

# Gowers Review of Intellectual Property

## MCPS-PRS Alliance Response



### 1. Introduction

The Mechanical-Copyright Protection Society (“MCPS”) and the Performing Right Society (“PRS”) act in the United Kingdom as respectively the mechanical rights and performing rights collecting societies, representing thousands of writers, composers and publishers of musical works. Whilst remaining separate societies, MCPS and PRS operate through an operational alliance. MCPS-PRS is a member of British Music Rights and the British Copyright Council and fully endorses the comments submitted to the review by these organisations.

We have taken a two-tier approach in our response to the review. First of all we offer some headline messages – our thoughts on some current issues. Secondly, we make a number of detailed observations on issues that impact directly on MCPS-PRS’ business and operations. Whilst we believe firmly that copyright functions well and that a fundamental revision of copyright law is unnecessary, we have taken the opportunity within this section to identify specific areas that might be worthy of review.

We have not used the questions posed in the consultation document as a template for our response but we have indicated the relevant question numbers where relevant.

### 2. Headline Messages

There are a number of major issues that are currently dominating music industry discussions of which we have highlighted only a few in this section in respect of which we have a particular interest and on which we are grateful for the opportunity to express our views.

#### 2.1. Multi-territorial licensing in the digital world.

As explained in more detail below (section 3.1.1), the world of collective management is changing significantly with societies having to develop from their traditional roles as national licensing entities and find the best way to ensure that licences can be granted on a multi-territorial basis to meet the needs of new trans-national digital services. In so doing they must also operate in a competitive market. Following the European Commission’s Impact Study last July<sup>1</sup> and the resultant Recommendation<sup>2</sup> societies are now competing for members (and therefore repertoire) on a pan-European basis and those societies that can offer rights holders exemplary service, transparency, good standards of governance and fast, accurate and fair royalty distributions will win out. This option was preferred by the Commission over the

---

<sup>1</sup> Commission Staff Working Document: Study on a Community Initiative on the Cross-Border Collective Management of Copyright, 7 July 2005

<sup>2</sup> Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC)

alternative option of societies competing directly and solely for users (which, in our view, would not be in the interests of the underlying right holders) and we urge the Government to maintain its support for the Recommendation.

## **2.2. Dispute Resolution and the Copyright Tribunal**

As a related point to that above, in this new environment, although primarily it can be said that collecting societies compete for members (rather than competing solely for users, which was the option rejected by the Commission), the distinction may become less stark as they will nevertheless need to attract users or licensees on the basis of the quality and quantity of repertoire they hold – the strength of a society’s repertoire will command the price that can be charged as there is likely to be meaningful repertoire to be had from another source. The relevance of this is as follows: the point at which (and to the extent to which) collective management becomes rooted in free market structures is the point at which the function provided by the Copyright Tribunal<sup>3</sup> – that of regulating disputes on commercial rates and terms – becomes unnecessary.

Obviously the Copyright Tribunal will continue to be necessary during either the transition to a competitive market in collective management, or in respect of areas where the national monopoly situation continues to exist. MCPS-PRS does have views as to how the Copyright Tribunal could be improved and will be making detailed submissions in the context of the Patent Office review and for the purposes of this review endorses the position set out in the submissions of British Music Rights and the British Copyright Council. In summary our position is that the Copyright Tribunal should be better placed to deal with what are essentially commercial disputes about licensing terms; being faster, cheaper and more commercial in its decision making with true relevant commercial expertise on its panel. It should not be seen nor see itself as an additional regulatory body overseeing “perceived abuses” of monopolies. To help this there should also be a clear delineation as regards the respective remits of the Copyright Tribunal and the competition authorities – both the Office of Fair Trading (OFT) and the Commission. Specifically, the OFT’s potential (if unintentional) jurisdiction over commercial disputes relating to royalty rates and licensing terms leaves collecting societies exposed to the risk of double-jeopardy and this needs to be addressed.

## **2.3. Private Copying**

As the Treasury is aware, the UK is one of the few Member States without a combined private copying exception and levy system<sup>4</sup>. Accordingly, whilst copyright holders may have the exclusive right to authorise the making of such copies, UK creators have for many years been denied any remuneration, their exclusive right being practically unenforceable in the domestic scenario. In 1988 a House of Lords judge remarked: “a law which is treated with such contempt should be amended or repealed”<sup>5</sup> but some in the music industry, particularly the record labels, think this is not the case and in any event many others think that it now too late, partly because

---

<sup>3</sup> Question 4(c)

<sup>4</sup> Specific Issues: Copyright exceptions – fair use / fair dealing. Question (d)

<sup>5</sup> Lord Templeman, *CBS Songs Ltd v Amstrad*

they believe that in the brave new world of online distribution the situation is set to change and that digital rights management will save the day, providing a secure framework through which private copying can be controlled and licensed. But in the meantime, there are millions of unprotected copyright works inhabiting the online ether; private copying is rife and UK copyright holders still go uncompensated. There is no easy answer to this – it is true that levy systems are a crude and old-fashioned mechanism through which to distribute royalties but on the other hand consumers have the understandable expectation that they can make additional personal copies of recordings that they have purchased legally. The one certainty is that, in the absence of a mechanism to ensure that rights holders receive “fair compensation” as stipulated in the EU Copyright Directive<sup>6</sup>, the possibility of an exception for private copying must stay off the agenda<sup>7</sup>.

#### **2.4. Extension of term of copyright for sound recordings**

MCPS-PRS is of course a firm advocate of strong copyright protection and as such supports the record industry’s call for a review of the term of protection for sound recordings<sup>8</sup>. However, we accept that economic evidence is essential before such a step is taken given the absence of justification for any extension of term on single-market grounds, term already having been harmonised throughout the EU<sup>9</sup>.

### **3. Detailed Comments**

#### **3.1. Licensing**

MCPS and PRS offer licences covering the works of its combined membership of 48,000 composer, writer and publisher members and, through a network of reciprocal representation agreements with societies around the world, a comprehensive international repertoire. Users rely heavily on the traditional one-stop-shop licensing model provided by collecting societies through which they can obtain licences covering global repertoire for UK use<sup>10</sup>. The alternative – a licensing scenario premised on individual rights management – as well as being inconvenient for users would be detrimental to the rights holder community as a whole.

