

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT B
STRUCTURAL AND COHESION POLICIES



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**Collecting Societies and
Cultural Diversity in the
Music Sector**

STUDY



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT B: STRUCTURAL AND COHESION POLICIES

CULTURE AND EDUCATION

COLLECTING SOCIETIES AND CULTURAL DIVERSITY IN THE MUSIC SECTOR

STUDY

This document was requested by the European Parliament's Committee on Culture and Education.

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Abstract:

This study investigates how EU policy on music rights licensing, particularly for online services, is affecting cultural diversity. For that purpose, it analyses information on the popularity of different repertoires (Anglo-American, EU and domestic) in recent years in a sample of EU Member States. It finds that current policies are likely to weaken the position of authors and composers, therefore posing a challenge for cultural diversity.

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LIST OF ABBREVIATIONS

- ADAMI** Society for Artists' and Musical Performers' Rights (France)
- AFI** Italian Phonographic Association
- AGEDI** Association for the Management of Intellectual Rights (Spain)
- AIE** Artists and Performers Society (Spain)
- AURA** Association of United Recording Artists (United Kingdom)
- BEA** Belgian Entertainment Association
- CELAS** Centralised European Licensing and Administrative Service
- CFI** Court of First Instance
- CISAC** International Confederation of Societies of Authors and Composers
- DG** Directorate General
- DPMA** German Patent and Trade Mark Office
- EC** European Community
- EU** European Union
- FIMI** Federation of the Italian Music Industry
- GEMA** Society for Musical Performing and Mechanical Rights (Germany)
- GESAC** European Grouping of Societies of Authors and Composers
- GVL** Society for Performing Artists, Producers and Promoters (Germany)
- ICMP** International Confederation of Music Publishers
- IFPI** International Federation of the Phonographic Industry
- IMAIE** Institute for the Protection of Performing Artists Rights (Italy)
- MCPS** Mechanical Copyright Protection Society (United Kingdom)
- PAECOL** Pan-European Central Online Licensing

- PAMRA** Performing Artists' Media Rights Association (United Kingdom)
- PEDL** Pan-European Digital Licensing Initiative
- PEL** Pan European Licensing Initiative of Latin American Repertoire
- PMI** Independent Music Producers (Italy)
- PPL** Phonographic Performance Limited (United Kingdom)
- PRS** Performing Rights Society (United Kingdom)
- RAAP** Recorded Artists and Performers (Ireland)
- SACEM** Society of Musical Authors, Composers and Editors (France)
- SABAM** Belgian Society of Authors, Composeurs and Publishers
- SCF** Phonographic Consortium Society (Italy)
- SGAE** Spanish Society of Authors, Composers and Publishers
- SIAE** Italian Society of Authors and Publishers
- SIMIM** Belgian Society of Music Producers
- UNESCO** United Nations Educational, Scientific and Cultural Organisation
- WIPO** World Intellectual Property Organisation

EXECUTIVE SUMMARY

Background

The exercise of copyright and related rights can generally take place in two ways: either individually by the right holders (i.e. composers, authors, music publishers, performers and record producers) which negotiate directly with the commercial user of the protected work, or collectively via recourse to the services of collective licensing bodies. Whereas right holders are in principle free to decide whether to exercise their rights in person or not, in specific instances, mandatory collective rights management is prescribed by national or EU legislation.

A key European feature, collective rights management has spread in all EU countries, given the difficulties encountered with individual rights management for specific types of content exploitation. Collecting societies have been established in the EU Member States and have been commonly entrusted with the following tasks:

- a) negotiating licence fees and providing authorisations for the commercial exploitation of music content;
- b) collecting revenues for right holders;
- c) distributing royalties to right holders; and
- d) monitoring content usage.

In many European countries, collecting societies have also been legally compelled to support artistic creation by providing financial assistance for specific cultural and social purposes.

