

“Music is a moral law. It gives soul to the universe, wings to the mind, flight to the imagination and charm and gaiety to life and everything.”

Plato, 428 BC-348 BC

**AN OPINION ON MUSIC PUBLISHING AND THE ASSIGNMENT OF RIGHTS TO A COLLECTION SOCIETY
IN AN “OPTION 3” EUROPE**

Contributed by MPA UK

The business of music publishing is first and foremost a partnership between a publisher and a songwriter or composer. This partnership is of course subject to a contractual agreement, but it is founded upon a relationship of trust.

It is of course true to say that publishers are motivated by a desire to make a profit – they owe a duty to their writers to maximise revenues and they endeavour to make a margin so that they can make further investment in the brightest new musical talent. Publishers’ agreements with song writers are negotiated in a fiercely competitive environment with the opportunity for writers to have experienced legal representation. Writers can choose between hundreds of different publishers or elect to self-publish. Contrast this with the exclusive, non-negotiable membership agreements which writers are required to sign with the national collection societies.

The European Commission in the RTL/CISAC case has specifically required Performing Rights Organisations (PROs) to remove obstacles, to enable writers to move from one PRO to another, either as to all their rights or itemised rights as defined in the so called GEMA categories. After all, the rights owner in a musical work is initially and ultimately the writer – not a collection society nor indeed a publisher – and it is for the writer to decide how they want to assign and license their rights. Generally, and in principle why should any person in Europe be obliged to assign (that is, to give up) their rights exclusively to a PRO for no consideration in order to become a member of such organisation?

There is a longstanding tradition in the United States of a non-exclusive grant of performing rights where both writer/publisher and the PROs all hold the rights non-exclusively. Therefore the writer/publisher can already exercise these valuable rights in Europe outside the PRO network if they so wish – but significantly, have not chosen to do so. There hasn’t been a scramble for these rights among publishers, as some envisage, nor any diminution of the value of these rights as a result of the publisher holding them non-exclusively. Instead US writers benefit from the flexibility of their rights being available so that licensing of the performing right in US repertoire can be carried out in the most streamlined way possible following the mechanical right.

Furthermore all MPA publishers support the principle enshrined in the 2005 Recommendation of the European Commission that rights owners have the choice to appoint a collective rights manager for the online use of their musical works across the entire EU (known as “Option 3”). Driving this Recommendation was the need to provide a simplified licensing framework in order to support the growth of the new online music services. At the request of the users, and because the collection societies were insisting on national licensing only in a single market, the Commission looked into the issue of pan-European licensing and came down in favour of Option 3. The Commission stepped in and publishers stepped up to meet the users’ needs. The result, brought about to some extent by the failure of the societies, provides for greater ease of licensing whilst upholding the value of copyright works, benefitting writers, publishers and music users alike.

The MPA represents the broad church of UK publishers, large and small. All of our members value and support collective rights management and the business of PROs in particular. Our philosophical support for the idea of the collective does not necessarily commit us to support individually each and every part of the current collective rights management architecture in Europe and beyond. The critical issue for all publishers (and the writers whom they have the honour to represent and publish) is about the structure of PRO management in Europe and its fitness and flexibility for digital purpose. The structure comprises 27 branches each rooted in its respective territory, jealously guarding their customs, their governance, their unique IT and data management systems, their idiosyncratic and unaudited licensing and distribution and accounting policies. How many 100s of millions of Euros could be saved in back office costs for the benefit of writers and publishers if this crumbling edifice were overhauled?

All publishers need the expertise of an efficient and cost conscious PRO to help them do better business, particularly across Europe directly, B to B, and notBBBBBB to B. Who should be at the forefront of pan-European licensing? The society that is most fit and flexible for purpose. And what should it be doing?

- Building partnerships with other European partners to reduce and share backoffice costs.
 - Indirectly enabling other PROs to grant pan-European licences by ensuring that the mechanical right and performing right are licensed together to online music services.
 - Directly representing publishers as agent in granting pan-European licences to online music services.
- This is achieved by rendering their existing national sub-publishing arrangements non-exclusive and appointing the chosen society as non-exclusive agent for pan-European licensing of the mechanical rights to sit alongside the performing rights which the society already controls.

The MPA and its member publishers will continue to push for greater efficiency, flexibility, transparency and accountability within the collective rights management structure in Europe, and all of the benefits won will be shared with writers. We must do more and better business, based on flexibility and choice for all rights owners.

Comments to this opinion can be made by email to anne-sophie.duchene@icmp-ciem.org for publication in the next issue of Global Briefing.

North America

US Secretary of Commerce Gary Locke hits out against internet piracy

In a conference on music piracy given at Belmont University in Nashville, Tennessee, between members of government and local music business leaders, US Secretary of Commerce Gary Locke has hit out against internet piracy. Locke mentioned how music sales had diminished in some places by over two-thirds and how songwriters were being denied making an honest living through piracy, emphasising how the current system is clearly not working. He said the Obama administration would be coming down hard on transgressors and he vowed to eliminate the mentality of illegally downloading just because it is convenient. Locke was in Nashville touring Music Row while addressing the conference on intellectual property enforcement. He added that the Commerce Department would shortly implement a thorough policy on copyright protection.

