoire will be presumed as covered). There will be no incentive to address the current inefficiencies related to identification of repertoire, invoice of uses and distribution of royalties. The burden of such inefficiencies will be held by rightholders, notably foreign rightholders.

Extended licensing is also likely to lack the flexibility of other licensing processes. Firstly, service providers would have no choice but to obtain the extended licence from a single CS in the country of origin of the service. Second, to avoid "opt outs" the local CS are likely to have a very conservative licensing policy to the detriment of innovative services.

The main impacts of this option*:

Impact on the IM	(+) Country of origin licence deemed to cover the entire EU. (-) Societies/rightholders with commercially attractive repertoire likely to opt out of each local ECL.
Impact on users (online services)	(-) Risk of large scale opt-outs, thus increasing the number of licences needed. (+) Even after opt-outs, services will have legal certainty that the ECL in the country of origin covers all residual repertoire for all EU territories. (-) Risk of lesser flexibility in the licensing process, e.g. for new or innovative services.
Impact on consumers	(-) Fewer innovative services available. (+) If opt outs are limited, access to larger breadth of repertoire.
Impact on rightholders	(-) Rightholders/CS with commercially valuable repertoire (making it worth direct licensing on a MT basis outside of local societies), need to opt out of ECLs in all MS. (-) Risk of a two-tier licensing infrastructure, with less commercially attractive repertoire being managed less efficiently and transparently by a local society (in particular, risk of less accuracy in the distribution of income, including cross-border distributions).
Impact on CS (incl. reciprocal agreements)	(+) Local societies presumed to be in a position to administer licences with an effect equivalent to a MT licence from their domestic market. (-) CS with commercially valuable repertoire (making it worth direct licensing on a MT basis outside of local societies), need to opt out of ECLs in all MS. (-) Limited incentives for CS to improve their services, as they would benefit from a presumption that they represent the repertoire. (~) Reciprocal agreements would remain necessary as CS granting ECL need to represent a significant number of rightholders either directly or indirectly.
Cultural diversity	(+) Less commercially attractive repertoire available on a MT basis. (-) Risk that less commercially attractive (niche or local) repertoire is not licensed effectively and that proceeds are not distributed accurately.
Compliance costs	(-) MS need additional supervision over the grant of ECLs (e.g. the CS must be representative). (-) Societies need to satisfy the conditions for the granting of ECLs. (-) Rightholders would need to opt out of all local societies if they licence directly.
Effectiveness	In theory ECL could be an effective solution but in practice it is likely that major righholders and CS with commercially valuable repertoire would opt out to keep control over their repertoire. Blanket licensing would not improve the administration within CS and due to the opt-outs legal certainly would not improve sufficiently.

* The (+) and (-) signs in this table do not express comparison to the baseline scenario but reflect the absolute value of the impact.

24.8. Option B4 – Extended collective licensing combined with a country of origin principle

24.8.1. Impact on the Internal Market

At first sight, this option provides a degree of legal certainty in the internal market by ensuring that the local collecting society in the country of origin of the service grants a "blanket" licence with extended effect under the law of the country of origin of the service.

Besides the difficulties associated with the identification of the country of origin in a certain and predictable manner for online services operating in the EU, the main risk associated with this option for the functioning of the Internal Market is that it will make it more difficult for publishers or societies which currently grant EU-wide licences to do so. In order to continue doing so, they would have to opt-out from the extended licences in all Member States.

Further, significant discrepancies in the efficiency of local collecting societies will persist across the EU. This means that in some Member States it will be more difficult to obtain a licence from a local collecting society (which has seen many opt-outs and/or which has limited technical abilities to administer multi-territory licences) than in others (which manage a broader repertoire and/or have the ability to administer multi-territory licences). Thus the value of licences granted by collecting societies would vary significantly from one Member State to the next, causing distortions in downstream markets (commercial users).

24.8.2. Impact on online services

Under this option, a commercial user would need:

(1) A number of mono-repertoire licences from rightholders and societies which have opted out. Rightholders and societies are likely to voluntarily grant such licences on a multi-territory basis.

(2) An extended license from the collecting society in the country of origin of the service, which would have an equivalent effect to a multi-territory licence.

The breadth or repertoire available under the extended licence from the local society in the country of origin of the service would depend to a significant degree on the opt-outs of rightholders: aggregation is *prima facie* achieved by means of a wide ranging statutory presumption that a representative collecting society in the country of a users' establishment represents the aggregate EU repertoire. However, there is a high likelihood that this aggregation will not materialise because of large scale "opt-outs". A number of rightholders with commercially valuable rights would be expected to opt-out from all or most local collecting societies, as there would be no incentives for them to keep their rights within the local extended licences. A number of societies themselves (e.g. those currently keen on licensing their repertoire directly for multi-territory uses and those holding the most commercially valuable repertoire) would also be likely to opt out.

Consequently, commercial users would still need to get a number of licences from rightholders and societies (as under the baseline scenario) as well as an extended licence from the society granting an extended licence in their country of origin. The local society will licence local and EU repertoire which is not opted out. This is likely to include rights from societies which hold less commercially attractive repertoire (especially in non-domestic markets) and rights which are difficult to attribute to rightholders with certainty. For users

who need a comprehensive coverage of works to choose from, this additional coverage will nevertheless have the added value of providing additional legal certainty that all claims from rightholders are covered by the extended licence.

Extended licensing is likely to lack the flexibility of other licensing processes. First, service providers would have no choice but to obtain the extended licence from a single collecting society in the country of origin of the service. This may lead to potential abuses from the competition law perspective. Second, the system would partly rely on other societies and rightholders not opting out. Societies, motivated by the desire to ensure that the interests of their partners are protected, would limit the scope of the agreement to less "risky" or innovative services. Serving the more innovative services would require *ad hoc* discussions between the collecting societies concerned. It is therefore difficult to envisage that this option would foster the emergence of timely and "bespoke" licences for online services.

24.8.3. Impact on rightholders

The individual exercise of their rights by rightholders would be subject to the formal need to opt out from a collecting society. In practice, should a rightholder wish to exercise his rights directly, he would have to notify collecting societies in 27 Member States of his intention to "opt out" of the extension agreement. In this process, they would have to identify their rights and their works precisely. This would be extremely cumbersome for individual creators, as well as for major publishers whose catalogues are continuously augmented with new works.

Some rightholders which have not opted out of a society would see their rights licensed for use across the EU without their express consent and without being members of the local licensing society. They would accordingly not be represented in that society, and would have to rely on such societies identifying them and paying them the remuneration collected for their works in the local market and in the rest of the EU. In such circumstances, there is a risk that some rightholders find it difficult to track their income.

Further, there would be no improvement of the data-processing ability of collecting societies. All local collecting societies would be granting what the facto would be equivalent to multi-territory licences (covering a varying breadth of repertoire), regardless of their ability to identify repertoire and deal with usage reports. This is likely to lead to inaccurate and slow payments to rightholders. Non-domestic rightholders are the most likely to be affected, as it would be difficult for them to exercise control over each and every local society (other than option their rights out altogether). While major rightholders will respond by opting out, smaller rightholders or individual creators are likely to keep their rights within the local society. A two-tier licensing infrastructure might, as result, also follow from this option, with major rightholders licensing outside of the local collecting societies and smaller rightholders bearing with local societies.