For decades, collective management of authors' and music publishers' rights has centred on mono-territorial, yet multi-repertoire licensing arrangements. Most European collecting societies have been connected to each other through bilateral agreements, allowing for the reciprocal representation of their repertoires. Under this system, each collecting society has been entitled to license not only the repertoire of its own members but also the repertoire of its associated collecting societies for commercial exploitations taking place in its country of establishment. Collecting societies representing performers and record producers have not been successful in establishing such an advanced and sophisticated system of reciprocal representation, as is the case for authors' and music publishers' rights.

The advent of new technologies and the expansion of digital content services have generated heated debates over the optimum model for music rights management, leading the European institutions to take action in the field. On 18 May 2005, the European Commission published Recommendation 2005/737/EC on collective cross-border management of copyright and related rights for legitimate online music services, advocating multi-territorial licensing for the online environment. Issued a few years later, the Commission Communication 'Creative Content Online in the Single Market' drew attention to the need to improve existing licensing mechanisms for different types of creative content, including music, so as to allow for the development of multi-territory rights clearance methods. The Commission's CISAC anti-trust decision, adopted in July 2008, provided further insight into the system of reciprocal representation agreements between European collecting societies and its compatibility with EC law.

The aim of the study

This study has been commissioned by the European Parliament in order to take stock of recent developments in the field of music rights management and examine how EU policy on music rights licensing affects (or might affect) cultural diversity in the music sector.

Central to the notion of cultural diversity is the production and diffusion of diverse cultural expressions. Specifically in the field of music, the essence of cultural diversity lies in the creation and distribution of varied musical content. Proper rewards for creators and access to a wide range of music repertoires are *sine qua non* conditions for the preservation and further stimulation of Europe's cultural wealth.

The study is based on the premise that music rights management may have major repercussions on creative activity and the market availability of diversified musical content. The business model used for the collection and distribution of revenues to right holders can affect the volume of creative output and condition the presence of different types of music repertoire in the market.

With a view to investigating the cultural ramifications of recent EU action in the field of music rights management and relevant market developments, in-depth research has been carried out in five EU Member States, which were selected as 'case-studies': Belgium, Germany, Italy, Spain and the UK. Research was coordinated by the Hellenic Foundation for European and Foreign Policy (ELIAMEP), drawing on the expertise of a team of academics and research fellows specialised in intellectual property matters.

The bulk of analysis took place in the first half of 2009, the assignment starting on 27 November 2008. Direct contacts were established with the collective rights managers, set up with the above mentioned countries and administering the rights of authors, composers, music publishers, performers and record producers. Information has also been gathered by collecting societies active in other EU countries, artists' associations operating at the national and European levels, music publishers' representative bodies, commercial users of protected musical content and the recording industry. Data was collected through the conduct of interviews and from written replies to a series of questionnaires prepared for research purposes.

The contents of the study

The first chapter of the study considers:

- the basic features of copyright and related rights management in the EU;
- the cultural dimension of collective rights management;
- the main characteristics of the licensing model followed thus far for cross-border music rights clearance in the offline and the online environments;
- recent EU activity in the field of music rights management, geared to multi-territorial and essentially pan-European music rights licensing for the digital exploitation of music content; and
- the nature and scope of the principal reactions of the music sector to the new digital music rights licensing approach, promoted by the European institutions.

The second chapter of the study identifies market developments in the area of digital music rights management and examines emerging business models. It presents:

- the new structures created for the provision of EU-wide licences in the digital environment; and
- various initiatives launched or envisaged for the same purpose.

The last section concludes with an assessment of such new licensing trends.

Chapter 3 proceeds with a cross-country overview of collective music rights management *before* and *after* the emergence of new licensing trends for the digital exploitation of music works. The intention is not to identify the *actual effects* of EU digital music rights-related action on European collecting societies and their ability to discharge their duties. Given the non-disclosure of quantitative information regarding the revenues that the new digital licensing models generate for right holders, a succinct economic analysis of the impact of such models on European collecting societies' licensing performance is not possible. Rather, the objective is to identify the *potential effects* of the systemic changes that currently take place in the field of music rights management on cultural diversity and more specifically, on the creation and market diffusion of varied music content.