CMPA concerned that Music publishers face direct financial attack under new Copyright Act provisions

The Canadian Music Publishers Association is voicing concern that the government's latest attempt to modernize the Copyright Act, C-32, falls well short of striking a balance between creators and users of copyrighted content. It points out that in its current form the legislation contains a number of new or expanded "user rights" which could ultimately be harmful to music publishers.

The proposed deletion of subsection 30.9 (6) would eliminate the current obligation of broadcasters to pay for copies made for the purpose of broadcasting, either through the Commercial Radio Tariff or the Broadcast Mechanical Tariff. The introduction of format shifting and music reproduction allowances in the legislation is another concern as payments currently received under the levy are expected to significantly decline as the leviable media becomes obsolete. The association says attempts to correct problems in some areas have led to "unintended consequences" which could have negative impacts on the music publishing community. The expansion of fair dealing provisions to include three new "allowable purposes" (parody, satire and education) is a concern and could lead to a loss of revenue.

The provision to allow for a proposed exemption for user-generated content (UGC) for non-commercial purposes is also problematic as rights-holders will need to establish that the use of their work has a substantial adverse effect on their existing or potential market. In its current form, CMPA believes that C-32 does not meet Canada's international obligations to ratify the WIPO Copyright Treaty or under the Berne Convention.

"Canada is currently participating in the ACTA discussion about protecting copyright and intellectual property," CMPA points out. "While a finished agreement from these talks is still in the future, all indications thus far present far stronger provisions for ISP liability than what is to be found in C-32, with consideration being given to strong notice and take-down provisions."

NMPA praises court action in ordering LiveUniverse to close unlicensed lyric sites

The National Music Publishers Association has praised the action taken by the Federal Court of the Central District of California this August in ordering the shutdown of the four LiveUniverse lyrics websites within 48 hours.

President and CEO David Israelite commented: "The Court's action is consistent with copyright law and precedent, and should serve as a reminder to web operators who attempt to profit from copyrighted works without a license. Such activity will not be tolerated. Licenses are available from multiple sources and the legal marketplace is thriving. There is simply no excuse to fail to license music content."

The judge ordered that the four sites – lyricsdownload.com; completealbumlyrics.com; lyricsandsongs.com and allthlyrics.com – should be shutdown until all infringing material was removed and verified by the court. Failure to do so would incur sanctions of \$100,000 against each.

Brussels

ICMP thanked by Commission for its support in highlighting counterfeiting

ICMP has received thanks from DG Internal Markets and Services for its support in the 'REAL Fake' competition for EU Schools as part of the promotion of the new EU Observatory on Counterfeiting and Piracy. The competition was part of the EU's initiative to raise awareness among children and citizens on the issue of counterfeiting and piracy.

ICMP took part in the awards ceremony in the European Parliament in June. Chair Nicolas Galibert and Ger Hatton were accompanied by French singer and song writer Alain Chamfort and met with Commissioner Michel Barnier, who of course was familiar with Alain chamfort's music and welcomed his involvement.

“We were delighted to be a part of the event and meet with Commissioner Barnier,” said Nicolas Galibert. “The Commissions’ letter of thanks was much appreciated and we are committed to working with them in stamping out counterfeiting and piracy which threaten our industry and the whole European economy.”

Single Market Act – including online digital content - to be published on 6 October

The European Commission is preparing a Single Market Act based on the Monti Report of earlier this year (*Global Briefing of 25th May*). Seen as a blueprint for revitalizing the Single Market, the Act will contain some 30 proposals including new legislation in areas such as taxation, counterfeiting and support for jobs and growth.

In particular it will look to facilitate pan-European content licensing with development of EU-wide copyright rules and a framework for digital rights management. It will also address issues such as levies, cross-border licensing, transparency of collective rights management and a framework for orphan works. Key recommendations include proposals for an EU copyright law, including an EU framework for copyright clearance and management; and proposals for a legal framework for EU-wide online broadcasting. Internal Market Commissioner Michel Barnier has chaired a subgroup of nine European Commissioners in preparing the Act which is expected to be implemented in 2012.

Europe

IRELAND

Music industry was ‘the canary in the coalmine’ claims IRMA boss

The chair of the Irish Recorded Music Association (IRMA), Willie Kavanagh, has hit back at an article in The Irish Times which suggested that the music industry was a ‘ship of fools’ that had done nothing to adapt to the digital era.

In a strongly worded Opinion Kavanagh points to numerous inaccuracies in the original article by Brian Boyd, and argues the case for a fair reward for artists that will protect and promote creativity.

"It is more accurate to say the industry was the 'canary in the coalmine' when it came to development of the digital economy," writes Kavanagh. "The problems it has experienced are now being visited upon the book, film, games and software industries. Those businesses are looking at how the music industry adapted, and are joining with it to call on governments to ensure that the internet is not a "wild west" where creators' rights are trampled underfoot."