24.8.4. Impact on collecting societies (incl. reciprocal agreements)

For collecting societies, this option provides reassurances that they will have a role to play in their domestic market, where they are the most likely to be permitted to grant extended licences for services established there. Small or medium sized societies might see this as a short term advantage, although in the long run they will either have to improve their services or suffer opt-outs of most rightholders. For larger societies which are competing to licence their rights directly to all major commercial users across Europe, this option makes things

more difficult (they would have to opt out). This option does not provide any incentive for the societies to improve their capability to deal with online service providers

As regards reciprocal agreements, under this option, each local collecting society would be presumed to represent the rights of all rightholders which have not opted out, EU wide. However, in order to benefit from such a presumption, a local collecting society would have to first establish that it is "representative", i.e. that it is expressly mandated by a sufficient number of rightholders to manage their rights. A collecting society which would represent only a small fraction of rightholders could not be expected to benefit from an extension effect. Thus in order to qualify, a collecting society would need to represent a large number of rightholders, via direct mandate, but also through agreements allowing it to represent the repertoire of other societies. This means that this option does not do away with the need to conclude reciprocal agreements.

In addition, this option can mean that a local society is in a position to grant EU wide licences to major multi-territory users established in their domestic territory, or to new innovative services. In both cases, it is likely that some societies, if they do not opt-out entirely, will conclude more limited reciprocal agreements, in order to avoid losing control over the licensing of such major services or new services.

24.8.5. Impact on cultural diversity

This option would *prima facie* be beneficial to repertoire solidarity and to cultural diversity, as in principle the entire European repertoire would *a priori* be included in each licence. Niche and local repertoire would be guaranteed access to multi-territory licensing, by virtue of the extension effect of the licence. Local societies would also be guaranteed a role in licensing online services originating in their territories.

However, there is a risk of a two-tier licensing infrastructure emerging (see above), with the result that local and niche repertoire might be licensed and administered in conditions which are less favourable.

24.8.6. Impact on consumers

Impact on consumers would be mixed. On the one hand, consumers would be unlikely to benefit from the launch of more innovative services, as the licensing process will be slow to adapt to the flexibility required for new and innovative services and the likely opt outs would not necessarily lead to a reduction of the number of transactions that need to be undertaken to launch new services. On the other hand, if the number of "opt-outs" is limited, existing services or services which rely on a less innovative or risky business model would be accessible to consumers across the EU.

24.8.7. Compliance costs

This option would involve compliance costs for Member States, collecting societies and users.

Member States would have to amend their legislative framework to ensure that a collecting society can grant ECLs. Generally, for a collecting society to be permitted to grant an ECL, a Member State would first need to ensure that the collecting society is representative. This would require an assessment of whether, on the basis of a society's direct mandates from rightholders and agreements with other societies, that society is mandated to licence the rights of a significant portion of the musical works used in the EU. Secondly, Member States would

need to satisfy themselves that the collecting society wishing to grant an ECL satisfies certain conditions, beyond the observance of governance and transparency principles applicable to all collecting societies. This is because an ECL allows a collecting society to grant licences covering the works of rightholders which have not mandated it (whether directly or indirectly, via an agreement with their own collecting society). Accordingly, certain safeguards need to be provided for the interests of these "non-represented" rightholders, such as the setting-up of an "opt out" mechanism, the right to equal treatment with members of the society and the right to collect individual remuneration.

As a result, it is likely that the setting up of ECLs will lead to additional costs in supervising collecting societies.[289] The additional costs will be greater in MS which currently neither supervise collecting societies nor have an ECL regime in place. They would be lower in Member States where ECLs are already granted, although the degree of supervision would still need to be higher as these ECLs would be deemed to have an effect equivalent to a multi-territory licence under the country of origin principle.

Collecting societies seeking to grant ECLs would need to change their statutes of association and their distribution rules in order to provide the safeguards referred above. This would likely involve legal costs (drafting of new provisions), and the costs of obtaining the approval of members of the society.[290] In addition, the option would entail an administrative burden for such societies. They would have to provide the relevant authorities in their Member States with information as to how they are representative and as to how they safeguard the interests of non-represented rightholders, and possibly pay a registration few to such authorities.

There would be compliance costs for rightholders opting-out from each local collecting society (see impact on rightholders). This would ultimately depend on how many collecting societies opt to provide ECLs, and on how burdensome the procedure for opting-out would be.

24.8.8. Effectiveness

In theory extended collective licensing could be an effective solution to reach the objectives. In practice however it is likely that major rightholders and CS with commercially valuable repertoire would opt out to keep control over their repertoire. Some service providers would be in a better position than today to obtain licences but others would not. Blanket licensing would not bring about any improvement in the administration within CS and due to the opt-outs legal certainly would not improve sufficiently.

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289 For instance, the UK Intellectual Property Office estimates that the introduction of extended licensing in the UK would require two full-time staff to oversee the extended licensing http://www.ipo.gov.uk/consult-ia-bis1054.pdf.

290 This may take the form of a general assembly of the members of the society. Anecdotal evidence suggests that the cost of a general assembly ranges from 15000€ (for a medium sized society) to 300000€ (for a large collecting society). However, these general assembly meeting usually take place regularly regardless of the introduction of major developments such as granting ECLs.

25. ANNEX P: COMPLIANCE COST OF OPTION A4 – BEYOND CODIFICATION: A GOVERNANCE AND TRANSPARENCY FRAMEWORK IN COLLECTING SOCIETIES

25.1. Codification of the existing principles

The codification of the existing principles would require amendments to Member States' laws. In turn, collecting societies would have to amend (to different degrees) their statutes, membership terms, distribution rules and other internal documents. This would typically require preparation of amendments to the existing documents and holding meetings of relevant governance bodies to adopt the amendments (this could be done in the normal course of business as these bodies meet on a regular basis). Costs of preparing amendments to internal documents would depend on the nature of the principle, the level of adherence to this principle by a society, the size of a society and on whether the amendments would be prepared by in-house lawyers or commissioned externally. It is expected that these costs would not significantly exceed the costs already borne by collecting societies with regard to their internal documentation and meetings of their governing bodies.

25.2. Dispute resolution mechanism (for rightholders and commercial users)

The cost of providing such a mechanism for disputes between collecting societies and their members would be borne by collecting societies as they would be obliged to set it up and maintain it. Member States would decide on the type of dispute resolution mechanism for users (e.g. mediation, arbitration, tribunal) and on its financing. Currently, most of the Member States provide for some form of dispute resolution mechanism for users and therefore could use the existing structures as a basis for the future mechanism.

The costs of a dispute resolution mechanism would vary according to the precise nature of the dispute resolution mechanism chosen. On a low end estimate, some societies use existing expert dispute resolution bodies, such as the World Intellectual Property Organisation (WIPO)' arbitration centre. For instance, AGICOA and EGEDA use the WIPO centre for certain disputes with their members. Set up costs are not publicly known, but are likely to be relatively low, as this dispute resolution process draws on an existing arbitration centre. Operating costs only occur when a dispute arises, and in such cases the fees charged are capped at 5000 USD (AGICOA) or € 4000 (EGEDA).[291] Other societies that already operate alternative dispute resolution (excluding royalty disputes) report that the costs of setting up such a mechanism would be in the range of €35 000, and the operating costs in the range of €11 000 per year. At the other end of the scale, operating a full blown copyright tribunal would cost approximately €86 000 per year.