A detailed examination of the value and trade flows of the music repertoires enjoyed in a selected set of EU countries is thus made. Analysis centres on four different types of repertoire (i.e. the domestic repertoire, the European repertoire, the Anglo-American repertoire and the international repertoire) and builds on quantitative and qualitative information provided by the collecting societies established in the countries concerned. Additionally, the main governance rules the collecting societies apply in their daily operation are presented, as this kind of information is revealing of the interests the various players in the area of collective rights management pursue. Attention is finally given to the local collecting society's licensing performance particularly in the digital environment, since the effects of EU action in the area of digital music rights management are (or could be) first manifested there.

In the light of preceding analysis, the last chapter of the study:

- identifies how the music sector has positioned itself vis-à-vis the new pan-European licensing approach, advocated by the European institutions;
- analyses the potential effects of the new licensing models detected on the market and/or their future development on cultural diversity;
- comparatively examines the present diversification of the European music market in terms of value and circulation of repertoires; and
- formulates policy options for the European institutions in relation to cross-border music rights management.

Main findings

In the wake of EU action in the field of music rights management for digital exploitation, various business models for multi-territorial music rights clearance have been contemplated by market operators. These essentially pertained to the management of copyright, namely the management of the rights held by composers, authors and music publishers, and not the management of the neighbouring rights enjoyed by performers and record producers.

Whilst not all the business models considered have materialised in the provision of pan-European licences, it is plain that the EU objective of overcoming territorial segmentation of copyright management in the digital environment has been attained.

The new licensing channels that have been established for the provision of EU-wide licences and are operational concern specific types of repertoire, primarily the Anglo-American repertoire. This contrasts the previous system of collecting societies' reciprocal representation, according to which each collecting society could grant access to the entire repertoire of the collecting societies participating in the system on its territory. The new licensing arrangements allow for the provision of mono-repertoire licences for multiple territories. In other words, there is no truly multi-territorial and multi-repertoire system in place. Repertoire fragmentation is one of the principal results of EU action in the field of music rights management.

Most of the business models which have emerged in the digital music rights licensing market as a response to EU action have derived from major music publishers. Major music publishers have devoted much time and resources to the development of multi-territorial licensing mechanisms. Most of these mechanisms rest on the abandonment of the system of reciprocal representation for the mechanical rights they enjoy in the Anglo-American repertoire in relation to digital licensing. Such rights have been entrusted to specific collecting societies or newly created collective rights management bodies for pan-European digital exploitation.

Many European collecting societies (especially small and medium-sized collecting societies) have criticised these market developments, arguing that they will lead to an over-centralisation of market power and repertoires at the EU level, as well as undesired competition to the detriment of less commercially successful and local repertoires. The argument that their economic sustainability is endangered was also put forward.

Composers and lyricists appear largely unaware of the new licensing trends and their effects on their creative activity. Music publishers, on the other hand, acknowledge the need for the introduction of effective multi-territorial licensing channels but opinions diverge as to the optimum way to move forward. As to commercial users, these complain about the fragmentation of repertoires, induced by the abandonment of the reciprocal representation network by major publishers, the legal uncertainty as to the identity of the collective rights management bodies entitled to grant licences and the exact scope of such licences.

The exit of major music publishers from the system of reciprocal representation in relation to EU-wide digital licensing has not equalled total abandonment of the reciprocal representation network. Major publishers continue to rely on the services of national collecting societies for other rights they enjoy in the same or other repertoires and have an enhanced power to influence collecting societies' licensing activity in general, notably by threatening to withdraw more repertoires and rights.

This raises the question of balance of rights holders' interests. Composers and authors that are not represented by major music publishers, as well as local music publishers do not enjoy sufficient means to pursue and defend their interests. This poses a fundamental challenge for cultural diversity.

Chapter 3 attests to the importance of the Anglo-American repertoire as a revenue source for the European collecting societies. One could reasonably argue that the collecting

societies which are excluded from the management of such repertoire will progressively start facing reduced turnovers. This could affect their ability to cater for the needs of their members.