The Societies impose no barriers to licensing<sup>11</sup>. We are mindful of our potentially dominant position in the market and will refuse to license only as a last resort, generally in the face of consistent bad faith on the part of an existing licensee. Licences are available to all users that are willing to agree to payment of a reasonable royalty and necessary terms and conditions to ensure, for example, that the Societies receive timely and accurate usage reports in order that royalties may be paid to their members. The rates and terms and conditions of some schemes have been set by the Copyright Tribunal, but in respect of other schemes (and new schemes) we can enter

---

<sup>6</sup> Article 5(2)(b), Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29EC)

<sup>7</sup> Specific Issues: Copyright exceptions – fair use / fair dealing. Question (e)

<sup>8</sup> Specific Issues: Current term of protection on sounds recordings and performers’ rights. Question (a).

<sup>9</sup> Question (b).

<sup>10</sup> Question 3(a)

<sup>11</sup> Questions 3(a),(d)&(f)

into negotiations on behalf of our members. In such cases we seek to negotiate specific rates and terms and conditions with the appropriate licensee organisation or trade association (for example, the BPI, the Commercial Radio Companies Association and the Fitness Industry Association) as this gives any scheme launched a certain legitimacy within the relevant user sector. The Societies constantly monitor developments in technology and new delivery platforms in order to devise new licensing schemes that respond to users' needs. Examples are recent trial schemes covering delivery of TV programming to mobile phones. Looking further back, the MCPS-PRS Joint Online Licensing scheme, launched in 2002, was the first of its kind to cover all of the necessary rights in musical works for a wide range of online uses.

### ***3.1.1. Licensing of Online Use***

The Treasury will be aware of the European Commission's interest in the cross-border collective management of copyright (music in particular) and its Recommendation of October 2005 which sets out to address the issue of pan-territorial licensing of online rights<sup>12</sup>. Appended to this document is MCPS-PRS' response to the Commission's impact study of July 2005 in which we state our willingness to consider positively any initiative to increase efficiency of licensing, provide a fair and transparent system of remuneration flow back to our members and which would generally operate in such a way as to enhance and protect the interests of the creators and rights holders we represent. As such, we broadly welcome the Commission's chosen route – the so-called “Option 3” model – which recognises the fiduciary relationship between societies and their members and aims to introduce competition between collecting societies for rights holders' pan-European online rights. We remain concerned at any attempts to put an “Option 2” approach premised solely on societies competing with each other for licensees back on the agenda as this can only decrease the value of music and undermine the Commission's objective of protecting creators' rights and ensuring fair remuneration for rights holders.

MCPS-PRS has focussed considerable resources in recent months on the implementation of the Commission's Recommendation. In January two joint ventures were announced; one between MCPS-PRS, the German society GEMA and EMI Music Publishing which will enable one body to license all of EMI's English and German language works on a pan-European basis, and the other with the Spanish society SGAE to build a pan-European licensing platform (please see the attached press releases). Running in parallel to this activity, we are working hard to devise structures that would be attractive to rights holders wishing to engage with the new “Option 3” environment by placing their online rights within one entity. The attached document “The Future of Online Music Licensing with MCPS-PRS” was prepared as a discussion document for prospective “online” members. Please note that this document should be treated as confidential. We would of course be happy to meet with the review team to explain these initiatives in more detail.

### ***3.1.2. Licensing of Offline Use***

We are constantly looking for ways of streamlining licensing processes and making them more accessible for users. We are now moving towards joint licensing for

---

<sup>12</sup> Question 3(i)

broadcasters<sup>13</sup>, under which they will have one licence covering both mechanical and performing rights for a wide range of new exploitation types in addition to traditional broadcasting.

In the field of public performance licensing<sup>14</sup> we are mindful of the overlapping customer bases of PRS and PPL and that this overlap has increased as music use has grown in recent years. At the same time, previous obstacles to co-operation have been removed - we were pleased to note for example the amendment of sections 67 and 72 introduced through the Copyright and Related Rights Regulations of 2003 as this has gone some way to alleviate the disparity between PRS' and PPL's ability to license in this area. We have expressed a willingness to work together in order to simplify and streamline customer-facing operations and we hope that once the Copyright Tribunal's review of PPL's public performance tariffs has been completed greater co-operation will be possible. We have already initiated discussions.

### ***3.1.3. Compulsory Licensing***

With all of these initiatives in mind, we hope that the Treasury agrees that given collecting societies' willingness to develop new licensing structures in line with technological advancements and users' needs, there is no justification for the introduction of any form of compulsory licensing. MCPS-PRS has been monitoring developments in France and views the proposed "license globale" – in effect a statutory licence for filesharing – with concern. Any compulsory licensing regime will by its very nature conflict with the conventional principle that a copyright owner should be able to control the use made of his material. We also stress that it is completely illogical to impose a legislative solution premised on legitimising filesharing activity as this would destroy any hopes rights holders have of licensing and monetising this form of exploitation. What is lacking is a secure legal foundation against which we can develop licensing schemes.<sup>15</sup> We explain more – and suggest how Government might help – in the following section.

### ***3.1.4. Licensing of peer-to-peer filesharing<sup>16</sup>***

Figures released by the BPI at the beginning of April indicate that illegal filesharing has cost the UK music industry £1.1bn in the last three years. Yet because of inadequacies in UK legislation and case law the music industry the outcome of any legal action against the software providers behind peer-to-peer services or the ISPs that provide access to them is uncertain.

The business models of many ISPs and software providers are reliant on the availability of music and there is clear justification for their taking responsibility for the exploitation of copyright content that occurs on their networks. To our mind it is manifestly unfair that that these parties enjoy profits made (whether directly or indirectly) from the exploitation of copyright material yet creators receive no remuneration and no responsibility is taken for controlling its use. Furthermore, it is anomalous that copyright holders may be powerless to enforce the specific rights

---

<sup>13</sup> Question 3(a)

<sup>14</sup> Specific Issues: Copyright – licensing of public performances

<sup>15</sup> Questions 3(d) & 3(f)

<sup>16</sup> Questions 3(d), 3(f) & 4(a)

given to them in law. A very small number of filesharing services have taken responsibility and sought to legitimise their activity through seeking licences with rights holders. But for the majority there is no acceptance of responsibility because their position is that there is no liability in law, and as such there is no incentive for them to enter into licence negotiations. For liability to attach there has to be a restricted act taking place, authorisation of that restricted act or a defined act that attracts secondary liability. As the service or software providers are not themselves directly carrying out any restricted act, we would urge the Government to consider authorisation and secondary liability as possible solutions.