25.3. Governance rules

Collecting societies would have to bear the costs of implementing rules pertaining to the decision-making process (including representation of rightholders in the internal bodies, participation of rightholders in taking key decisions), accountability of managers (e.g. procedures on acknowledgement of duties, declaration of interests in the society), right of members to make inquiries to collecting societies and other control measures, etc. These

[291] See http://www.wipo.int/amc/en/arbitration/egeda/fees/ and http://www.wipo.int/amc/en/arbitration/agicoa/fees/

would typically require preparation of amendments to the statutes and their adoption by the general assembly.

25.4. Handling rightholders' income

Collecting societies would have to also bear costs of adapting to the new rules on handling rightholders' income. These include the separation of rightholders' and societies' assets, the obligation to account for revenues and costs separately for various revenue streams, rules on prudential investment, etc. Collecting societies were consulted on the costs of adapting to these rules. They indicated that they do not generally break down their costs specifically for different revenue streams; some of them already adhere to rules on the separation of assets and on prudential investment but the details of the applicable rules vary. The cost of adaptation to the new rules would depend primarily on the level of adherence to similar rules by a given collecting society. In some instances it is expected that substantial changes will have to be made while in others only marginal changes would be required to comply with the new rules. Information on the specific cost of adapting to such changes is generally not available. It is accordingly not possible at this stage to estimate those costs.

25.5. Administrative burden

25.5.1. Introduction

The main information obligations resulting from the proposed governance and transparency framework include: providing public access to certain information and documents (statutes, directors/managers names, membership terms, annual accounts, annual report, auditor's report, repertoire, the territorial scope of mandates for this repertoire, reciprocal agreements, the applicable tariffs, etc.), providing rightholders with access to additional information (distribution rules, rules on deductions, directors/managers remuneration, etc.).

The less significant part of the costs related to compliance with information obligations will be that related to the preparation and publication of information and documents such as statutes, directors/managers names, membership terms, repertoire, the territorial scope of mandates for this repertoire, reciprocal agreements, the applicable tariffs, distribution rules, rules on deductions, directors/managers remuneration, etc. Information on the cost elements of producing such documents and information is generally not available. The information received from collecting societies was not complete enough to be used in meaningful calculations. However, as these documents typically already exist (independently from the proposal) it can be assumed that costs related to them would not exceed the costs already borne by collecting societies (business as usual). The cost of providing access (e.g. by making information and documents available on the web) is expected to be marginal (see below in Table P5.2 the cost of publication of reports on the web).

The most significant costs will be those related to the preparation of the annual accounts, annual report and audit of the accounts. The calculation of the administrative burden will therefore focus on these costs. This means that the costs given below may be slightly underestimated. To accommodate for this underestimation the costs of publication on the web of annual accounts were calculated and the actual calculations were based on assumptions which rather overstate the actual costs in order to obtain more realistic results.

25.5.2. *Cost calculation*

The calculation of costs of preparing the annual accounts, annual report and audit of the accounts involved the following steps:

Step 1 - Estimating the number of collecting societies (CS) in Europe by size category (small, medium sized and large).

This was done based on the available data from the collecting societies' websites, supervisory authorities, etc. as well as on data on the turnover and employment of the largest of these societies (see: Annex H).

The following assumptions have been made:

Collecting societies are deemed small, medium-sized or large when they meet one of the turnover or employment thresholds as defined in Directive 78/660/EEC[292] (Articles 11 and 27) for limited liability companies:

- small societies: employment below 50, turnover below €8 800 000;
- medium-sized societies: employment below 250, turnover between €8 800 000 and €35 000 000 and
- large societies: those not meeting the criteria of small and medium-sized societies.

Unless available data proves otherwise, the assumption is that there is one large collecting society in every Member State and that the remaining collecting societies are medium-sized (exceptions: it is assumed on the basis of markets size that BG, CZ, EL, SI have only medium collecting societies while CY, EE, LT, LV, SK have only small ones).

Table P.5.1: Estimated number of EU collecting societies and their estimated size

Member State	Estimated size of Collecting Societies			Total
	Large	Medium-sized	Small	
AT	1	7	0	8
BE	1	25	0	26
BG	0	6	0	6
CY	0	0	1	1
CZ	0	6	0	6
DE	1	11	0	12
DK	1	8	0	9
EE	0	0	10	10
EL	0	17	0	17
ES	1	7	0	8
FI	1	5	0	6
FR	1	24	2	27
HU	1	5	0	6
IE	1	7	0	8
IT	1	3	0	4
LT	0	0	5	5
LU	1	2	0	3
LV	0	0	2	2
MT	n/a	n/a	n/a	n/a

292 Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3) of the Treaty on the annual accounts of certain types of companies, OJ L 222, 14.8.1978.

NL	1	21	1	23
PL	1	14	0	15
PT	1	3	0	4
RO	1	11	0	12
SE	1	5	0	6
SI	0	5	0	5
SK	0	0	6	6
UK	1	19	0	20

Note: non-shaded areas are estimates subject to assumptions described above.

Source: European Commission desk research on: umbrella organisations of collecting societies, websites of national supervisory authorities, authorisation decisions, contacts with Member States authorities, screening of legislation.

Step 2 - Taking account of the current reporting practices in the Member States.

Based on the information at the disposal of the European Commission (stemming from the screening of national copyright laws) on the existing information obligations in the EU Member States covering annual accounts, annual reports and auditors reports, it can be assumed that minimum 40% of collecting societies are already under an obligation to produce and make public the three above mentioned documents. It is to be noted though that in reality, taking into account the number of collecting societies per country (i.e. making a weighted average across the EU MS), 70% and 50% of colleting societies in the EU are already under an obligation to produce, respectively, annual accounts/annual reports and auditor reports. Given the lack of real data across the EU and the need to use proxies for collecting societies, the initial cost calculations are based on a lower business-as-usual share of the new cost (40%) in order not to underestimate the real costs to be borne and the sensitivity analysis is conducted to allow for different assumptions to make the analysis more complete.

Step 3 - Taking account of the cost of reporting and administrative burden per reporting obligation.

These were taken from the "Report on measurement of administrative burden in the area of accounting and company law"[293] which focused on the limited liability companies in the EU and could be seen as a good proxy for the collecting societies. The study did not assess the cost of day-to-day bookkeeping but just the cost/burden of the reporting itself. The following average rates for cost were obtained (after correcting for extreme figures):

Table P.5.2: EU average annual cost of certain reporting obligations per company (for limited liability companies) in Euros

Information obligation	Small	Medium-sized	Large
1. Obligation to draw up annual account and disclosure of account	1 976	2 313	10 627
2. Annual reports	238	1 120	2 870

[293] Disclaimer and data limitations: http://ec.europa.eu/enterprise/policies/smart-regulation/documents/ab_studies_2009_en.htm
Study: http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09_companylaw_en.pdf
Data Annex: http://ec.europa.eu/enterprise/policies/better-regulation/files/abst09_cl_data_annex_en.pdf

3. Auditing of annual accounts	3 855	16 873	53 154
4. Publication of reports on web	34	34*	34*

Note: extreme values excluded; EU averages modified taking into account data received from 2 large collecting societies and one medium-sized

** due to lack of data, cost for small companies was used*

Source: Consortium 2009 Administrative burden study, own calculations.

For the purpose of calculating the administrative burden, individual country costs (which can be found in the "Report on measurement of administrative burden in the area of accounting and company law" mentioned above) were used.