Moreover, it seems that commercial users now have less incentive to obtain licences for smaller or specialised repertoires. Rights clearance for the most commercially successful repertoire, that is the Anglo-American repertoire, is key to a market entrant wishing to operate on a pan-European basis. Since the latter is presently split amongst various rights managers, users face a multiplication of negotiations for rights clearance. The resulting costs could convince them to disregard rights licensing for local repertoires.

Direct licensing could continue and even expand to other repertoires and music rights but the ultimate question is who will be the market actors that will accommodate the needs of individual authors, composers and local music publishers. Should direct licensing affect the ability of European collecting societies – at least those of small or medium size – to accommodate the interests of all their members, this will have detrimental effects on cultural creation and the diffusion of a variety of music repertoires in Europe.

This is all the more troubling, when one considers that the European music market is not as diverse as one would consider it to be. According to the findings of chapters 3 and 4, the repertoires of the EU Member States do not develop at the same rate and do not circulate within the EU with the same success. The repertoires of the smaller EU countries and the new Member States, in particular, do not easily penetrate European markets.

Confronted with the challenge of cross-border music rights licensing, the European institutions have various policy options: leave the market to find its rhythm or opt for some sort of regulatory intervention. The latter option offers a variety of alternatives: soft law measures, co-regulation schemes or legislative intervention by means of harmonisation. Whilst the choice is incumbent upon the European institutions, it is feared that if the market is left to evolve of its own, business models that further hamper the diversification of the European music scene could emerge (or might be emerging).

At the end of the day, music rights management is not simply a legal matter. It is an issue of high political relevance, given the implications it entails for the preservation and promotion of cultural diversity in Europe. Perhaps a system enabling all collecting societies and licensing bodies established in the EU to provide pan-European and multi-repertoire licences whilst fostering competition for the efficiency of services provided and transaction costs would be to the benefit of all the parties involved: rights holders, users but also the final consumer of music.

What is indeed important in Europe is a mechanism whereby through increased collaboration among collecting societies and other licensing operators, music rights management aims at:

- a) broad availability and access to a variety of repertoires, including small and specialised repertoires;
- b) a balanced accommodation of the interests of all right holders, with renewed emphasis on the interests of creators of local or specialised cultural content;
- c) user-friendly, uncomplicated and comprehensive rights clearance services;
- d) increased rights managers' transparency and accountability.

INTRODUCTION

Music rights management has attracted much Community attention in recent years. On 18 May 2005, the European Commission published Recommendation 2005/737/EC on collective cross-border management of copyright and related rights for legitimate online music services, advocating multi-territorial licensing for the online environment.² Issued a few years later, the Commission Communication 'Creative Content Online in the Single Market' drew attention to the need to improve existing licensing mechanisms for different types of creative content, including music, so as to allow for the development of multi-territory rights clearance methods.³ The Commission's anti-trust decision adopted in July 2008 with respect to the CISAC case provided further insight into the issue of music rights management.⁴

This study has been commissioned by the European Parliament in order to take stock of recent developments in the field of music rights management and examine how EU policy on music rights licensing affects (or might affect) cultural diversity in the music sector.

Over the past few years, culture, creativity and cultural diversity have progressively gained resonance in European affairs. The 2007 Commission Communication on a 'European agenda for culture in a globalising world'⁵ and the active negotiation and rapid adherence of the European Community to the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions⁶ illustrate the increased attention afforded to culture and cultural diversity by the European institutions. Both instruments should be seen as complementing Article 151 of the EC Treaty, particularly its paragraph 4, according to which '[t]he Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures'.

Central to the notion of cultural diversity is the production and diffusion of diverse cultural expressions. Specifically in the field of music, the essence of cultural diversity lies in the creation and distribution of varied musical content. Proper rewards for creators and access to a wide range of music repertoires are *sine qua non* conditions for the preservation and further stimulation of Europe's cultural wealth.

The study is based on the premise that music rights management may have major repercussions on creative activity and the market availability of diversified musical content. The business model used for the collection and distribution of revenues to right holders can affect the volume of creative output and condition the presence of different types of music repertoire in the market. Intended to assist European institutions in the design and development of policies that effectively protect and promote cultural diversity, the study

² European Commission, Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services, OJ L 276, 21/10/2005, p. 54.