- **Authorisation**

Any ISP or software provider would no doubt rely on the House of Lords decision in *CBS v Amstrad* (1988) and formulate a defence on the basis that they were merely facilitating rather than authorising the infringing activity. The line between “authorisation” and “facilitation” is a fine one and the Government may consider it useful to have some guidelines set down in legislation. Such guidelines might suggest that a court takes into account certain factors in deciding whether an activity falls within the scope of “authorisation” for example, extent of the infringing use, failure to implement mechanisms to reduce the infringing activity and reliance on high volume use to generate income - these are some of the factors taken into account by the US Supreme Court in *MGM v Grokster* (June 2005). The Australian Copyright Act 1968 contains provisions on authorisation which may be worthy of consideration<sup>17</sup>.

- **Secondary Infringement**

We suggest that there is a clear analogy between a person who provides software and/or network services which are used to infringe copyright and a person who permits the use of premises for an infringing performance under s26. Whilst we have not yet considered specific drafting, we propose that the Government considers a new act of secondary infringement to cover the provision of software or access to network services for the making and/or communication of infringing copies, with a knowledge requirement based on a belief on reasonable grounds that the communication would not infringe copyright.

### **3.2. Exceptions**

We agree that exceptions are an essential element of a balanced copyright regime, ensuring a fair balance between the exclusive right of the copyright owner to control exploitation of his works (thus preserving an incentive to create) and the requirement of society in general to be able to access them. We appreciate in particular the importance of educational exceptions and in this regard support the paper submitted by the Educational Recording Agency (of which both MCPS and PRS are members) calling for a review of s35<sup>18</sup>. That aside, we believe that current exceptions to

---

<sup>17</sup> Section 36

<sup>18</sup> Specific Issues: Copyright exceptions – fair use / fair dealing. Question (f).

copyright, if properly applied, provide an adequate balance – but unfortunately our experience is that some exceptions are already open to misapplication by commercial users seeking to reduce their liability in licence fees. We would certainly oppose therefore any suggestion that they should be widened<sup>19</sup>. If anything, a review should consider if they are still relevant in light of technological and market developments.

There are two exceptions in particular which give us cause for concern, as explained in more detail below:

### ***3.2.1. Fair dealing for the purpose of criticism and review (s30)<sup>20</sup>***

As previously mentioned, we agree that fair dealing provisions are crucial in maintaining a reasonable balance and s30 clearly has a role in encouraging legitimate critical review of creative works. Again, however, there is a tendency on the part of some licensees during the negotiation process to manipulate the criteria under which the exception applies. Some TV production companies, for example, have been known to use the existence of minimal critical comment within general entertainment programming as a basis for claiming that the s30 exception applies. Newspaper publishers have also argued against the need for a licence for the distribution of CDs mounted on magazine and newspaper covers on the basis of a cursory review of the works contained on the CD. Such CDs invariably consist of complete tracks and we would query whether such use is “fair” given the public’s perception of covermounts as a free substitute for commercially available product. In this regard, some clarity on substantiality would be useful as well as safeguards to prevent general misuse of the section.

### ***3.2.2. Time-shifting (s70)<sup>21</sup>***

We are concerned that the very broad provisions of s70 (which allows the making for private and domestic use of a recording of a broadcast solely for the purpose of viewing or listening at a more convenient time) might catch new forms of exploitation for which they are not intended. The introduction of Digital Audio Broadcasting has brought with it functionality for multiple channels to be automatically scanned for specific recordings – these recordings can then be digitally “repaired” to insert missing material, indexed and stored indefinitely. There is concern amongst rights holders that ultimately this will supplant the legitimate market for paid downloads. The ideal solution in the long-term is some form of licensing but a licensing solution (a) would require there being liability on the part of the broadcasters and/or hardware suppliers for authorising copying by individual consumers; and (b) would rely on adequate DRM and the willingness of broadcasters and hardware manufacturers to implement technological measures. Any regulation is likely to be unpalatable given the desire to encourage the growth of the market in new digital hardware – instead obligations would have to be imposed through licence agreements. In the meantime, clarification of s70 to ensure that its scope is limited to time-shifting of broadcast programming and excludes the searching and copying of specific tracks would be a welcome first step towards addressing the problem.

---

<sup>19</sup> Question (a).

<sup>20</sup> Question (b)

<sup>21</sup> Question (b)

### **3.3. Enforcement**

Proving a copyright infringement case can be difficult and costly. Because of the Civil Procedure Rules, the claimant must have identified and prepared his evidence before a claim is brought, which means that a high proportion of costs must be incurred at the start of the enforcement process. If the claim is settled early on in proceedings, it can be hard to recover these costs as they may be disproportionate to the damages at stake. It also now seems to be accepted that roughly 30% of the winning party's costs will be irrecoverable in any event.

MCPS has great difficulty in bringing copyright infringement actions because of the following evidential difficulties: proving authorship, proving subsistence, producing a full chain of title to prove current ownership, proving lack of grant of licence from all possible licensors; and is subsequently unable to protect the rights of its members adequately. The following amendments to the current regime could help to ameliorate this situation whilst continuing to protect the proper interests of defendants. We have also highlighted some other issues (in addition to those related to civil procedure) that cause particular problems for us in the area of enforcement. The online revolution means that copyright works are now available in forms which can be readily passed on or copied. This must be matched by a practical enforcement regime.

#### **3.3.1. Presumptions<sup>22</sup>**

The CDPA currently contains evidential presumptions which apply to civil infringement actions. Those applicable to musical and literary works are found in s104. Under these, authorship and first ownership of a work are presumed to be as stated on the work as published or on the work when it was made, unless proven otherwise.

We believe that the introduction of similar presumptions in relation to the subsistence of copyright in a work, the claimant's title, territorial qualification and lack of licence would address some of the enforcement difficulties currently experienced by rights holders. The presumption as to subsistence is already available under the Irish Copyright Act. The Alliance Against IP Theft (AAIPT) has been lobbying for the incorporation of these provisions into UK law since its inception and will be raising this again through the Treasury's review.