These figures were assumed to comprise business as usual costs and administrative burden in the following proportions:[294]

Table P.5.3: Administrative burden per company as % of reporting cost, EU average

Information obligation	Small	Medium-sized	Large**
1. Obligation to draw up annual account and disclosure of accounts	50%	25%	25%
2. Annual reports	75%	25%	25%
3. Auditing of annual accounts	75%	25%	25%
4. Publication of reports on web	100%	100%**	100%**

** the source study takes 0% admin burden for large companies assuming that all is business as usual, i.e. that all large companies already provide for annual accounts and reports and audit annual accounts on a yearly basis; we have taken 25% not to underestimate the cost*

*** due to lack of data, cost for small companies was used*

Source: Consortium 2009, Administrative burden study[Error! Bookmark not defined.], own calculations

Step 4 – Calculating and obtaining results

Given our assumption (Step 2) concerning 40% of collecting societies already being under an obligation to produce and make public the annual accounts, annual report and audit reports, these collecting societies will only incur part of an additional cost resulting from the need to adjust their current practices to the requirements of the present proposal. Consequently, the data from Table P.5.1 (number of collecting societies), adjusted by the 40% share of collecting societies, was multiplied by country-specific cost figures (EU average presented in Table P.5.2) and then by administrative burden % as presented in Table P.5.3).

294 According to the Standard Cost Model which is a tool advised in the Commission IA Guidelines for calculation of costs stemming from legislative information obligation, Reporting cost (or administrative cost) = business as usual cost (not affected by our proposal) + administrative burden (new cost implied by our proposal). For illustration, if companies did not have any reporting practices before our proposal, business as usual cost = 0 and all the reporting cost would be constituted by the administrative burden.

The remaining 60% of the collecting societies which are assumed not to prepare any of the above mentioned information will incur higher costs to comply with the proposal. Accordingly, the data from Table P5.1 (number of collecting societies), adjusted by the 60% share of collecting societies, was multiplied by country specific cost figures (EU average presented in Table P5.2). In all cases average cost per company was rounded to full hundreds.

As a result, an average additional administrative burden for European collecting societies stemming from the proposed measures is estimated at approximately €16 000 per collecting society per year, which amounts to an EU-wide average burden increase of around €4.1 million per year.

Step 5 – Conducting sensitivity analysis

First a change of company size, ceteris paribus, was tested. Under the assumption that all European collecting societies are:

- small companies (as defined in Directive 78/660/EEC, see Step 1): the average administrative burden would amount to €5 300 per collecting society per annum, or €1.35 million for the EU,

- medium-sized (as defined in Directive 78/660/EEC, see Step 1): the average administrative burden of €14 100 per collecting society per annum, or €3.6 million for the EU,

- large (as defined in Directive 78/660/EEC, see Step 1): the average administrative burden of €46 700 per collecting society per annum, or €11.9 million for the EU.

Second, the assumption about the current reporting practices in the Member States (Step 2) was lifted and all collecting societies were deemed to prepare no information at the moment. Other steps being the same as in Step 4, the average burden per collecting society per year is estimated at €22 800 with the total for the EU at €5.8 million.

Third, it was assumed that all companies prepare some sort of reporting and new obligations would be entirely an additional administrative burden (as presented in Table P5.3). Under these conditions the average burden per collecting society per year is estimated at €5 900 with the total for the EU at €1.5 million.

To sum up, the overall administrative burden stemming from the proposal would situate somewhere between €1.5 million and €5.8 million for all EU collecting societies (taking into consideration their sizes) per year, which would translate into an average per collecting society of between €5 900 and €22 800 per year.

Step 6 – Putting the compliance cost in perspective

In order to better illustrate the compliance cost estimated above, it has been compared to certain indicators of collecting societies activity, such as the turnover (collections of 2010) and operating expenses. This data, together with the personnel cost, have been extracted from the Annual reports of the collecting societies for 2010 (see Table F.1.1 in Annex F). For the purpose of this estimation and to make sure the share of the additional administrative burden is not underestimated, a collecting society with the lowest operating expense has been chosen per each size category.

As can be seen in table P.5.4, the compliance cost stemming from the current proposal would not exceed 1.2% of operating expenses and 0.4% of turnover for small collecting societies, and, respectively, 1.3% and 0.1% for the medium-sized ones.

Table P.5.4 Administrative burden as a share in operating expenses and turnover of collecting societies by size

Collecting society	**Turnover/ Collections 2010**	**Operating expenses**	**Personnel cost**	***Compliance cost due to the current proposal (per collecting society)***		
	(million EUR)	(million EUR)	(million EUR)	*(EUR)*	*(a) % of operating expenses*	*(b) % of turnover*
Small: AGATA (LT)	1.4	0.4	0.2	*5 300*	*1.2%*	*0.4%*
Medium-sized: Bonus Presskopia (SE)	17.8	1.1	0.8	*14 100*	*1.3%*	*0.1%*
Large: Bild-Kunst (DE)	56.3	3.8	2.5	*46 700*	*1.2%*	*0.1%*

Source: Annual reports 2010 of collecting societies (see table F.1.1 in Annex F), own calculations

Step 7 – Taking into account the Commission proposal on simpler accounting for smaller companies[295]

On 25.10.2011 the Commission proposed a Directive to replace and modernise the existing Accounting Directives. The proposal simplifies the Accounting requirements for small companies and improves the clarity and comparability of companies' financial statements within the Union.

To illustrate how this proposal would affect the compliance costs arising from the current initiative, an adjustment to the previous calculations were made according to the cost reduction presented in Table P.5.5 below.

Table P.5.5 Changes in underlying costs of selected information obligations for small companies due to the Accounting directives review

Cost for small companies	**Annual report**	**Annual financial statement**	**Auditors report**
Current Cost (c.f. table P.5.2)	238	1 976	3 855
New accounting directives cost	238	1 115	948
Ratio: Current cost / New accounting directives cost	100%	56%	25%

[295] IA for the proposal of a Directive repealing and replacing the Accounting Directives 78/660/EEC and 83/349/EEC, Annex 7, p. 71 http://ec.europa.eu/internal_market/accounting/docs/sme_accounting/review_directives/20111025-impact-assessment-part-1_en.pdf

Subsequently, costs for small companies per MS were multiplied by the percentage from table P.5.4 so as to obtain the cost for different scenarios taking into account the Commission proposal on simpler accounting mentioned above.

Table P.5.6 Changes in compliance cost of option 4 due to Accounting directives review

Changes due to Accounting directives review	Current estimation	**New estimation after accounting review**	**change %**
Mixed scenario*, all collecting societies	4 062 382	3 972 453	-2.2%
Per collecting society	15 931	15 578	
All collecting societies are small	1 351 457	**508 511**	**-62.4%**
Per collecting society	5 300	**1 994**	
All collecting societies deemed to prepare no information at the moment	5 760 559	5 658 226	-1.8%
Per collecting society	22 590	22 189	
All collecting societies prepare some information at the moment	1 515 117	1 443 793	-4.7%
Per collecting society	5 942	5 662	

Source: Consortium 2009 Administrative burden study; IA for the proposal of a Directive repealing and replacing the Accounting Directives 78/660/EEC and 83/349/EEC, Annex 7, p. 71; own calculations.