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on creative content online in the single market, COM(2007) 836, 3/1/2008.

⁴ European Commission, Decision C(2008) 3435 of 16/7/2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 – CISAC), available at: <http://ec.europa.eu/competition/antitrust/cases/decisions/38698/en.pdf>.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalising world, COM(2007) 242.

⁶ UNESCO Convention on the protection and promotion of the diversity of cultural expressions, available at: http://portal.unesco.org/culture/en/ev.php-URL_ID=33232&URL_DO=DO_TOPIC&URL_SECTION=201.html.

inquires into the cultural ramifications of recent EU action in the area of music rights management.

To attain the above mentioned objective, in-depth research has been carried out in 5 EU Member States, selected as 'case-studies': Belgium, Germany, Italy, Spain and the UK. The selection of these countries has been driven by the need to gather qualitative and quantitative data that could roughly represent the EU27 reality, allow for comparative analysis and enable the drawing of meaningful conclusions. Research was coordinated by the Hellenic Foundation for European and Foreign Policy (ELIAMEP), drawing on the expertise of a team of academics and research fellows specialised in intellectual property matters.

The bulk of analysis took place in the first half of 2009, the assignment starting on 27 November 2008. Direct contacts were established with the collective rights managers, set up with the above mentioned countries and administering the rights of authors, composers, music publishers, performers and record producers. Information has also been gathered by collecting societies active in other EU countries, artists' associations operating at the national and European levels, music publishers' representative bodies, commercial users of protected musical content and the recording industry. Data was collected through the conduct of interviews and from written replies to a series of questionnaires prepared for research purposes.

The authors of this study would like to stress that crucial to the analysis that has been made was the disclosure of data on a purely voluntary basis from the collective rights managers themselves. Whilst the level of commitment of our interviewees has varied, ELIAMEP would like to thank all the different actors who participated in the study, providing accurate and reliable information.

1. RIGHTS MANAGEMENT IN THE EUROPEAN UNION: SETTING THE STAGE

The EU has a long-standing commitment to the harmonisation of Member States' copyright legislation. Since the early '90s, several regulatory measures have been adopted with the aim of guarantying the proper functioning of the internal market in cultural goods and services. Legislative enactments recognised special categories of rights and modes of exploitation, dealt with particular elements of protection, such as the time remit of copyright, or focused on enforcement.⁷ Directive 2001/20/EC on the harmonisation of certain aspects of copyright and related rights in the information society, in particular, sought to adjust the regulatory framework in the light of technological developments and brought EU copyright protection into line with the WIPO 'Internet Treaties'.⁸

Cultural diversity considerations have been integral to legislative action undertaken. Though primarily designed to correct legislative disparities between national copyright laws, the harmonisation instruments which were adopted at EU level also sought to create a legal environment supportive of creativity and innovation. For the European institutions, establishing a rigorous, effective copyright system was considered to be 'one of the main ways of ensuring that European cultural creativity and production receive the necessary resources'.⁹

Subject to ECJ assessment and Commission competition law scrutiny since the early 1970s,¹⁰ the issue of music rights management has lately been brought to centre stage due to the advent of the multimedia era and the expansion of digital services. The emergence of new ways to produce, deliver and access music works has triggered a re-appraisal of traditional models for music rights administration. EU action has not taken so far the form of harmonisation measures. It has rather built on non-binding legislative instruments and the application of EC competition rules.

With a view to setting the stage for subsequent analysis, this chapter considers the basic features of copyright and related rights management in the EU (section 1.1), examines the

⁷ Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 346, 27/11/1992, p. 61 (repealed by Directive 2006/115/EC, OJ L 376, 27/12/2006, p. 28), Council Directive 93/83/EC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, 6/10/1993, p. 15, Council Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights, OJ L 290, 24/11/1993, p. 9 (repealed by Directive 2006/116/EC, OJ L 372, 27/12/2006, p. 12), Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22/6/2001, p. 10, Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L 272, 13/10/2001, p. 32, and Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 20/4/2004, p. 45. See also European Commission, Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights, COM(2008) 464.