In addition, we believe that the burden of proving lack of licence should be reversed in the criminal provisions of the Act. In order to bring criminal prosecution for any of the offences set out at s107(1), the rights holder must prove that the defendant has not been granted a licence by any party entitled to license the use. Due to the worldwide nature of copyright, the complex international division of rights and that fact that licensees sometimes hold concurrent licensing rights exercisable for different territories, lack of licence from any possible source can be extremely hard to prove. We submit that the burden of proof should be reversed, and believe it can be without infringing the Human Rights Act. There are other legislative provisions which have such reversed burdens of proof (e.g. firearms and TV licences) where the practical difficulties for the claimant of proving lack of licence are disproportionately onerous

---

<sup>22</sup> Question 4(a)

compared to a requirement for the defendant to produce the licence on which he seeks to rely. The courts have safeguarded the defendant's constitutional rights in these situations by stating that once the defendant meets the evidential burden of proving their licence, it is then for the claimant to disprove its validity to the criminal standard.

We also believe that the civil presumptions should apply to criminal cases on the same evidential basis as set out for rebuttal of lack of licence, in order to avoid legally aided defendants putting the prosecution to proof on authorship in order to frustrate proceedings and exhaust prosecution funds.

### **3.3.2. *Costs***<sup>23</sup>

The costs involved in bringing a copyright infringement action are high and are rarely recovered even if the decision itself is in our favour. Under the Civil Procedure Rules costs are front-loaded, as detailed case preparation is required. This often dissuades us from initiating legal action. As a result we are perceived by some members as being unwilling to fulfil our obligation to protect and enforce their rights.

We would favour a costs regime where costs are awarded on an issue-by-issue basis. This would dissuade defendants from running up unnecessary costs by raising numerous technical issues as they would be liable for both side's costs on those issues if they were resolved in our favour. It would also enable us to separate the expense involved in meeting specific demands of defendants (e.g. court appearances by witnesses to prove title) from expected costs such as proving infringement.

### **3.3.3. *Damages***<sup>24</sup>

Civil damages are generally designed to act as compensation for the claimant rather than punishment for the defendant. Despite this, the CDPA has specific provisions on damages in s97 which allow for the award of additional damages in relation to flagrancy and any benefit the defendant might have accrued by the infringement. Unfortunately, because of the reluctance of judges to allow damages to be awarded punitively, historically the instance and scale of these additional damage awards has been very modest and has acted as an insufficient deterrent to continued commercial infringement. We have previously called for clearer provisions for additional damages to be made (for instance, double damages to be awarded in defined circumstances) so that there is more consistency, or alternatively an express power to award aggravated and exemplary damages, as available under the Irish Copyright Act.

We welcome that the UK Regulations published on 19 April implementing the IP Enforcement Directive and we note in particular implementation of Article 13 on damages to ensure that the Courts have regard to actual prejudice caused by the infringement, and take into account negative economic consequences and non-economic factors, such as any moral prejudice, for infringement of any intellectual property right. We hope that the Courts will now be more willing to take into account factors such as flagrancy in awarding appropriate damages.

---

<sup>23</sup> Question 4(b)

<sup>24</sup> Question 4(a)

### **3.3.4. Role of Trading Standards<sup>25</sup>**

Under s107A the Trading Standards Authority has a duty to enforce the criminal provisions of s107. The fact that this has not yet been enacted is the biggest hurdle we face in bringing criminal proceedings. The Patent Office has undertaken to do a 3-year pilot on the basis of funds acquired through the Assets Recovery Agency but in the meantime Trading Standards have no enforcement powers in relation to copyright infringement and we have to rely on the police. This means that criminal enforcement has been reliant upon identifying Trade Marks Act offences, because the equivalent duty has been enacted under that Act<sup>26</sup>. This pragmatic solution to the lacuna in the CDPA has been criticised by the courts (House of Lords in *R v Johnstone*) who have narrowed the scope of trade mark offences in an attempt to exclude such use. There has also been a growth in trade mark free counterfeits as more pirate factories are operated domestically and optical discs are produced and sold without inlay cards.

### **3.3.5. Notice and Takedown<sup>27</sup>**

As the Treasury will be aware, the E-Commerce Directive (as implemented by the E-Commerce Regulations 2002) provides a basic framework through which rights holders may be able to secure the removal of cached or hosted illegal material. However, European rights holders are increasingly having problems with the migration of pirate websites to anonymous registries and overseas ISPs, and the continual movement of sites from territory to territory. Many non-EU countries have weak copyright legislation and poor enforcement provisions which leaves UK rights holders powerless to take any action in those countries in order to prevent illegal content flooding into the UK. The Russian site AllofMP3 is an example of an unlicensed service that claims legitimacy on the basis of deficient IP laws in Russia. Communications network providers claim that they do not have the technological capability to block illegal content transmitted to UK users by overseas providers yet recent cases suggest otherwise – Google’s ability to comply with the Chinese authorities’ request to erect barriers to prevent certain content being received by Chinese citizens received much media attention, and in a well-publicised French case it was decided that Yahoo! should be obliged to block French consumers’ access to sites engaging in the sale of Nazi memorabilia. Network providers are making money from facilitating access to all manner of content, including copyright-infringing files and other illegal material. As such there is a clear argument that they should assume a degree of social responsibility and put in place technological measures to reduce the amount of illegal activity occurring on their networks. We would welcome any attempt by Government to address this problem.

As regards the problem of overseas “copyright havens”, whilst we realise that the inadequate copyright protection afforded in other territories is not something that can be addressed in UK legislation, we believe that the UK is in a strong position to be able to exert some pressure on Governments overseas. We note in particular that intellectual property is a point of discussion in all US trade negotiations.

---

<sup>25</sup> Questions 2(b), 4(a)

<sup>26</sup> Question 2(b).

<sup>27</sup> Question 4(h)

### ***3.3.6. Infringement of copyright in non-domestic repertoire<sup>28</sup>***

PRS has the right to issue licences for use of foreign repertoire through the reciprocal agreements it has in place with affiliated collecting societies overseas. However, our right to license such repertoire is invariably that of a non-exclusive licensee and consequently we find that our ability to take infringement proceedings on foreign repertoire is severely compromised. Whilst in many sectors we can rely on PRS members' works (to which PRS is assigned the performing right) as a basis for legal action under s96 there are a number of sectors, the restaurant sector being an example, where only non-domestic repertoire is used. We are granted a right to take legal action under our reciprocal agreements but that right is rendered useless by UK copyright law.

By introducing provisions under which certain infringements are actionable by a non-exclusive licensee (s101A) the Government has clearly recognised that there are situations in which non-exclusive licensees should have the ability to enforce their rights. However, the section is drafted in such a way as would apparently defeat any attempt by PRS to rely on it. In particular, we would welcome clarification of subsection 1(a) which requires that the infringing act be directly connected to a prior licensed act of the licensee.