Notes: * 40% of collecting societies already being under an obligation to produce and make public the annual accounts, these collecting societies will only incur part of an additional cost resulting from the need to adjust their current practices to the requirements of the present proposal

The most important change stemming from the adjustments applied would clearly be seen for the small companies (62% reduction in costs). The other scenarios would only marginally change (cost reduction between 2 and 5%) since they take into account the real size distribution of collecting societies and the number of small CSs is very limited in the EU.

To sum up, the results for the scenarios analysed under the sensitivity analysis (Step 5) and adapted in line with the revision of the Accounting directives are as follows:

- Under the assumption that all European collecting societies are small companies (as defined in Directive 78/660/EEC, see Step 1): the average administrative burden would amount to €1 994 per collecting society per annum, or €508 511 for the EU;

- no change for medium-sized or large collecting societies;

- Assuming all collecting societies were deemed to prepare no information at the moment, the average burden per collecting society per year is estimated at €22 189 with the total for the EU at €5.7 million;

- Assuming all collecting societies prepare some sort of reporting and new obligations would be entirely an additional administrative burden (as presented in Table P5.3), the average burden per collecting society per year is estimated at €5 662 and the total for the EU at €1.4 million.

26. ANNEX Q: COMPLIANCE COST OF OPTION B2 – THE EUROPEAN LICENSING PASSPORT

26.1. Database and data processing costs

Collecting societies were consulted on the costs of operating the IT infrastructure required for the granting and administration of their licences for each revenue streams. Collecting societies indicated that they do not generally break down their costs specifically for different revenue streams[296] and generally could not provide a clear breakdown of their costs by cost centre for each revenue stream. Further, no clear breakdown of costs per cost centre is available from the annual report or published accounts of collecting societies, although collecting societies reported that their main costs were personnel costs. On average, personnel costs account for approximately 55% of the operating expenses of collecting societies. Most societies, however, indicate that IT costs are an important cost factor. For those societies that report IT costs in their annual reports and annual accounts, it is not possible to draw clear conclusions.[297] In some instances, it can be inferred that IT costs would amount from roughly 5% to 15% of their operating expenses, but this only accounts for operating expenses and would not reflect investments in IT systems. Further, information on the specific costs of managing multi-territory licences is generally not available. It is accordingly not possible to estimate those costs.

Scarce anecdotal evidence may give a broad indication of the costs involved. One major society reportedly invested 70€ million over the course of 7 years in upgrading its database for multi-territory licensing. ICE, a joint venture between PRS for Music and STIM, was initially created in 2009 to provide a joint database for the two societies. However, the costs of setting up and running ICE are not publicly available. ICE reportedly employs a staff of 75 and administers a database of approximately 15 million works.[298] The staffing costs of ICE could be estimated at 5.6€ million per annum – roughly equivalent to the personnel costs of a small society such as TEOSTO.[299] The total costs of running ICE would accordingly be expected to be in excess of 5.6 €million per annum - compared to the approximately 82€ million collected by EU authors' societies for internet and new media in the EU in 2009. Further, ICE is used not only for multi-territory online licences but for most revenue streams, including off-line. One middle-sized collecting society estimates the costs involved in managing rights on a multi-territory basis, in particular costs associated with IT infrastructure but also those related to staff, IT support, licensing, external consultants and premises, at 4.8€ million per annum.

Moreover, the costs of documenting rights on a multi-territory basis would be expected to include high set up costs and, initially, relatively high running costs. This is because the documentation of works ownership on a multi-territory basis requires the creation or

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296 Some societies deduct a different administrative charge from different revenue streams. However, this method of charging rightholders and members does not imply that costs have been allocated to specific revenue streams. Note that "administrative costs" or "administrative charges" are used in the industry to refer to the costs charged by collecting societies for their services.

297 Some societies outsource some data processing, which is reported in broader category of overall expenses for services from third parties; others include the rental of computer software in the broader category of property expenses.

298 ICE response to the Global Repertoire Database Request for Information, http://globalrepertoiredatabase.com/rfir/ICE%20GRD%20RFI%20Response.pdf, p. 7.

299 On the basis of the average cost per collecting society employee in Sweden, where ICE is based.

upgrading of IT systems which are future proof, flexible, and able to interoperate to some extent with existing tools. Further, the initial costs of "populating" the database would be expected to be high. This entails "disambiguating" ambivalent records, resolving conflicts in the data (e.g. in the case of a joint database, if two societies each claim 70% ownership in the same work) and the importing of data concerning works published or used in the past over several decades.

However, the costs of running and administering such a database would be expected to decrease significantly over time. This is largely because the initial investments will be amortised, and because the data will have been entered and "cleaned" once and for all. The registration of new works would concern a smaller number of works and would potentially be processed electronically. It would also be registered in a manner which is consistent with the standards of the database, thus minimising the need for further intervention in the data.

Finally, ICE illustrates that databases do not need to be replicated by each and every collecting society. ICE reportedly documents close to 15 million works. In contrast, it is estimated that the entire world repertoire would amount to 50 million works (high end estimate).[300]

The main advantage of the Passport option in this respect is that it allows societies to aggregate their services and rely on a smaller number of databases and IT infrastructures. This would avoid the duplication of costly investments.

26.2. Electronic data-processing, invoicing, reporting

There are already a number of tools available for collecting societies. E.g. for the electronic processing of usage reports, one format is available free of charge and has been used already by a number of collecting societies.[301] For the reconciliation of conflicting invoices, a number of licensing entities have developed a common standard.[302] For the electronic registration of works, common standards are already available.[303] While these standards and tools are available, generally at no extra costs, their implementation depends largely on the availability of a database.

Some collecting societies have indicated that short timescales for reporting, invoicing and reporting can realistically be achieved by them. Reporting usage in detail to rightholders is also done by some societies, and is not thought to be problematic, as it depends mainly on the existence of appropriate databases and on the implementation on automatic processing of the data.

26.3. Arbitration

The costs of an arbitration mechanism would vary according to the precise nature of the arbitration mechanism chosen. On a low end estimate, societies that already operate alternative dispute resolution (excluding royalty disputes) report that the costs of setting up

[300] See Annex I.

[301] E.g. the DDEX format has been used already by CELAS, GEMA, PAECOL, PRS for Music, NCB, SABAM, SACEM, SGAE.

[302] E.g. the Claim Confirmation & Invoice Details (CCID version 13) format, which is used at least by ARMONIA (a group comprised of SACEM, SIAE and SGAE), CELAS, GEMA, SACEM, SACEM/DEAL, PRS for Music and PAECOL.

[303] E.g. the CISAC Common Works Registration format, available to CISAC members.

such a mechanism would be in the range of €35000, and the operating costs in the range of € 11000 per year. At the other end of the scale, operating a full blown copyright tribunal would cost approximately € 86000 per year. However, these costs relate to bodies which operate in relation to several rights and revenue streams. The costs of operating an arbitration mechanism limited to online rights might be lower.

26.4. Administrative burden

The main information obligations resulting from compliance with the passport option are providing users, rightholders and societies with access to information on the repertoire administered by the passport entity; and providing users, rightholders and societies with information as to how the passport entity complies with passport rules.

The cost of providing remote access to such a database is expected to be marginal, especially in comparison with the cost of creating and administering a multi-territory database. Similarly, the cost of informing users, rightholders and societies as to how compliance with passport criteria is ensured are expected to be marginal.

