



EUROPEAN COMMISSION

Internal Market and Services DG

Knowledge-based Economy

Copyright and the knowledge-based economy

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## CALL FOR COMMENTS

The Commission intends to assess the development of Europe's online music sector in the light of the Commission Recommendation of 18 October 2005 (2005/737/EC) on collective cross-border management of copyright and related rights for legitimate online music services OJ L 276, 21/10/2005 ("the Recommendation"). Point 16 of the Recommendation invites Member States and collective rights managers to report to the Commission on measures they have taken in relation to the Recommendation and on the management, at Community level, of copyright and related rights for the provision of legitimate online music services.

As the Recommendation opted for a "light touch" non-binding approach to the matter of EU-wide online licensing, the Commission intends to monitor commercial developments in regular intervals. Therefore, the Commission invites all interested stakeholders to submit views and comments on their initial experience with the Recommendation and, in general, on their views on how the online music sector has developed since its adoption. In this respect, the Commission identified several policy areas where views and opinions by the market players appear essential.

### 1. NATURE OF THE INSTRUMENT

The Recommendation is a non-binding instrument introduced under Article 211 TEC. To that extent, it is introduced as part of the Better Regulation agenda. Although legislation was originally envisaged in the area of collective management, the legislative agenda was limited to the introduction of measures on transparency and governance. The recommendation interprets Treaty rules on the provision of services to the cross-border management of certain "online" rights.

- (1) Are legally binding rules on the following issues preferable: (1) licensing; (2) transparency and governance; (3) assignment; and (4) withdrawal of online rights?**

### 2. EU-WIDE LICENSING

The recommendation puts forward measures for improving the EU-wide licensing of copyright for online music services. Improvements are necessary because new internet-based services need a license that covers their activities throughout the EU. The absence of EU-wide copyright licenses has been one factor that has made it difficult for new Internet-based music services to develop their full potential. One

way of measuring success in reaching this policy objective would be a corresponding reduction of online music service providers that continue to operate on the basis of mono-territorial licenses.

- (2) What are the tenders that are underway which envisage EU-wide licensing arrangements?**
- (3) What are the EU-wide licensing arrangements that have been set up?**
- (4) Which online customers music service providers benefit from EU-wide licences for their pan-European retail or other activities?**
- (5) What types of online services are most interested in obtaining EU-wide licenses?**
- (6) What legislative or other types of obstacles have been encountered in setting up EU-wide licensing arrangements?**

### **3. SCOPE OF THE RECOMMENDATION**

The Recommendation is limited to certain defined "online" rights. The Recommendation defines the types of rights in terms of the legal nature of the right. The Recommendation does not address the necessity for collective rights managers to further define the categories of "online rights" by (1) type of use or (2) form of exploitation.

It does not include broadcasting including by cable or satellite.

The Recommendation does not contain points on possible behaviour of future EU-wide licensors with respect to lesser used (niche) repertoire.

- (7) Does the Recommendation correctly set out the rights of the various rightholders that are typically licensed for the provision of "online" services?**
- (8) For the purposes of the withdrawal of rights, should "online" rights be further defined by category according to use or form of exploitation?**
- (9) Alternatively, should rightholders be able to retain some types of use or forms of exploitation without assigning them to a collective rights manager?**
- (10) How can the inclusion of equitable remuneration for record producers and performers be justified in contracts?**
- (11) Should it be mandatory to include niche repertoire in EU-wide licences?**

### **4. GOVERNANCE AND TRANSPARENCY**

Certain collective rights managers have begun to implement certain of the provisions linked to governance (points 10-15 of the Recommendation). In some cases, music publishers are being offered greater representation on the board. In

other instances, payments to rightholders including music publishers switched from a yearly to a quarterly basis. There appears to be an increased willingness to acknowledge or discuss deductions made by the rights manager for purposes other than the management services provided. The Recommendation invites Member States to provide for effective dispute resolution mechanisms at national level.

- (12) Does the Recommendation bring about any changes in relation to transparency of rights management and increase the effectiveness of dispute resolution?**
- (13) Does the Recommendation bring about sufficient safeguards for individual rightholders with respect to (1) tariffs; (2) licensing conditions; (3) entrustment; and (4) withdrawal of online rights?**
- (14) Should the Recommendation further address rightholders' participation in setting deductions for purposes other than for the management services provided?**
- (15) Does the Recommendation provide sufficient safeguards for commercial users?**
- (16) Should applicable rules and principles in relation to dispute resolution be strengthened in the future?**

All stakeholders are invited to comment on the above-mentioned issues until 1 July 2007 on [markt-d1@ec.europa.eu](mailto:markt-d1@ec.europa.eu).

By responding to this call for comments you automatically give permission to the Commission to make your response public unless your opposition to publish your response is explicitly stated in your reply.