## **3.4. Digital Rights Management**

MCPS-PRS is a firm supporter of DRM as an essential tool for rights holders to control and monitor exploitation of their works and as such encourages the application of DRM through clauses in its licence agreements. A major problem is one of public perception – unfavourable media coverage of some record companies' over-zealous implementation of copy-control (and ensuing legal actions) has tainted consumers' views of DRM as a whole. Other types of DRM are however becoming an invaluable aid to rights management in the online environment – these technologies are completely invisible to consumers.

MCPS-PRS feels that lack of interoperability between different proprietary DRM technologies is an issue but believes that it should be left to the market to drive change in this area. It would not be advisable for DRM to be regulated at this stage – any regulation of such a rapidly advancing area could not possibly predict future developments and may only serve to restrict investment and thus endanger market growth<sup>29</sup>.

Please refer to British Music Rights' comments on this issue, which MCPS-PRS fully supports.

---

<sup>28</sup> Question 4(a)

<sup>29</sup> Specific Issues: Copyright – digital rights management. Question (a).

### **3.5. Role of Competition Law in Regulating IP<sup>30</sup>**

It is asked whether competition law should have a greater role to play in regulating IP. MCPS and PRS are, like any other undertaking, subject to competition law. As collecting societies, however, they (or other similar societies) have been subject to specific scrutiny by both domestic and European competition authorities from time to time; the nature of the activities of collecting societies – setting prices for a whole sector of rights holders and operating usually as a monopoly in their market – means that inevitably there is a tension between competition law principles in their purest form and the activities of such societies. It is accepted that it is always necessary to ensure that the benefits derived from such collective activities (both for the rights holders and user communities) are sufficient to justify those activities. The collective structure of rights management and licensing in our sector has proved an immensely valuable one; it has benefited the rights owners concerned by ensuring an adequate return for exploitation of their works, but it has also benefited the “user” community immensely in ensuring accessibility to the world repertoire of musical works.

It is a delicate balance and our present concern is that too aggressive an application of competition law principles could render the collective management model unattractive for the underlying rights holders, especially the larger companies who may withdraw wholly from the collective management system. In particular we are concerned that competition policy may be used in such a way as to introduce what is effectively compulsory licensing by means of forcing a society grant to any other society its rights without restrictions to allow pure competition between the societies to the ultimate detriment of the underlying rights owner. It is for the same reasons we support the Recommendation (please see section 3.1.1.) and we are concerned that competition law is not used as a means of frustrating the principles set out in it.

In the context of the UK only, we would wish for a clear delineation between the respective remits of the Office of Fair Trading and the Copyright Tribunal. The OFT as the competition authority obviously has jurisdiction to look at any activity or operation of MCPS/ PRS as to whether it may infringe competition law, but experience has also suggested that many potential licensees who perhaps dispute the commercial terms upon which the societies wish to license their repertoire, see the OFT as an alternative or additional option to the Copyright Tribunal to put pressure on the societies by claiming the licensing terms themselves are abusive. Potentially this is a much cheaper and easier route for a licensee who does not have to take any actual action. We consider that it would be desirable if, through sector guidelines or otherwise, it could be made clear that the OFT will not entertain any complaint if it appears to be essentially a dispute as to commercial terms which can be otherwise dealt with by the Copyright Tribunal. This would ensure that the societies do not face the real threat of double jeopardy.

---

<sup>30</sup> Specific Issues: Coherence between competition policy and IP policy. Question (d)

### **3.6. Withholding Tax**

MCPS-PRS recognises that the bilateral agreements between the UK and other territories have achieved much in minimising the amount of withholding tax levied on royalty payments flowing between these countries and we applaud the UK Government's commitment to reducing withholding tax further, as is evidenced by recent discussions between the UK and Japan.

We object to withholding tax on two grounds. First of all, it imposes an administrative burden on the Societies and their members and secondly it is unfair on rights holders. It is particularly detrimental to low-earning creators (rights holders receiving significant royalties generally take legal steps to ensure that they are not subject to this additional tax burden) – the very people whose income needs to be protected in order to encourage further creativity and cultural diversity.

As such, we would encourage the Government to work within the EU to eliminate withholding tax between Member States. At the very least, production of a valid certificate should secure a reciprocal automatic reduction to a zero rate of taxation. We would welcome any attempts by the Government to improve this unfair and bureaucratic tax regime.

## **4. Appendices**

- MCPS-PRS' submission to the European Commission on its Impact Study of July 2005
- Two press releases dated January 2006 on pan-European licensing initiatives

# **Study on a Community Initiative on the Cross-Border Collective Management of Copyright (Staff Working Document)**



## **Comments from MCPS-PRS-Alliance Limited**

### **1. Introduction**

The Mechanical-Copyright Protection Society Limited (“MCPS”) and the Performing Right Society (“PRS”) act in the United Kingdom as respectively the mechanical rights and performing rights collecting societies on behalf of thousands of writers and composers of musical works and their publishers. Whilst remaining separate societies, MCPS and PRS operate through an operational alliance. Further, for the avoidance of doubt, in certain areas including those in relation to online exploitation, the societies issue joint licences, i.e. covering both the mechanical and performing rights.

This submission is made on behalf of both societies by the MCPS-PRS Alliance. Further, MCPS-PRS has seen and fully supports the comments from British Music Rights who directly represent the interests of our constituent members. We have also seen the submission of GESAC and where relevant have indicated our support for issues raised by GESAC.

This submission is relatively brief principally because of the short timescale available since publication of the Working Paper on 7<sup>th</sup> July and the fact that the Working Paper has pursued a direction that is very different from that contained in the Communication on Rights Management published in April 2004. MCPS-PRS would be happy to provide further information to DG Markt where it can to supplement this submission if DG Markt feels that would be helpful.