26.5. Conclusion

Investments are required in order for societies to deliver multi-territory licences. Currently, it is not possible to quantify the investments required.[304] However, it is clear that a number of licensing entities would be expected to be able to comply with passport requirements at a reasonable cost. It is also clear that duplicating those investments would not be necessary to gain a comprehensive overview of rights ownership in the EU – there is no need for 27 databases to record the entire EU repertoire, as relatively recent databases are already in a position to reference a large share of the EU repertoire. Further, it would not be economically viable for all societies to duplicate those costs – for many, these would be unsustainable.

The passport option sets requirements which are aimed to provide minimum guarantees that copyright is licensed and managed with accuracy. It also seeks to ensure that societies which do not have databases running only face minimal costs in order to gain access to the multi-territory licensing market, by using existing or developing infrastructure developed by passport entities.

[304] In future, the G&T requirements foreseen in this impact assessment would be expected to bring more clarity as to the costs involved.

27. ANNEX R: COMPARISON OF THE COMBINATIONS OF G&T AND "LICENSING" OPTIONS

27.1. Guarantee sufficient transparency and control over the activities of collecting societies

Objectives ► / Policy Options ▼	Effectiveness				Efficiency
	Guarantee the application of G&T standards in CS	Guarantee transparent and fair handling of income by CS	Ensure legal certainty for users and licensors	Enhance the capability of licensors by ensuring they use licensing infrastructure fit for the online environment	Cost-effectiveness
Status quo	0	0	0	0	0
Option A3: Codification	+	+	=	=	-
Option A4: Framework of G&T rules	++	++	=	=	-

Table R.1.1: Contribution of comprehensive G&T rules to improving the supply of multi-territory licences for the online use of musical works.

The **codification of existing rules (option A3)** would contribute to achieving transparency and control over the activities of CS mainly by ensuring that existing rules are clearer and more easily enforced (by recourse to dispute resolution). However, it would fail to capture the more recently identified problems in relation to financial transparency and control of rightholders – which are feature of some more recent national legislation. Accordingly, while there would be some improvements in transparency and control, and in the handling of royalties, these would remain limited to general principles. Combining codification with different licensing options provides a further view of how the objective of ensuring sufficient transparency and control would be met:

1. The passport (option B2) would, on the one hand, bring more transparency on the income derived from online rights, by promoting rights management practices which account precisely revenue and costs at the level of individual works. However, the passport option would not bring further transparency as to how a society finances the costs of its online operations (i.e. whether from cross-subsidisation from other revenue streams, financial income, etc.). Lack of financial transparency would thus remain. Similarly, while the passport acknowledges that rightholders and societies should choose how best to licence online rights (i.e. by choosing the best passport society), it does not strengthen the ability of rightholder to control the decision of their collecting society.

2. Parallel direct licensing (option B3) would to some extent mitigate the limited scope of a codification exercise, by allowing rightholders to licence their rights in parallel to the CS. Thus lack of financial transparency and of rightholder control would only affect those online revenue streams that rightholders do not licence in parallel. In all likelihood, this would concern online services of lesser commercial importance, as well as rightholders who are not

sufficiently important economically to licence their rights directly. To some extent, the combination of codification with parallel direct licensing might thus seem more proportionate (than parallel direct licensing with a framework of G&T rules), as the benefits of imposing more stringent regulation would be limited to such cases. However, this would be at the cost of accepting that "small" rightholders and "small" services should be subject to less transparency and control.

3. Conversely, ECL/country of origin (option B4) would put more emphasis on the limited scope of codification. This is because the ECL/country of origin option, by giving societies a presumption that they can licence the rights of non-affiliated members, EU wide, raises the demands and expectations on collecting societies.

Compared to codification, a **framework of G&T rules (option A4)** would further improve the oversight of all rightholders over CS and guarantee a fair handling of collected royalties. Further, the options available in relation to multi-territory licensing are also likely to have an impact on the transparency and control of collecting societies.

1. The **passport** (Option B2) would improve transparency and the fair handling of revenues for all rightholders. This is because entities which come under the scope of the passport rules would have to provide a sophisticated and accurate level of transparency in the reporting and distribution of remuneration collected from online uses, in line with the demands of online licensing. This would complement the framework of G&T rules to give a full picture of the activities of CS, from their general financial activities (including their investments decisions) to the their online activities.

2. **Parallel direct licensing** (Option B3) does not provide any rules which would directly improve the transparency and control of rightholders, as it relies principally on allowing rightholders to license rights directly. Indirectly, it is possible that this option would give an incentive for societies to be more transparent in order to reduce the incentives for rightholders to license directly. It would also reduce the negative impacts for rightholders resulting from a possible deficient implementation of the G&T standards, as rightholders will not be tied exclusively to their society in the way they currently are.

3. The **Extended Collective Licensing ("ECL")/country of origin** (Option B4) would not, on its own, improve the transparency and control of rightholders over CS: this is because licensing would remain dependent on local societies, with no guarantee that such societies are transparent, well governed, and apply existing rules. In this sense, ECL/country of origin would increase the need for a G&T framework to improve the oversight and control of rightholders over societies granting ECLs in the country of origin of a service. However, the fact would remain that a local society in each respective territory would benefit from the extension effect, thus weakening the control of rightholders over the way their rights are licensed, and limiting the incentives for the local society to improve its services.

27.2. Improve the supply of multi-territory licences for online users

Objectives ►	Effectiveness	Efficiency

Policy Options ▼	Guarantee the application of G&T standards in CS	Guarantee transparent and fair handling of income by CS	Ensure legal certainty for users and licensors	Enhance the capability of licensors by ensuring they use licensing infrastructure fit for the online environment	Cost-effectiveness
Option B2 + framework of G&T rules	++	++	+	++	-
Option B3 + framework of G&T rules	+	+	+	+	=
Option B4 + framework of G&T rules	-	=	+	-	-

Table R.2.1: Comparison of multi-territory licensing options and comprehensive G&T rules.

Combined with the application of a G&T framework, the above analysis of impacts demonstrates that options based on the passport (Option B2) or based on parallel direct licensing (Option B3) are the most conducive to encouraging the emergence of competitive licensing infrastructures supplying multi-territory licences. The ECL/country of origin licences (Option B4), while not leading to such licensing structures, may improve (subject to opt-outs) legal certainty for some users.

Codification (option A3) or a framework of G&T rules (option A4) would also affect the way these options improve the supply of multi-territory licences, mainly because they would increase, the trust and confidence of rightholders in CS. Over time, this would reduce the incentives for rightholders to deliver multi-territory licences through other means than a collecting society. Some rightholders have indicated that they would be prepared to re-entrust some of their rights to CS, should there be appropriate levels of governance and transparency. This is more likely to be the case under option A4 than under option A3, as the latter would not deliver transparency in the financial activities of collecting societies, and would only marginally improve the ability of rightholders to control collecting societies.

The **passport** (Option B2) would essentially ensure that rightholders and societies choose the best licensing infrastructures to license their works on a multi-territory basis. This would be a market-driven aggregation process, with positive knock-on effects for online services and consumers. There would be improved legal certainty for users (dispute resolution available) and a clear framework for rightholders and societies to aggregate repertoire, including, if need be, on the basis of the right to "tag on" their repertoire to a passport entity. Rules on data-processing would set a clear and high benchmark for the quality of the services of collecting societies.

