

Key feedback to the EU Commission CRM Directive Proposal on collective management of copyright and related rights and on multi-territorial licensing of musical works for digital music services COM(2012) 372/2:

The EU Commission Proposal for the CRM Directive sets forth important principles to ensure that collecting societies administer the rights and represent the interests of their members in an efficient and proper manner and to help further multi-territorial licensing of musical works for digital music services. We consider the criteria below should be retained and/or enhanced in the CRM Directive so that creators, consumers, collecting societies and online music service providers benefit from new and innovative digital offers and business models on a multi-territorial basis and Europe's unique cultural diversity continues to thrive:

- 1. Ensure commercial flexibility and market principles:** Royalty rates for digital music services should be negotiated between the collecting society and the online music service provider on the basis of market principles in order to encourage investment in innovation and experimentation of new business models.
***Recommendation:** (a) replace the entire 3rd paragraph of Article 15, section 2 (including the reference "right to compensation") with wording stating "The collecting society shall negotiate, in accordance with commercial principles, with the user the amounts due, notwithstanding any national law or other practice", so that national laws cannot establish the amounts payable for rights for digital music services or otherwise create distortions in the market, and (b) strengthen Article 32 for the purpose of promoting commercial licensing by extending the referenced period from "three years" to "five years" to assist the transition to commercial licensing. In addition, Article 30 ensures that rights holders have the opportunity to grant multi-territorial licenses in the event their collecting society does not do so, and Article 5 sections 2 and 3 provide protections and flexibility to rights holders by enabling them to select and revise the collecting society of their choice.*
- 2. Prevent over-aggregation of repertoires:** In order to create a commercial market with multiple licensors of musical works (e.g. 6 – 10 licenses for all musical works in all EU Member States), the number of repertoires which a collecting society may represent, directly or indirectly, on a multi-territorial basis should be limited.
***Recommendation:** insert in Articles 28 and 29 that each collecting society may represent the repertoires of the collecting societies of no more than one-third of the EU Member States, i.e. no more than 9 EU collecting societies (including itself) of the current 27 EU Member States. It is important, for the purpose of avoiding/limiting potential monopolistic distortions, to prohibit the creation of one or a few EU "one-stop shops" licensing all or most of the musical works to online music service providers, and the "one-third" limit would ensure that collecting societies have choice and flexibility as to who may represent their works.*
- 3. License the reproduction right and the communication right together:** A functioning digital market should ensure against further complexities by avoiding the splitting of certain rights.
***Recommendation:** add to Article 22, section 2, a criterion in paragraph (f) for multi-territorial licensing stating: "the ability to offer both the reproduction (mechanical) and the communication (performance) right in the digital musical works it seeks to license by means of multi-territorial licenses".*
- 4. Manage the multi-territorial licenses in an effective manner:** Multi-territorial licensing brings administrative challenges due to the quantity of data which must be obtained from authoritative sources and processed accurately and promptly. We consider the conditions in Article 22, section 2, to be appropriate, and we encourage the use of international industry standards for formats for reports and invoices, as well as a single authoritative database (e.g. the proposed GRD or Global Repertoire Database) collecting data from appropriate sources and/or linking multiple databases, which could be the source for providing or making available data relating to repertoire works (Article 23, section 1) to existing or potential online music service providers.

RELEVANT DATA:

We estimate that, based on a sample benchmark of the US digital music market in 2009 and per capita spending on digital music in the US and Japan, the European digital music sector, estimated conservatively, could have reached a value in 2009 of one to three billion Euros greater (i.e. over 100-330% larger) than what we estimate it to be.

In our view the two prevailing reasons for the shortfall are (1) the non-existence of a Digital Single Market and (2) the inability of the society-led licensing regime to accommodate new services and innovation through bespoke licensing arrangements.

COMPARISON BETWEEN THE EUROPEAN DIGITAL MUSIC MARKET AND THE USA

	EU	US	EU as percent of US
Population	501 million	310 million	162%
GDP	EUR 12,8 trillion	EUR 11,1 trillion	115%
Digital Music Market	EUR 900 million	EUR 2,7 billion	33%
Digital percentage of the Recorded Music Market	13%	43%	30%

- The EU market is substantially larger than the US market in terms of population and overall economic output, whereas the EU digital music market, in our estimate, is approximately one-third of the US market.
- This deficit, in our view, cannot be explained by levels of broadband penetration or other technical factors including piracy.

COMPARISON OF PER CAPITA SPEND ON DIGITAL MUSIC IN KEY TERRITORIES

	EU	USA	JAPAN	UK	FRANCE	GERMANY	SPAIN	ITALY
2009 per capita spend on digital music	€1,80	€8,60	€8,05	€5,15	€2,30	€2,05	€0,70	€0,57

- The disparities in per capita spend on digital music also highlight that **developed markets without market-distorting private copy claims have higher digital music spends (USA, Japan, UK, Australia), as**

well as robust creative industries (e.g. the UK Government estimates that 2 million persons are employed by the UK creative industries¹).

New Creation

The 2010 report from SNEP (France's recorded-music trade association) contains figures relating to declining investment and production of French recordings. SNEP reports (<http://proxy.siteo.com.s3.amazonaws.com/disqueenfrance.siteo.com/file/final2web-guideecomusic2010.pdf>) that from 2002 to 2009:

- the annual number of French music albums released fell over 61%;
- annual French music-industry investments in promotion and marketing fell 56%;
- the annual number of new French artists signed to recording contracts fell nearly 60% (based on data on pp14-16 of the report provided by four major labels).

RECORDED MUSIC INDUSTRY: DIGITAL REVENUE AS A PERCENTAGE OF PHYSICAL REVENUE 2009

COUNTRY	PERCENTAGE	WORLD RANK FOR ALL RECORDED MUSIC
USA	78,2%	1
JAPAN	32,4%	2
SOUTH KOREA	122,2%	15
EU MEMBER STATES		
UK	26,0%	3
GERMANY	11,8%	4
FRANCE*	18,2%	5
BELGIUM*	11,4%	13
AUSTRIA	12,5%	14
CZECH REP*	4,4%	36
HUNGARY	5,1%	38
SLOVAKIA	6,5%	46

* This country's digital music market decreased in economic value from 2008-2009

¹ The UK Government's Department for Culture, Media and Sport also states "Employment in the sector [of the creative industries] has grown at double the rate of the economy as a whole" (http://www.culture.gov.uk/what_we_do/creative_industries/default.aspx).