### **2. Executive Summary**

- MCPS-PRS does not accept that the present system of musical work licensing within the EU has contributed significantly, if at all, to any differential in development of online services in the EU as compared to the US. Online take up rates in Japan, Korea and the USA are governed more by bandwidth and price than any other single factor. Music does not exist to subsidise distribution platforms;
- Notwithstanding that, MCPS-PRS is willing to consider positively any initiative which would increase efficiency of licensing, provide a fair and transparent system of remuneration flow back to its members and which would generally operate in such a way as to enhance and protect the interests of the creators and right holders that we represent;
- MCPS-PRS is therefore very pleased to note the focus in the Working Paper on ensuring that creators get effective protection in Europe for the exploitation of their works within online music services;
- MCPS-PRS believes that Option 2 as promulgated in the Working Paper cannot achieve this objective as it compels CRMs to compete vis a vis users

and this is diametrically at odds with the fiduciary duties that CRMs owe to their members and can only be detrimental to the overall goal of ensuring effective protection for creators. Option 2 can only decrease the value of music, and the ultimate response to it would be to create scarcity and exclusivity to preserve value;

- Broadly, therefore, on the assumption that there is some need for any active Commission initiative, MCPS-PRS supports adoption of Option 3, although this is not without some reservations as to the practical difficulties which will need to be resolved.
- If the Commission is desirous of ensuring competition between societies with the attendant risks for music diversity and creative wealth, then even if that competition is on the basis promulgated under Option 3, the Commission must ensure that there is some level playing field for that competition to take place.
- The study either ignores or underestimates the level of investment in time and resource that will need to be made by CRMs to properly manage right holders copyrights in the online environment and particularly in connection with moving away from the current structure of national reciprocity to the Option 3 model. It is vital, therefore, that CRMs have the confidence and security of knowing that any model being advocated and the practical solutions they will inevitably have to resolve in achieving that overall aim has the full backing of all Commission Directorates.

### **3. The MCPS-PRS position as regard the need for Commission intervention**

#### **3.1 To drive development of the online services market in Europe.**

MCPS-PRS believes that in so far as the Working Paper seeks to justify active intervention by the Commission, whether through Option 2 or Option 3, as being necessary to ensure that the EU online market does not lag behind the US online market, such a proposition is fundamentally flawed. In this regard, MCPS-PRS agrees with the points raised by GESAC in section 1.5 of its submission concerning the economic data, and furthermore specifically draws attention to the point made by GESAC concerning the flourishing of the mobile industry in Europe as compared to the US. Such success is obviously notwithstanding the system of musical work licensing through CRMs operating in Europe. Put more basically, online take up rates in Japan, Korea and the USA are governed more by bandwidth and price than any other single factor. To seek to manipulate the market by focussing on one aspect of music licensing is also misconceived: music does not exist to subsidise distribution platforms and even if there are good reasons to suggest that traditional operating systems of CRMs should be changed in the online age, they should not be changed to create a false palliative to cure the business inadequacies of broadband distribution.

As a connected point, the alleged difficulty or complexity in obtaining “multiple” licences for musical works, appears to us to be largely illusory. It should be noted by the Commission that whilst the Working Paper seems to accept the efficiencies of the IFPI simulcast and webcasting reciprocal models in enabling sound recording rights to be collectively licensed (aside from the fact that the model is recognised as not ensuring protection for rights holders), the relevance of such

collective licensing in the online market is minor<sup>1</sup>. The bulk of legitimate online music services involves interactive streaming and/or downloads. Our understanding is that sound recording rights are not licensed collectively for such uses but are licensed individually by the record companies concerned. Whilst these may be pan-territorial licences, in order to secure licences for local or independent repertoire, service providers may need to negotiate literally hundreds of licences on an individual basis. Even if 25 separate licences were necessary for musical works – which as GESAC points out in section 2.1 of its submission, is rarely required by licensees – this number pales into insignificance when compared to the number of sound recording licences that could be required and to lay any “blame” at this particular door is illogical and wholly misleading.

### **3.2 To encourage competition between societies for rights and therefore better protect the interests of creators and right holders.**

We would agree that competition between societies for right holders as promulgated under Option 3 should theoretically improve the services offered to the right holders and safeguard their interests. The real question is whether there needs to be any positive intervention by the Commission to ensure that the model is in fact adopted.

It is our belief that it is more than likely that something like the model promulgated under Option 3 will develop organically even if the Commission elects to do nothing, i.e. Option 1. This is based on what appears to be increasing pressure from certain rights owners for more direct control over CRMs and the terms and conditions on which they are appointed to represent those right holders.

It is also at least arguable that the Option 3 model will also become a long-term result of any imposition of the Option 2 model; given that under the Option 2 model the likely ultimate result will be a downward price pressure, then in order to provide a floor against such a pressure, right holders will withdraw rights from that model and at best will require the control over administration for their rights as envisaged under the Option 3 model, or even more drastically withdraw from the collective licensing model to create scarcity and exclusivity in order to preserve value.

Commission intervention, however, may be necessary to ensure full transparency and fair distribution of royalties to “foreign” right holders. Although it is entirely true that reciprocal agreements between musical work CRMs do require “national treatment” and therefore there is no direct discrimination in how royalties are allocated and paid on the grounds of nationality of the right owners, there are nevertheless some distribution policies which inevitably benefit or favour only local or genre specific right owners and which are therefore indirectly discriminatory. Furthermore, although cultural diversity and the broader role of societies is valued, MCPS-PRS and its members have historically raised concerns about so called social and cultural deductions which may often be used in ways which cannot conceivably benefit the right holders from whose revenues the deductions have been taken.

---

<sup>1</sup> Indeed, the Commission noted at paragraph 34 of the Simulcasting Decision (Case COMP/C2/38.014) that “simulcasting presents distinct features, both legal and technical, from other activities that also require the clearance of rights”.

## **4. Issues concerning the Option 3 model**

Whilst MCPS-PRS broadly supports the Option 3 initiative, there are probably two main areas of concern, notably the practical problems that the Option exposes and any potentially detrimental effects on cultural diversity.

### **4.1 Practical problems**

The Working Paper does indicate that DG Markt may not understand or appreciate the complexities behind rights administration or indeed those relating specifically to online licensing. The practical problems identified again broadly fall into two areas; firstly difficulties directly related to the relationship between creators and other right holders and the CRMs and secondly practical issues of ensuring efficient and workable systems vis a vis licensees.

In the first category, it will simply not be an easy matter for many individual rights holders to extract their “online rights”<sup>2</sup> from any one society and place them with another; in relation to the chain of rights holders on any particular work, such as a writer and a publisher, there may be a divergence of view between them as to where they wish their online rights to be vested. The position becomes even more complex in relation to what we would call split works i.e. works which are created by more than one creator who in turn have different publishers. Within the European legal system where one joint or co-author cannot bind another, repertoire specific licensing will pose great difficulties in relation to split works both in relation to valuation of those rights but also ensuring accurate payment via the right society.

