ICMP/CIEM – GESAC Common Declaration on Governance in Collective Management Societies and on Management of On-line Rights in Music Works

Whereas ICMP/CIEM and GESAC have engaged in a dialogue on issues of common interest,

Whereas the dialogue has been given momentum and a sharper focus by the adoption by the Commission of its Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (hereafter, the "Recommendation"),

Whereas 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 (hereafter "collective management societies" or "CMS"), to the categories of online rights in music works and to potential co-operation between CMS in connection with cross-border online licences,

Whereas ICMP/CIEM and GESAC commend the European Commission for having chosen as a policy option in the Recommendation to re-enforce the position of rights holders,

Whereas ICMP/CIEM and GESAC have agreed as a first step to adopt this initial Common Declaration which sets forth some agreed principles:

1. Membership in CMS:

Membership in CMS will be open to all music publishers, including all individuals and all corporate or other legal entities, as rights holders.

2. Representation on Board of Directors of CMS:

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.

b. Each society will retain the ability to set forth specific rules relating to the eligibility to the Board of music publishers controlled or owned by users, provided that these rules will be defined and applied in a balanced, fair, equitable, proportionate, even-handed and non-discriminatory way.

3. General Meeting of Members of CMS:

General meetings of the members of CMS 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.

4. Transparency and accountability of CMS to the Rights holders:

CMS will 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. They will inform right holders of the repertoire represented, the territorial scope of the mandates granted, and on existing reciprocal agreements.

5. Categories of online rights:

a Collective rights management:
ICMP/CIEM acknowledges the advantages to rights holders of collective rights management by CMS within the framework of the Recommendation.

- b. Freedom of choice:
  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.

- c. Forms of exploitations:
  - Existing so-called GEMA categories will be adapted to online exploitations through the definition of new EU standard on-line categories, harmonised between societies, as set forth below in this Declaration agreed between ICMP/CIEM and GESAC
  - A review mechanism will be put in place in order to, in cooperation with ICMP/CIEM, adjust these standard categories of online exploitations as the market and licensing needs evolve
  - These new categories will be by forms of exploitation:
    - On-line categories will be split between interactive exploitations and non-interactive exploitations (e.g., essentially webcasting, portals exploitations, individual websites, etc.) thus forming two new categories; each category will include the different rights required for the corresponding exploitations (mechanical and/or performing rights).
    - Simulcasting will not be within the on-line categories, as it is actually related to broadcasting and will fall within the category for broadcasting,
  - CMS may create more detailed sub-categories within each of the above mentioned standard categories, notably if required by national legislation.

6. Further steps:

a. ICMP/CIEM and GESAC are 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 modifications of the relevant applicable laws.

b. ICMP/CIEM and GESAC agree to continue moving forward without delay the dialogue between the two organisations, particularly on governance (specifically, the arrangements for electing publishers to CMS' Boards of directors, e.g.: collegiate voting) and on cross-border online licences and the potential related cooperation between CMS."

For ICMP/CIEM,

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For GESAC,

Mr Bernard Miyet
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