⁸ The WIPO Copyright Treaty which protects authors of literary and artistic works and the WIPO Performances and Phonograms Treaty for performers and phonogram producers set minimum international copyright standards for the online environment.

⁹ Directive 2001/29/EC, cited above, para. 11.

¹⁰ See for instance ECJ, Case 127/73, *BRT v SABAM*, [1974] ECR 51, Case 7/82, *GVL v Commission*, [1983] ECR 48, Case 395/87, *Criminal proceedings against Tournier*, [1989] ECR 2521, Case 110/88, *Lucazeau and others v SACEM and others*, [1989], ECR 2811. See also European Commission, Decision 82/204/EEC of 4 December 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.971 – GEMA statutes), OJ L 94, 8/4/1982, p. 12, and Decision 81/1030/EEC of 29 October 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.839-GVL), OJ L 370, 28/12/1981.

cultural dimension of collective music rights management (section 1.2), discusses the main characteristics of the licensing model followed thus far for cross-border music rights clearance (section 1.3), presents recent EU activity in the field (section 1.4) and explores the nature and scope of the principal reactions of the music sector to new trends in digital music rights licensing (section 1.5).

1.1. Copyright and music rights management in the EU: A few preliminary remarks

Copyright is the legal protection afforded to the creator of an original literary, artistic, music or scientific work. It entails an exclusive right to authorise or prohibit the exploitation of the work.

In the field of music, copyright protection is provided to creators of musical works (i.e. composers and lyricists). Right owners benefit from the recognition of two main categories of rights: mechanical rights and performing rights. Mechanical rights stand for the right to reproduce the protected work by making physical and intangible copies. Performing rights pertain to the right to communicate the work to the public, including the right of making available to the public.

Music publishers are not granted copyright protection by law (i.e. automatically); they acquire mechanical and performing rights in a derivative way from creators through contracts concluded with them.

'Related rights', also known as 'neighbouring rights', differ from copyright in that they belong to owners regarded as intermediaries in the production or diffusion of works. In the field of music, such rights apply to performers and record producers. Musicians and singers perform musical works written by composers and lyricists; record producers record and produce musical works written by composers and lyricists, played by musicians or sung by performers.

The exercise of copyright and neighbouring rights can generally take place in two ways: either individually by the right holder which negotiates directly with the commercial user of the protected work, or collectively via recourse to the services of collective licensing bodies. In the case of collective management, right holders transfer or entrust their rights to the intermediate collective manager which acts in their interest and on their behalf, and negotiates rates and exploitation terms with users. Whereas right holders are in principle free to decide whether to exercise their rights in person or not, in specific instances, mandatory collective rights management is prescribed by national or EU legislation.¹¹

Collective music rights management is a key European feature. Dating back the 19th century, it has spread in all EU countries, given the difficulties encountered with individual rights management for specific types of content exploitation. Due to practical reasons, right holders may not always control and monitor all uses of their work. A composer, for example, may not easily identify all different radio and TV stations which broadcast his works in order to negotiate licences and obtain remuneration. No less importantly, the number of users seeking exploitation of copyrighted content and the volume of the works that a commercial operator may wish to exploit can render individual management an extremely complex and burdensome exercise for both right owners and users.

¹¹ Directive 93/83/EEC for instance provides for mandatory collective management of the right to remuneration for cable retransmission.

The fact that collective rights management is often the most effective way for rights trading - to the benefit of right holders and music rights licensees alike -, explains to a great extent the long-standing operation of collecting societies in Europe. Set up to represent authors and music publishers originally, then performers and phonogram producers, collecting societies have been commonly entrusted with the following tasks: a) negotiating licence fees and providing authorisations for the commercial exploitation of music content; b) collecting revenues for right holders; c) distributing royalties to right holders; and d) monitoring content usage. Moreover, in many European countries, collecting societies have been legally compelled to support artistic creation by providing financial assistance for specific cultural and social purposes.¹² These usually range from the organisation of cultural festivals and events to the channelling of resources to social security funds for artists.