The main effect of combining codification with the passport would be to facilitate the unfettered freedom of rightholders to withdraw their rights or entrust them to another collecting society. This would potentially allow rightholders to “vote with their feet” more easily and withdraw their online rights from their collecting society if they feel that it is not adequately licensing their online rights, either themselves of through a passport society. However, it remains the case that codification would not directly improve financial transparency. This means that rightholders would not have a clear picture of the costs and decisions involved in licensing online rights. Codification would also only provide very

general principles applicable to the decision making process and representation of rightholders, which are unlikely to yield significant improvements in the ability of rightholders to better control and participate in the decisions of collecting societies.

Comprehensive G&T rules would contribute significantly to improving the effectiveness of the option. Rightholders would have a clear picture, including of the implications from a financial point of view, of whether their society should engage itself in licensing under passport rules, or choose to entrust their rights to a passport entity. Well governed and transparent societies would be able to reach the most appropriate solution for the licensing of their rights on a multi-territory basis in the interest of rightholders.

Parallel direct licensing (Option B3) would provide a clear framework for the emergence of flexible licensing structures delivering fast and timely licences. For consumers, this could lead to more online services launching faster. The main drawback of this option is the risk of a two-tier licensing infrastructure, with no guarantee that the lower tier could have access to the upper tier of licensing infrastructures (which would be fit for the online environment), nor indeed to the multi-territory market. This could be detrimental in particular to less commercially attractive repertoire (e.g. niche and local repertoire).

Codification (option A3) would not change the risk that parallel direct licensing leads to a two-tier licensing infrastructure, with niche and less commercially attractive repertoire being licensed by the "lower tier" of collecting societies. However, it would make it easier for rightholders to exercise their right to withdraw or to licence directly, as these rights would be clearly spelled out and could be enforced through dispute resolution.

Similarly, the addition of a G&T framework (option A4), while improving the trust and confidence of rightholders in collecting societies, is unlikely to change this fact. As a result, the breadth of repertoire available in new multi-territory online services would be reduced and cultural diversity could suffer.

ECL/country of origin (Option B4) would have positive effects on aggregation of repertoire only to the extent that rightholders do not opt out and will, to some degree, provide legal certainty for users. On the other hand, it is unlikely to lead to the development of licensing infrastructures fit for the online environment, as some societies might not have the resources or the incentives to adapt their licensing infrastructures.

Codification would again improve the ability of rightholders to opt-out of the ECL or indeed withdraw their rights entirely out of their collecting society. It would also allow rightholders the possibility of resolving conflicts with societies, including on opt-outs, in a more convenient, cost effective and timely manner than judicial proceedings. However, codification would not yield sufficient trust and confidence that rights can be safely left in a society granting ECL/country of origin licences, because it would not directly lead to improved transparency and control.

Comprehensive G&T rules, by increasing the trust and confidence of rightholders, might marginally reduce the opt-outs of rightholders and thus improve aggregation, although it is still likely that there would still be opt-outs from a number of societies by a significant number of rightholders and CS. It would also set high standards of governance and financial transparency that should be observed by societies granting ECL/country of origin licences.

28. ANNEX S: MONITORING INDICATORS

This section outlines, for each objective, the success criteria, their indicators and where the information could be gathered from.

28.1. Guarantee sufficient transparency and control over the activities of all collecting societies

28.1.1. Ensure transparency and control over collections and distributions

Success criteria	Indicators	Source of information
Access to documents and information as set out in the proposal.	Number of societies that grant access to such documents and information to the public and to their members.	Websites of collecting societies, surveys among rightholders and users.
Ability to influence key decisions.	Number of societies that transposed rules on rightholder involvement in the decision-making process including representation in the governance bodies. Number of disputes concerning these issues.	Review of societies documents, information from societies and national authorities, contacts with rightholders.

28.1.2. Guarantee distribution of collected royalties

Success criteria	Indicators	Source of information
Timely and efficient distribution of collected royalties (including via reciprocal representation agreements).	Number of societies that transposed rules on rights of rightholders to approve distribution schedules, separation of assets, accounting revenues and costs per revenue stream, prudential investment rules, etc. Royalties collected/royalties distributed ratio. Costs/revenue ratio. Amount of undistributed royalties per year. Time taken to distribute royalties. Number of disputes concerning these issues.	Annual accounts and auditor's report, review of societies documents, information from collecting societies and national authorities. Contacts with rightholders.

28.2. Improve multi-territory licensing for on-line use of musical works

28.2.1. Ensure the development of licensing infrastructures fit for the online environment

Success criteria	Indicators	Source of information
Availability of accurate databases recording rights ownership information	Ability to process electronic registration of works Ability to process work-share and multi-territory ownership information Availability of the databases to interested parties.	Passport entities, collecting societies or organisations administering such databases. Rightholders (registering their works and accessing the databases). Users
Electronic, accurate, timely invoicing of work-share basis	Reduction/avoidance of double invoices Use of IT tools in the reporting of uses and in the invoicing. Tools and procedures to resolve conflicts in ownership data.	Users, passport entities, other industry players providing IT solutions.
Accurate and timely distribution to rightholders	Accurate and timely reports to rightholders on works usage per territory.	Annual reports, accounts and auditor's reports of collecting societies, rightholders.

28.2.2. Ensure that all repertoire can be aggregated and licensed on a multi-territory basis

Success criteria	Indicators	Source of information
Availability of repertoire for multi-territory online licensing	Number of passport entities and breadth of repertoire available Whether part of the repertoire is still licensed on a territorial basis Number of societies tagging on their repertoire to a passport entity Increase in online services operating across the EU (indirect indicator)	Passport entities, collecting societies, rightholders, commercial users.

28.2.3. Ensure legal certainty for users and licensors

Success criteria	Indicators	Source of information
Legal certainty for the conditions of operation of entities licensing on a multi-territory basis	Compliance of licensing entities with passport and G&T rules.	Member States, national case law, passport entities, commercial users, rightholders.
Availability of arbitration mechanisms for multi-territory licences	Existence of arbitration mechanisms. Bringing of complaints, issues dealt with, results.	Passport entities, rightholders, commercial users.

29. ANNEX T – GLOSSARY

29.1. Legislative references

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, p.10. ("Copyright in the Information Society Directive")

Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 376, 27.12.2006, p. 28. ("Rental and Lending Directive")

Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L 272, 13.10.2001, p. 32. ("Resale Right Directive")

Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, 6.10.1993, p. 15. ("Satellite and Cable Directive")

Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version), OJ L 111, 5.5.2009, p. 16–22.

Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property right, OJ L 157, 30.4.2004, p. 45–86.

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, OJ L 77, 27.3.1996, p. 20–28.

Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version), OJ L 372, 27.12.2006, p. 12–18.

Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights, OJ L 265, 11.10.2011, p. 1-5.

29.2. Definitions

"**Creative industries**": they include services such as publishing activities (books, periodicals and software), motion pictures, video and television programme production, sound recording and music publishing activities, programming and broadcasting activities, computer programming, architectural and engineering services, advertising, design activities, photographic activities, translation and interpretation activities, creative, arts and entertainment activities.

