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**Hearing on the Governance of Collective Rights Management in the EU
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Panel 3 – Relationship between Collective Rights Managers and Commercial Users

Véronique Desbrosses' speech

While I shall be talking mainly about management of music copyright, some of what I will say also applies to other repertoires represented by GESAC, such as audiovisual, the visual arts, etc.

In the digital society, as with more traditional uses, collective management societies play a key role in **simplifying the conditions for authorising the use of copyrighted works**. Through a limited number of licenses, users get legally certain and non-discriminatory permission to use millions of works.

Authors' societies deal with hundreds of thousands of users of all kinds, and in 2007 collected in the EU alone more than 4 billion euros, paid out to over 3 million rights owners worldwide, including 600,000 in Europe.

Their activities are strictly regulated and controlled both nationally and at EU level, not least through the application of the competition rules. Besides these, **dispute resolution** systems enable users to challenge the rates and conditions of clearances granted.

Collective management societies also carry on their activities in **voluntary compliance** with professional management quality assurance rules.

GESAC's member societies are fully committed to transparency of **relevant information on pricing and conditions for licensing the use of works**. Of course, this openness has to be adapted to market structures, for each type of use and situation. There are cases of specific services, say, where rates result from commercial contract negotiations between two parties, and a degree of confidentiality – at the user's own request - may be required.

Some information, by contrast, is entirely divorced from business negotiations. Such is the case with **management costs or cultural and social deductions** that relate exclusively to relations between the management society and rights holders. These deductions are a charge on rights holders' remuneration, and it is therefore a matter for them to set the rules and

require full transparency from their society. What the authors' society and user negotiate on is the value of the repertoire for a particular purpose, and the use to which the fees collected are put has no bearing on the scale of charges. Nevertheless, information on administrative charges and cultural or social deductions are publicly available on authors' societies' websites.

It must be stressed that **transparency is also required of users**, who have to be able to provide authors' societies with the information needed to do their job. For example, where the scale of charges is based on the user's receipts, it must be possible to verify the amount of receipts, which cannot always be done because of some users' lack of transparency. Users also have to be able to provide information on the use made of works, which is essential to a proper allocation of the amounts collected.

Digital uses are driving continued refinements in management, such that micro-management and nano-distribution are now the order of the day; but these entail costly investment. Also, the effective implementation of rights is being undermined by the exponential increase in unlicensed uses, and the rapid turnover and transience of many users.

The transboundary aspect of the digital use of works, by contrast, is something that could have been better arranged. Cross-border uses are nothing new to authors' societies who have already had to deal with and come up with solutions for satellite broadcasting in the form of the 1987 Sydney Agreements. A solution was also found 10 years ago for online cross-border uses through the so-called Santiago and Barcelona Agreements which enabled multi-territorial, pan-European and even worldwide clearances to be granted for the world repertoire, thus meeting the aim of a one-stop shop. These agreements have not been validated by DG Competition because of the economic residence clause they contained – a clause that was entirely justified and essential, however, to preclude the risk of forum-shopping by users and an unacceptable devaluation of copyright.

The 2005 Recommendation and DG Competition's decision in the CISAC case have led to a fragmentation of repertoires. Unlike for traditional national uses, a single clearance for the world repertoire can now no longer be obtained from a single society for online uses. Instead, licenses for multiple territories have to be obtained for each repertoire from all the rights holders concerned.

I shall not go back over well-trodden ground here. GESAC has made its views known on this issue on numerous occasions in recent years. **But it must be borne in mind that the current situation, characterized by a fragmentation of repertoires and highly unsatisfactory to many users, is not attributable to authors' societies, and certainly would not exist had they been allowed to develop their own solutions.**

Be that as it may, this new development - the **fragmentation of repertoires** - has created new challenges stemming from uncertainty about who is authorized to grant clearances and set the amount of remuneration owed.

Previously, users knew they were obtaining full rights by applying to one society for a given territory, and the remuneration was distributed among the various rights holders further up the line. Now, users have to arrange directly with different managers and deal with issues that they did not even know existed before.

While they do not prevent clearances being granted or services being developed, these problems are no less damaging to rights holders than users, who often find in them excuses for blocking regulation.

One solution sometimes mooted is **the creation of a global database**. The feasibility of such a project may be questionable, as it would take several decades to get working properly. It would entail collecting data on all repertoires: music, broadcasting etc.; all rights - copyright, the related rights of performers and producers both inside and outside Europe; and transcribing those data into all the alphabetic systems: Arabic, Chinese, Hindu, etc. Not least of all, it raises some very difficult and complex issues, including the governance and cost of the project - who will foot the bill?

A more realistic possible alternative is **interconnection of the different existing information systems**. Authors' societies have very advanced systems for identifying works and interconnecting databases. In 2008, information on 38 million musical works was available on the CIS NET information system which links 59 musical rights societies around the world to facilitate the sharing of documentation, data exchange and royalty distribution. It would be entirely feasible to pull from this information system the non-confidential data users need for their activities, subject to the rules on the protection of privacy and personal data, obviously.

European authors' societies are constantly working for better relations with users. For example, discussions are ongoing with public broadcasters on the proposals they have just presented for rules tailored to their specific activities.

Re-aggregating fragmented repertoires and rights is a priority for authors' societies, and discussions on **developing a single European platform system or portal** for licensing for online services is underway. Copyright holders would be able to opt to have their rights managed by the portal to which users could apply for multi-territorial clearances for the widest possible repertoire. The interconnection of information systems just mentioned fits in perfectly with the idea of such a platform, would work on a purely opt-in, non-exclusive basis.

The complexity of the work required to set up such a platform can readily be imagined: it means developing rules for its governance, the methods for calculating scales of charges, invoicing, monitoring, settling the issue of administrative costs, tax issues, and much more.

The Commission is obviously kept informed of the progress made so far, and what authors' societies need is space and time to develop a coherent overall approach that both meets users' demands and addresses the interests of the different categories of rights holder, promotes consumer access to the widest-ranging repertoire possible, thereby delivering the aim of cultural diversity, and is of course compatible with competition law.

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