

INTRODUCTION

I would like to thank you on behalf of ICMP/CIEM for your invitation to the CISAC European Committee meeting today in Zagreb.

My name is Jenny Vacher. I am General Counsel for ICMP/CIEM, which is the global trade association for music publishing worldwide, in Europe and North America, and also in Latin America, Asia and Africa, for both independents and majors.

Music publishers in Central and Eastern Europe were pleased to welcome Mitko Chatalbashev a few months ago at the Conference which they organized in Ljubljana. This was the publishers' third conference in the region and a token of their youth and of their energy.

Today, as requested, I will share with CISAC and its member-societies a few of the thoughts of music publishers in respect to Central and Eastern Europe, since the focus of this Committee is not on Western Europe, but rather on the nine Central and thirteen Eastern European countries (including Turkey).

With all the political changes over the past years, the region is in a phase of great change and it is exciting to have an opportunity to contribute with the CISAC members to the process of enhancing the creators' rights and to the normalization of the market. My apologies to those of you who do not deal in music rights, since this will be the focus of my remarks this morning.

Before turning to my subject, I should like to begin with an introductory remark. The composers and lyricists, the music publishers and the societies are all united as regards the fundamentals of copyright. I have just come in from Geneva, where a WIPO

conference on a development agenda for copyright is being discussed by governments. Brazil and Argentina, with the support of the so-called “Friends of Development” are requiring that WIPO no longer act as supporter of the rights holders-community, but rather engage in an assessment of the needs of consumers and of developing countries with a view to re-evaluate the level of copyright protection outside Europe and North America.

ICMP/CIEM is fighting for the same values as CISAC:

- calling for the acknowledgement of exclusive copyright,
- fighting against the threats to weaken it, and
- supporting appropriate enforcement.

Now together, we will need to go a step further having to justify that copyright is not just a “must” in and of itself, but that there is a legitimate “raison d'être” behind it; the underlying need for the creators and their music publishers (in many cases, just small and medium-size enterprises) to rely on an exclusive copyright to adequately protect and value the intangible assets constituted by the musical works, i.e. the notes and the words.

All of this, because I would like to re-state that the ultimate goals of the creators, the music publishers and the societies are the same : “respect the value of music”.

The work of the societies, members of CISAC, in helping achieve this is much appreciated by music publishers. It is the *sine qua non* of the music publishers' business.

This brings me to my subject of today, music publishing in the region.

MY PROPOSAL IS THAT SOCIETIES SHOULD LEARN HOW TO WORK TOGETHER WITH MUSIC PUBLISHERS RECOGNISING NOT ONLY THAT THEY ARE CREDIBLE PARTNERS, BUT ALSO THAT THEY ARE PART OF THE CREATIVE COMMUNITY.

After having read some of the papers prepared for you by CISAC, I can appreciate that this proposal might raise some doubt. However, my message is based on a pragmatic approach to a market which has changed, where the users have changed, where the balance between rights holders has changed, where uses have changed, and where the commercial and political environment are modified; all of this requiring some level of reform within the societies in trust with the composers, lyricists and with the music publishers, who together have the ability to help develop markets which have great potential.

THERE ARE THREE CLARIFICATIONS THAT I WOULD LIKE TO MAKE IN SUPPORT OF THIS PROPOSAL.

I. First and foremost, it is not acceptable that some, by definition, qualify music publishers as users.

This starts the dialogue on a bad footing. To the contrary, music publishers are copyright holders through the publishing agreements which they sign with the composers and the lyricists. They may either hold the copyrights (like the mechanical right directly held by the anglo-american publishers and their network of sub-publishers in Europe) or share into the copyrights with the authors, depending on the copyright law applicable to the publishing agreement and on the rights in question.

In brief, through contract, music publishers have a vested interest in the copyright and share with the composers and lyricists the ultimate goal to bring the work to the market. It is the publishers' contractual duty to the creators to bring it to the market at the highest possible value.

It is true that in certain cases, music publishers may be associated, through the hazards of corporate re-structuring, with users' interests within large corporate groups (sometimes "indies" will also bear several hats, just as some composers and lyricists may also do so). Moreso, you might argue that in this region there is still some confusion between the publishing and the industry because the publishing market is only emerging and the same individuals have different roles. With the maturing of the markets and of the people, this factual confusion should disappear. The core point is that notwithstanding these extraneous considerations, the publisher in and of himself has a vested interest in the musical works along with the creators to whom they have a contractual commitment to report and deliver. A professional approach must be taken by all in order to build a partnership which strengthens the revenue streams in the musical works.

This is my point about music publishers as rights holders, which leads to the following proposal. As rights holders, music publishers should be admitted as members of each and all of the societies which collect and distribute on their behalf. This relates back to a principle, which is well-acknowledged in the European Union, that of non-discrimination.

II. A second point for clarification relates to the role of the music publishers.

Music publishers are the bridge between the worlds of creation and commerce. As Ralph Peer, Chairman of ICMP/CIEM, said at the CISAC Congress in London in 2003:

"It is not always an easy road to hoe, but one that is useful and necessary in encouraging and disseminating the intellectual and artistic realisation called music. A music publisher takes risks and is certainly a champion of the songs she or he represents. The music publisher as an entrepreneur is highly motivated to achieve success for its composers and lyricists. This motivation inures to their direct benefit since their success is tied in to that of their publisher.

Composers and lyricists rely on their publishers for guidance in their professional development, and for marketing, administrative and financial support. As novel products and exotic distribution channels come online, music publishers support their composers by adapting and packaging songs to reach these new markets. Publishers are uniquely placed to pursue the internationalisation of songs both through exploitation of the original creation and working with local writers to create foreign adaptations. Publishers take commercial risks to nourish and support composers and it often takes time before their music is brought to the public and any revenue is generated. Many of those risks do not pay off. One hit will cover for many unknown projects.”