Furthermore, it is entirely conceivable that certain rights holders will not wish to move from local CRMs and will want that local representation where they feel comfortable, with the language and personal relationships etc for online rights especially as they will have a continuing relationship with the local CRM for traditional rights.

It is important also that the system is made workable for licensees to ensure that the right holders do achieve the maximum benefits. Issues relating to speedy identification of relevant repertoire, conflict resolution and common systems of accounting and data provision will be vital.

Further, the assumption that remote monitoring of online services is easier in the online world is flawed. It simply is not practical – at least not yet. In the online environment the amount of data needing to be processed has increased wildly and CRM’s are currently in the process of upgrading systems to deal with such volumes. Additionally, service providers provide poor data which often does not have enough information to identify the IP interests. Even if the data provided

---

<sup>2</sup> (whatever that term is intended to mean which is not at all clear from the Working Paper)

was of a good quality, the effective decoding of the information requires databases such as those held by CRM's to be linked together and maintained.

Also there is still a personal relationship required with licensees not least because physical auditing and monitoring of source records will have to take place locally where the licensee operates. This will require some local presence or activity on the behalf of the licensor.

The solution as far as MCPS-PRS can see is for the societies to work together under a system of agreements which will be different from the current reciprocal system and much more individually tailored to cover what is needed.

Some agreements will deal with the representation of rights. For example, we foresee that it may well be possible that local authors represented by a small society may not be willing to join one of the "major" societies for online rights but wish to stay with their local society. That local society however, could on a collective basis choose which of the major societies it would like to place its collective online rights with on terms that would suit its members' interests. In effect, a local small society could act as a "rights holder" in that regard and obtain good conditions and the benefit of cost effectiveness by operating through the major societies. Conversely, if online services are local, major societies may wish to appoint local societies their agents to grant and administer such licences on their behalf.

Some agreements will deal with what might be termed "back office" issues. Groupings of societies could offer significant assistance in making the administration of licences easier for licensees if they could co-operate on issues such as common reporting formats, linking databases, finding solutions to difficulties in identifying repertoire and dealing with conflict resolution.

As pointed out in the GESAC submission, the musical work CRMs have been very active in seeking solutions for pan-territorial licensing. Whilst it is acknowledged that these have resulted in objections raised by DG Competition, the underlying will of the CRMs to find solutions cannot be doubted. MCPS-PRS believes that there can still be cooperation between the societies to assist with efficient licensing which nevertheless continues to protect the interests of their members and which allows for competition for members and would ask that any recommendations that may purport to propose Option 3 are at least flexible enough so as not to prohibit any groupings, relationships or cooperation between CRMs.

## **4.2 Cultural Diversity**

MCPS-PRS agrees that cultural diversity is extremely important and there is no doubt that care has to be taken in considering the ending of a system (effectively of sanctioned and regulated monopolies) that for a century has created music diversity and wealth (both spiritual and commercial).

Having said that, MCPS-PRS is not convinced that Option 3 would have the totally negative impact that some may suggest for the following reasons:

- Option 3 refers only to online and therefore the vast bulk of the revenue flowing through societies now from traditional uses will continue at least in the medium term and such revenue in any event will not disappear even in the long term. This will at least provide significant time to explore alternative means to fund cultural activities
- In any event, as suggested in 4.1 above, it is highly unlikely that smaller societies will be disenfranchised from online licensing activities and efficiencies could increase revenue generation;
- There is no evidence that right holders in the new environment will not agree to fund cultural activities for the benefit of the music industry both locally and internationally.

## **5. Other issues**

One thing that the Working Paper has not considered in any way is how to ensure that the competition that it promulgates is fair competition. CRMs are not quite in the position of other commercial entities to raise investment capital and significant investment will be needed by CRMs in this new world, which can possibly only be funded from revenues derived from the traditional exploitation given that the revenues from online are currently so relatively small. However it is also foreseeable that societies which can be said to be inefficient in the traditional world and therefore capable of amassing funds from revenue derived from exercise of the international repertoire in traditional ways could use those funds to subsidise activities in a competitive world in a way to attract rights holders. If the Commission wishes to introduce competition between societies on any level it must ensure a level playing field for such competition and outlaw any unfair cross subsidies. This is a tenet of other industries where competition has been introduced.

Further, it is vital that any initiative should also have the full support of DG Competition. For the CRMs to make the commitment to make the investment both in time and resources to build IT and administrative systems to support changes in working practices, they must be sure that such practices will not subsequently be the subject of objection or legal dispute.

As a final point, the role of any tribunal or arbitration court should in any event be re-evaluated in the context of a competitive environment as promulgated under Option 3.



-----  
**THE MUSIC ALLIANCE**



**23 January 2006**

### **FIRST STEPS INTO THE FUTURE OF EUROPEAN ONLINE LICENSING**

The first steps towards a pan-European one-stop shop for the licensing of online rights have been taken today by EMI Music Publishing (EMI) and two of Europe's largest collecting societies.

EMI will work with the UK's MCPS-PRS Alliance and Germany's GEMA to build a one-stop shop to clear the rights of EMI's Anglo-American songs across Europe for online and mobile usage.

The move is the first after the European Commission signalled the go-ahead for such collaboration in its Recommendation on the future of online licensing in Europe, published in October last year.

The Commission's view, shared by the three parties, is that a pan-European approach will speed up the development of legitimate online services. Having all of EMI's Anglo-American songs available in one place for licensing represents a significant first step towards truly pan-European licensing.

Adam Singer, Group CEO of the MCPS-PRS Alliance said, 'In online, no-one can hear your borders. EMI Music Publishing's repertoire includes some of the most important music in the world and online licensing of it just got easier.'

Jürgen Becker, CEO of GEMA said, 'Together with our partners EMI Music Publishing and the MCPS-PRS Alliance, GEMA will establish a future-oriented cross border Pan-European online licensing regime. This will provide licensees and consumers with a one-stop shop and also guarantee that rightsholders and sister societies are efficiently protected in the global digital networks.'