FRANCE

Anti-Piracy information campaign launched in France

HADOPI, the body in charge of regulating France’s new ‘three-strikes’ scheme, has distributed over half a million leaflets to motorists returning from holiday over the past two weekends. Part of a campaign to explain how the regime works - from warning letters through to the disconnection of internet access – the leaflets detail how the law is intended to protect the rights of authors and stress that Wi-Fi connections must be secured.

While there is no confirmed date for the first infringement warning letters to be sent it is understood that HADOPI's rights protection committee is already at work, and Secretary General Eric Walter has intimated that it could be imminently. Press speculation continues to abound as to the precise working of the regulation – such as whether spyware has been rolled out; what criteria are taken to prove sufficient precaution is taken against hackers; and indeed how the government plans to foot the bill for the scheme.

SWEDEN

Ennio Morricone and Björk awarded 2010 Polar Music Prize

Italian conductor and composer Ennio Morricone and Icelandic artist Björk have been named as this year's Polar Music Prize laureates. Each received their prize of one million Swedish kroner (€108,000) from His Majesty the King of Sweden, accompanied by Her Majesty the Queen HRH Crown Princess Victoria and HRH Prince Daniel. In its 19th year, the televised ceremony was held at the Stockholm concert hall and attended by a host of celebrity guests from the Swedish government and the world of arts and culture. Citations were read by actor Stellan Skargård and Björk's father, Gudmundur Gunnarsson, and the ceremony included performances by Robyn, Barbara Hendricks, Ane Brun and Wildbirds and Peacedrums. The Royal Stockholm Philharmonic Orchestra conducted by Hans Ek also performed.

National and Members News

Peter Hebbes on taking over from Mark Callaghan at AMPAL gave an interview to Australia's The Music Network which we reproduce in part here

New General Manager of the Australasian Music Publishers Association (AMPAL), Peter Hebbes sees the protection of music and writers in today's digital era as a key challenge. He believes that music publishing needs to be better understood and has set up a series of meetings with federal and state government departments as well as with other copyright associations in a bid to combine mutual interests and pool resources in promoting copyright protection, ownership and usage.

Hebbes cites Canada as setting a good example of how to do business in the digital era and regards the creation of new income streams and ensuring that they are user friendly, as a priority. He recognizes that third party uses such as Film, TV and advertising has been a significant growth area and intends to concentrate on working with artists and commercial users.

"The use of music is an important factor in the communication industry and we want to encourage that, provided that they pay for it" Hebbes commented.

Korean MCA plans for royalty distribution breach international rules

Plans by the Korean Music Copyright Association (KOMCA) to introduce a so-called 'Bonus point' system for royalty distribution of Korean domestic works are being challenged by the Korean Music publishers association who regard them as a breach of CISAC rules and detrimental to the promotion of cultural diversity.

Both KMPA and ICMP have called for the policy to be rejected, raising concerns that it is contrary to article 19 of the CISAC Professional Rules which states that societies shall not unjustifiably discriminate between creators and publishers or sister societies. It also violates article 5.1 of the Bern Convention of which Korea is a signatory, and under which authors enjoy the same rights as nationals.

Other news

Eagles singer wins copyright lawsuit against politician

Don Henley of the Eagles has won his lawsuit against California Republican Chuck DeVore for illegally using parts of Eagles songs in his, ultimately unsuccessful, campaign for the US Senate earlier this year.

The court ruled that Devore and his employee Justin Hart should have sought the appropriate licence before using the copyrighted musical works of Henley, Mike Campbell and Danny Kortchmar in videos placed on YouTube. The two men issued an apology and were ordered to pay an undisclosed sum as part of the settlement.

Film studios mount joint effort to stop pirate movie sites

Disney and Warner Bros are suing Triton Media in a bid to halt advertising on websites that carry links to pirated movies. The companies filed a complaint in the US District Court in California last month claiming that Triton committed contributory copyright infringement and induced infringement through their advertising. The move marks a new development in the fight against piracy with the studios naming a series of sites, all enabled by Triton which they say provide users with access to unlawfully reproduced content. Instead of suing the sites individually, they have targeted Triton as facilitators.

Survey finds streaming reduces incidence of filesharing

A poll undertaken for the Norwegian music service Aspiro has found that 54% of people who use streamed services no longer illegally download music. The survey, undertaken by Norstat found that over 30% of Norwegians now stream music with 68% claiming to be playing more music as a result. The findings are in line with a Money Supermarket poll last year which revealed that two thirds of people using Spotify had either stopped illegal downloading or did it much less frequently.

Upcoming meetings and events

ICMP:

Central and Eastern European Music Publishers Congress (CEEMPC) on 16 September in Riga, Latvia

Next ICMP Board call: 20 September 2010, 17:00 CET

Next ICMP Board meeting, 8-9 November, Dubai, UAE

OTHER:

WIPO International Copyright Forum, 18-19 November 2010, Beijing, China

Save-the-Date 7 & 8 June 2011: CISAC World Copyright Summit in Brussels

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