"**Copyright and related rights**": copyright is vested in authors whereas related rights are vested in performers, phonogram (i.e. record) and film producers as well as broadcasting organisations. Copyright and related rights include so-called "economic rights" which enable rightholders to control (license) the use of their works and other protected subject matter (i.e. performances, phonograms, audiovisual productions and broadcasts) and to be remunerated

for their use. These rights normally take the form of exclusive rights and include (among others): the right to copy or otherwise reproduce any kind of work and other protected subject matter; the right to distribute copies to the public and the right to communicate to the public performances of such works and other protected subject matter. These rights are, to a large extent, harmonised at the EU level. They can be managed directly by the original rightholder (e.g. the author of a book) or by those to whom the rights have been transferred (e.g. a book publisher). They can also be managed collectively by a collecting society. Authors are also granted so called "moral rights" (these are normally not granted to rightholders protected by related rights though some legislations provide for moral rights for performers). Moral rights may include the right to decide on disclosure of the work; the right to claim authorship of the work and the right to object to any derogatory action in relation to the work. Moral rights are not harmonised at the EU level.

"**Work**": creative output of authors protected by copyright. It includes: literary (books, lyrics, etc.), dramatic (plays, opera librettos, etc.), musical and artistic (photography, painting, etc.) works.

"**Other protected subject matter**": output of holders of related rights i.e. performers, phonogram and film producers and broadcasting organisations.

"**Commercial users**": any person or entity involved in the provision of goods or services who for its activities needs a licence from rightholders of copyrights and/or related rights.

"**Collecting societies**": organisations traditionally set up by rightholders at national level and whose sole or main purpose is to manage copyright or related rights on their behalf.

"**Collective rights management**": means the provision of the following services: the grant of licences to commercial users, the auditing and monitoring of rights, the enforcement of copyright and related rights, the collection of royalties and the distribution of royalties to rightholders.

"**Repertoire**": the sum of the rights of all rightholders that a collecting society directly represents.

"**Reciprocal representation agreement**": bilateral agreements between collecting societies whereby one collecting society grants to another the right to represent its repertoire in the territory of the other. Thus, along with its own national repertoire, society A also obtains the right to license the repertoire of society B with which it has a bilateral arrangement. In the case of authors' rights in musical works, the reciprocal agreements are normally limited to the territories in which the societies operate.

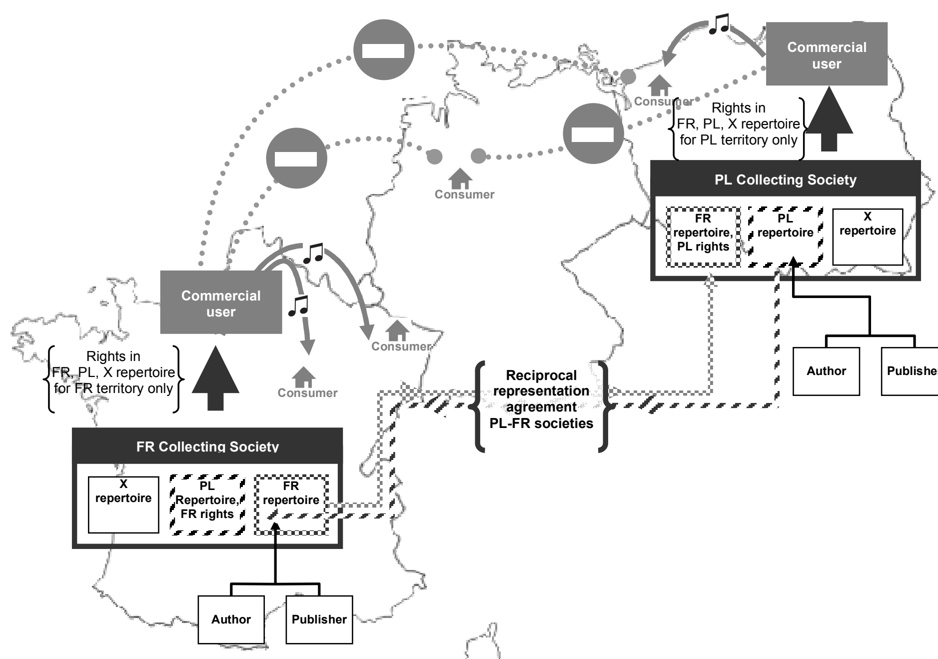

Table T.2.1: Simplified illustration of the functioning of a "traditional" reciprocal representation agreement for the licensing of musical works.

"**Reproduction right**": the right to authorise or prohibit direct or indirect, temporary or permanent reproductions of a work or other protected subject matter by any means and in any form, in whole or in part (Article 2 of Copyright in the Information Society Directive).

"**Distribution right**": the right to authorise or prohibit any form of distribution to the public of the original or copies of a work or other protected subject matter by sale or otherwise (Article 4 of Copyright in the Information Society Directive and Article 9 of the Rental and Lending Directive).

"**Right of communication to the public**": the right to authorise or prohibit any communication to the public of a work or other protected subject matter by wire or wireless means (includes acts such as broadcasting). Recognised as a broad exclusive right encompassing the making available right (see below) to authors (Article 3(1) of Copyright in the Information Society Directive); of a more limited scope for other rightholders (Article 8 of the Rental and Lending Directive).

"**Right of making available**": the right to authorise or prohibit the making available to the public of a work or other protected subject matter in such a way that members of the public may access them from a place and at a time individually chosen by them (Article 3 of Copyright in the Information Society Directive).

"**Rental and lending right**": the right to authorise or prohibit the rental or lending of the original or copies of a work or other protected subject matter (Article 3 of the Rental and Lending Directive).

"**Artists' resale right**": a right to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author provided that the resale involves as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art (Article 1 of the Resale Right Directive).

"**Mechanical rights**": term originally used to refer to the right to reproduce musical works in a physical music carrier such as a record or a CD. Also used now to refer to the right to reproduce a musical work for online uses. Mechanical rights are covered by the reproduction right.

"**Performance or performing rights**": term used to refer broadly to rights related to the "communication" of works (as opposed to physical distribution) by acts such as broadcasting on TV or radio, playing of music in places such as bars or concert halls, etc. Also used to refer to the making available of work or other protected subject matter in the Internet.

"**Blanket licence**": The expression is used to refer to licences which cover the entire repertoire represented by a collecting society.

"**Compulsory licence**": refers to a situation established by law for specific kinds of uses whereby the owner of the rights cannot oppose the granting of a licence but the licence fee shall still be agreed between the user and the rightholder or determined by a tribunal or other competent body.

"**Reprography copying**": a possible exception or limitation of the reproduction right in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects (Article 5(2)(a) of the Copyright in the Information Society Directive)

"**Private copying**": a possible exception or limitation of the reproduction right in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial (Article 5(2)(b) of the Copyright in the Information Society Directive).

"**Anglo-American repertoire**": industry jargon for musical works registered by their authors with the collecting societies in the U.S. and the United Kingdom or originating from the U.S. and the United Kingdom.

"**Continental repertoire**": industry jargon for musical works registered by their authors with the collecting societies in continental Europe or originating from continental Europe.

"**Music publisher**": music publishers market musical works and provide authors with a number of other services. Publishers usually track various royalty payments, monitor uses and license certain uses on behalf of authors. They often pay the author an advance on royalties and promote the work, e.g. by creating "demo" recordings or finding performers and record producers which might be interested in the work. In return, publishers obtain a share of royalties from rights and/or a transfer of certain rights e.g. mechanical rights (see Annex J, table J.3, for an illustration of the revenue streams of publishers).

"**Record producer**" (also referred to as "phonogram producer): record producers take the initiative and arrange the recording of music performances as well as the marketing and distribution of those recordings.