Though designed on a not for profit basis, collecting societies are economic entities operating on the market. To finance themselves and cover their administrative costs, they normally deduct a fee from the revenues to be transferred to the right owners. Membership fees may also be occasionally applied. Generally speaking, to ensure their economic standing, collecting societies need to attract a substantive number of members and secure appealing (to users) rights catalogues and repertoires.

For reasons linked in particular to the exclusive nature of copyright and the need to ensure the efficiencies described above, collecting societies represent powerful bodies in most EU Member States. Whilst in some EU countries they are explicitly designated as legal monopolies,¹³ in others they operate as *de facto* monopolies. This has led to criticism by both right holders and licensees, with calls for increased management efficiency and improved transparency on tariffs, revenue distribution and accounting practices.

The operation of European collecting societies has not formed the object of harmonisation at the EU level. The legal regime governing collecting societies' activities therefore varies considerably from one EU Member State to the other.

1.2. Collective music rights management and cultural diversity

It is generally acknowledged that the system of collective music rights management has an important cultural connotation.

Primarily responsible for the collection and distribution of royalties to right owners, collecting societies enable more creative artists (i.e. authors and performers) to earn an income from their cultural profession than it is possible via individual rights administration. Compared to possible results from individual management, the income collecting societies collect for right holders is bigger, because there is a significant advantage in cost effectiveness. Clearly, the more efficient collecting societies are in terms of maximising revenue collection and minimising the costs associated with rights management, the more money is paid to artists. This improves artists' ability to earn a living and therefore facilitates cultural creation. The same could be said regarding music publishers and record

¹² See in detail KEA, Study on collective management of rights in Europe: The quest for efficiency, available at: <http://www.keanet.eu/report/collectivemanpdffinal.pdf>, p. 79. See also Capgemini, Music in Europe: sound or silence?, Study of domestic music repertoire and the impact of cultural policies of collecting societies in the EU25, available at: http://www.soundorsilence.nl/CapGemini_SoS_2005.pdf, p. 29.

¹³ See in this respect KEA, Study on collective management of rights in Europe: The quest for efficiency (mentioned above), p. 15.

producers. Remuneration for investment in cultural creation and production acts as an incentive for further investments to promote creativity and innovation.

Additionally, by offering a single point for rights clearance, collecting societies prevent commercial users from having to negotiate with multiple right holders. Bearing in mind that high transaction costs may act as a deterrent for rights licensing (especially for individuals and operators of medium or small size), collective rights management reduces transaction costs and exerts a positive influence on the volume of rights trading. Users do not need to track down the various individual right holders of the works they want to exploit for licensing purposes. With one licence (instead of many), they can clear rights for a series of musical works. From this perspective, it could be argued that collecting societies support a broader range of music works and repertoires becoming available on the market. In other words, they promote increased distribution and access to music content.

Interestingly, collective rights management also acts as a safeguard for 'weaker' right owners, mainly young, not particularly famous or less popular artists. Collecting societies cater to all their members, whatever their talents or success. This has allowed for the effective institutionalisation of a certain amount of solidarity between right holders, in the sense that fees and tariffs are not conditioned by popularity. Less successful artists receive remuneration on the basis of the same conditions applied to top stars and at the same intervals. Accordingly, European collecting societies have been based on a system of cross-subsidisation among their members with part of the costs linked to the management of less commercial music genres being absorbed by other more popular music segments.

1.3. Territoriality and traditional models of collective cross-border music rights management

Copyright and related rights are rights of a territorial nature. They are granted by domestic legislation which defines the scope of the protection afforded within national borders.

The principle of territoriality is of relevance and importance for the exercise of copyright and related rights. It determines which law will apply to the act of exploitation of protected content and does not entail that music rights licensing should be limited to the national territory. There is indeed no legal or practical requirement constraining right holders to restrict rights exploitation on a national basis. Right holders are free to choose the territories in which licensing of their rights should be possible.

For decades, collective management of authors' and music publishers' rights in Europe has centred on mono-territorial, yet multi-repertoire licensing arrangements. Most European collecting societies have been connected to each other through bilateral agreements, allowing for the reciprocal representation of their repertoires. Under this system, each collecting society has been entitled to licence not only the repertoire of its own members (i.e the domestic repertoire) but also the repertoire of its associated collecting societies (i.e the foreign repertoire) for commercial exploitations taking place in its country of establishment.