- Ends -

#### **CONTACTS**

EMI Music Publishing  
Janice Brock  
+44 (0)7940 504922  
[jbrock@emimusicpub.com](mailto:jbrock@emimusicpub.com)

The MCPS-PRS Alliance  
Adrian Crookes  
+44 (0)7918 194151  
[adrian.crookes@mcps-prs-alliance.co.uk](mailto:adrian.crookes@mcps-prs-alliance.co.uk)

GEMA  
Dr. Hans-Herwig Geyer  
+49/89 48 003-420  
[hgeyer@gema.de](mailto:hgeyer@gema.de)

## NOTES FOR EDITORS

**EMI Music Publishing**, a unit of Britain's EMI Group PLC, is the world's leading music publisher with more than 1 million songs in its catalogue. It represents many of the top songwriters, producers and artists in the industry today, including James Blunt, Alicia Keys, Sting, Kanye West, Gorillaz, Usher, Jermaine Dupri, Sean 'P.Diddy' Combs, and Enya.

In addition, EMI Music Publishing owns the copyright to some of the world's best loved classic songs including 'New York, New York', 'Santa Claus Is Coming To Town', 'Singin' In The Rain', and the song voted the "song of the century", 'Over The Rainbow'.

[www.emigroup.com](http://www.emigroup.com)

**The MCPS-PRS Alliance.** MCPS and PRS are the UK collecting societies that ensure composers, songwriters and publishers are paid royalties when their music is used: from live performance to TV and radio, CDs to DVDs, downloads, streams and everything in between. Royalties create a future for music by supporting creators while they continue to write. MCPS and PRS are committed to delivering maximum royalties and world-class service. They work together in an operational alliance to get the best value for the music use of composers and songwriters everywhere. The Alliance is committed to working with partners throughout Europe and the world to build new platforms that simplify the licensing music.

[www.mcps-prs-alliance.co.uk](http://www.mcps-prs-alliance.co.uk)

**GEMA** is the German 'Gesellschaft für musikalische Aufführungs -und mechanische Vervielfältigungsrechte' or society for musical performing and mechanical reproduction rights.

As a state-recognised trustee organisation, GEMA administers the exploitation rights of creators of music. GEMA is a collecting society. It has the legal status of a commercial association and is subject to supervision and control by the German Patent Office, the German Federal Cartel Office, the Berlin Senate of Justice and the General Assembly of GEMA.

GEMA is a non-profit organisation: all earnings minus administrative costs are paid to the domestic and international rightsholders. It is the oldest authors' and publishers' society in Germany and the most significant in economic terms. GEMA has more than 60,000 members who are composers, lyricists and publishers.

[www.gema.de](http://www.gema.de)



-----  
**THE MUSIC ALLIANCE**



FUNDADA EN 1899

**20 January 2006**

### **MCPS-PRS and SGAE to work together on online licensing project**

The UK's MCPS-PRS Alliance and Spanish society SGAE today announce the launch of their collaborative project – eLOS – to build a model for the licensing of online music services in Europe. The move is a first step in what is likely to be a new era of collaborative projects between European collecting societies and is in line with the European Commission's recently published Recommendation for online licensing in Europe.

The Commission believes that online music distribution can be a driving force for all online business in Europe, particularly for broadband services.<sup>1</sup> It has been keen to ensure that rights holders' earnings are protected in an online environment.

To this end it has recommended that rights holders be able to choose which European society they want to license their rights for online usage in Europe. In practice, this is likely to be the society which offers the lowest admin rate for collecting royalties, which distributes those royalties quickly and accurately and offers the best 'customer service' and transparency of its business operations.

With this in mind, collecting societies have been exploring ways to bring about these changes and that will

- protect the value of music
- minimise the costs of what will be an extensive structural change
- provide the efficiencies needed by online licensees.

The move by the MCPS-PRS Alliance and SGAE will create joint licensing platforms and propositions for the powerful Anglo-Latin repertoires across Europe. Extensive trials will be undertaken during the first quarter of 2006, which, if successful, will lead to the launch of a fuller operation.

President of the SGAE Management Board, Eduardo Bautista, said, 'We at SGAE believe in innovation to provide solutions. After studying the impact of technology over the past five years, we think we are on the right track, betting on the convergence of Business and Technology in a multilateral environment.'

MCPS-PRS Alliance Group Chief Executive, Adam Singer, said, 'SGAE is a hot society when it comes to technology. The MCPS-PRS Alliance is proud to ally with SGAE to help make eLOS the leading infrastructure to harvest a digital Europe.'

- Ends -

<sup>1</sup> 'Only music has the real potential to kick-start online content services'

Source: Study on a Community Initiative on the Cross-Border Collective Management of Copyright, European Commission, 7 July 2005

## CONTACTS

The MCPS-PRS Alliance  
Adrian Crookes +44 (0)7918 194151  
[adrian.crookes@mcps-prs-alliance.co.uk](mailto:adrian.crookes@mcps-prs-alliance.co.uk)

SGAE  
Antonio Alferez (34) 616 48 94 54.  
[aalferez@sgae.es](mailto:aalferez@sgae.es)

## NOTES FOR EDITORS

**The MCPS-PRS Alliance.** MCPS and PRS are the UK collecting societies that ensure composers, songwriters and publishers are paid royalties when their music is used: live performance, TV and radio, CDs, DVDs, downloads, streams and everything in between. Royalties create a future for music by supporting creators while they continue to write. MCPS and PRS are committed to delivering maximum royalties and world-class service. They work together in an operational alliance to get the best value for the music use of composers and songwriters everywhere. [www.mcps-prs-alliance.co.uk](http://www.mcps-prs-alliance.co.uk)

**SGAE.** Founded in 1899, SGAE (Sociedad General de Autores y Editores) is the leading authors rights organisation in Iberianamerica, which covers a market of more than 500 million potential consumers.

In the past decade, SGAE has achieved the highest standards of quality in systems, processes, security and organization. It has been awarded the following certifications: ISO 9001 and UNE 71502.

SGAE was the first rights organisation to establish an R&D department that has developed, in recent years, the most advanced tools for the efficient administration of new entertainment business models in the Knowledge Society.

[www.sgae.es](http://www.sgae.es)

**eLOS (electronic Licensing of Online Services)** is an agency whose primary role is the centralised licensing of author rights for usages on digital networks within the European market. On behalf of the Societies (SGAE & MCPS-PRS), the eLOS Agency will reach rights licensing agreements, on a non-exclusive basis, with distributors, ie Digital Service Providers (DSPs).

The eLOS Agency's activity will be supported by a technological platform named eLOS System, making a massive use of digital rights management technologies with the aim of reaching the high operative efficiency levels which might ensure the competitiveness of the eLOS Agency's offer in the marketplace.