Contrary to what some may think, there were publishing houses in Central Europe, which of course disappeared or moved out of the region a long time ago for obvious reasons. Now, with the reversed political trend, music publishing is developing again. Although the market is far from mature, progress is being made. Building good staff, investing in flexible computer systems and working with local writers are some of the focuses of the music publishers throughout the region. There are success stories which give comfort to all those who believe that Central and Eastern Europe have a big potential for music creation and publishing. The statement that historically music publishers do not have their niche in the region is nonsense. The liberalization of the region and the setting up of secure revenue streams are prerequisites to the developing of music publishing as a creative and cultural business.

Domestic success stories! With the support of publishers, the O-Zone band from Moldavia succeeded in Romania, with the song Dragostea Din Tei which is a huge hit. Other domestic songs are promoted by bands with the support of publishers in Hungary and Poland. Music licensing in film is another example of success with the movie Kontroll (an indie production). All the writers and performers of the music have made it internationally thanks to this film. The soundtrack is a huge success thanks to publishers’ support. Publishers with international coverage are organising song-

writing collaboration teams throughout the region promoting the writing of songs and then of course the songs themselves. Synch. deals for advertisements have also contributed to the growth of the market (with Tchibo Cafe, for example). All of this adds on to the successes which you, the societies, have achieved in Poland, in Hungary and in the Czech Republic in securing blanket licenses with private TV and radio stations.

For all these reasons, music publishers as creative and cultural businesses, require respect and recognition for their contribution to the creation and dissemination of music in the best interest of the writers just as societies are the *sine qua non* to the publishers' business.

As entrepreneurs that carry the weight of the monetary investment in musical creation and dissemination, music publishers have a legitimate interest in their business interface with collecting societies. Commitments by societies to their member-writers and publishers are a legitimate expectation.

These should include fiduciary accountability, transparency, particularly in respect to the deductions which are applied, to the distribution processes (including the distribution of the private copying levies) and to the suspense accounts (which are reported to constitute a major issue). Efficiency is also expected, for example, in improving the treatment of so-called unclaimed titles, in applying standard European tax rules, such as the VAT rules, and in complying with international registration processes and common information systems.

Partnership should build up through institutionalized representation of publishers within societies, with a fair share in the votes and on the boards and other executive committees, for music rights as a whole and for music publishers among the music rights holders. A minimum level of representation on the boards should be at least one-third, such as at GEMA where a collegiate system is in place, while a ratio reaching fifty percent would seem fairer, such as at PRS. Among the publishers,

adequate checks and balances should allow a fair representation of the independent publishers while appropriate room should be given to the group of major publishers in order to preserve diversity and to provide national and international business expertise to the societies.

Particular attention should be given to the non-domestic repertoire. Indeed, there is an important proportion of international repertoire listened to in the region (see the 2004 Report by Cap Gemini sponsored by BUMA-STEMRA). The international repertoire has specific needs which must be addressed as the registration and documentation resources are often not up to the required standards. Sometimes the legislative environment also needs to be changed, for example when there are heavy tax withholdings on outbound royalties. Solutions should be worked out, preferably in coordination with the music publishers who have the contractual responsibility to ensure good administration for the writers. In addition, the larger societies in Europe might have the ability to help in providing the access to the documentation as well as the required administrative support. This would seem preferable to having huge investments made into creating new software and/or multiple databases throughout so many territories. Cost efficient solutions should be sought. While national standards of licensing and tariffs and possibly also national procedures for distribution and royalties would be maintained, it would equally be possible to eliminate national registration of copyrights and national maintenance of complex and expensive data. The savings could considerably increase the distributions which in turn are the source for capital investment in new talent.

Societies should act with publishers in the protection and administration of copyrights. If publishers in certain instances have a better ability to do so, they should be permitted to deliver. It should be a partnership between the societies and publishers, not a set of antagonistic acts.

III. My third and last point relates to the fact that the music publishing business relies on collective management, but it must be on a voluntary basis.

If you look at other lines of publishing in other sectors, you will notice that in most cases they rely primarily on individual rights management while this is not the case in the music area.

To the question whether music publishers need collective management, the answer is yes. And the societies need to be strong. In order to do so, they must be perceived as equitable and assuring high standards of integrity.

However, the rightsholder must be skilled to know when to apply collective management and when not to do so. The proper direction is dependent upon the national, legal, legislative, cultural and commercial environment.

It is the duty of all custodians of rights to be informed of the opportunities and threats presented in the current environment and to make decisions on collective management for the purpose of maximizing the benefits to the composers and the lyricists they represent. The statutes of the societies must allow this flexibility.

CONCLUSION

In conclusion, I would like to reiterate the offer by publishers to build partnerships with you, the societies.

At the international level, coordination has begun between GESAC, CISAC and ICMP/CIEM in several respects, legislative, such as the joint letter sent by all three organizations to the European Commission and the Czech Republic in respect to the negative changes recently brought to the Czech copyright law, administrative, such as the international harmonization in respect to the CWR, the registration of agreements, and the registration of cue sheets.

Some of the countries of Central and Eastern Europe are already in the European Union. Within the Union, there are principles which already apply, such as the freedom of contract, the right to assign ones' rights, non-discrimination of foreign rights holders, which should constitute a basis for making certain improvements. Admittedly, to date there is only limited legislation in respect to collective rights' management, but this should not exclude the option for publishers and societies to initiate discussions in order to find a better way to work together through voluntary steps taken on both sides.

As regards, the rest of the region outside the Union, music publishers, as the markets mature, will be looking to work with you, the societies, as partners on these same issues, of governance, administration, and cost efficiency.