In the light of the reciprocal representation licensing model, royalty collection and distribution, due as a result of the exploitation of rights on a national basis, has acquired a cross-border dimension. Collecting societies collect royalties not only for their members but also for the members of their affiliated societies. The revenues generated from the exploitation of foreign repertoire on domestic territory are then transferred to the affiliated societies for distribution to right holders.

Turning to performers' and record producers' rights, collecting societies in Europe have not been successful in establishing such an advanced system of reciprocal representation, as is the case for authors' and music publishers' rights. Whilst many European collecting societies representing performers have entered into reciprocal agreements for the repertoires they represent, most of these agreements have not been fully implemented mainly due to the lack of appropriate computerised infrastructure and reporting difficulties. Some of them further contain a waiver for revenue transfers, as it is assumed that reciprocal flows of remuneration would neutralise each other. The number of reciprocal representation agreements between European collecting societies representing record producers is limited.

The absence of a broad portfolio of rights that collecting societies are mandated to manage, has generally hampered the development of a sophisticated reciprocal representation network of collecting societies representing performers' and record producers' rights. Performers typically transfer their rights to the record producer.¹⁴ This is clearly the case, for instance, for the making available right. Major record companies, on the other hand, but also some large independents, often resort to individual management.¹⁵ For other types of rights, sub-licensing represents the main means through which cross-border collection and distribution of royalties takes place. Multinational companies (and to some extent also independent phonogram producers) outsource their rights to local labels - members of local collecting societies - in order to be able to receive royalties for the exploitation of their rights in the country of establishment of the collecting societies concerned.

This said, it should be noted that direct membership of foreign right holders has created an additional channel for royalty collection and distribution abroad. Early Commission findings that the refusal of collecting societies to conclude management agreements on the basis of nationality infringes EC competition law paved the way for the acceptance of foreign right owners as members of local collecting societies. This applies for both the collecting societies representing authors and music publishers and the collecting societies representing performers and phonogram producers.¹⁶

1.4. Recent EU action in the field of collective rights management

The advent of new technologies and the expansion of digital content services in Europe have generated heated debates over the optimum model for music rights management, inducing the European institutions to take action in the field.

¹⁴ The lack of legislative measures adopted at EU level with a view to protecting performers' rights to equitable remuneration against record producers' 'predatory' acquisitions of their exclusive rights merits attention in this respect. Only Directive 92/100/EC provides such protection to performers for the sole transfer or assignment of the rental right. Some EU countries have identified the problem and introduced legislation to protect the interests of performers. This is the case of Spain. The Spanish Copyright Law, while recognising the performers' right of making available, establishes a presumption of transfer to the producer. Accordingly, when the performers sign individually or collectively a contract with a phonogram or audiovisual producer regarding the production of phonograms and audiovisual recordings, it is presumed that their making available right is assigned to the producer, except for the equitable remuneration right that cannot be waived and must be paid and managed through collecting societies. In the opinion of AIE, the Spanish collecting society for performers, the solution applied in Spain should expand in other European countries too, since it helps to control the use of performances in the online environment.

¹⁵ Note for instance the new deal reached by YouTube and Universal regarding the creation of a new online hub for music videos, called VEVO, which will operate under a licence by Universal, covering neighbouring rights (www.nytimes.com/2009/04/10/technology/internet/10google.html).

¹⁶ Commission Decision 82/204/EEC of 4 December 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.971 – GEMA statutes), OJ L 94, 8/4/1982, p. 12, and Commission Decision 81/1030/EEC of 29 October 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.839-GVL), OJ L 370, 28/12/1981. Even today, however, most members of the collecting societies are nationals or nationally-based companies.

Noting that the licensing of 'online rights', that is the licensing of the rights which are required for the online exploitation of protected works, is commonly restricted by territory, the 2005 Commission Recommendation stressed the need for a licensing policy that reflects the ubiquity of the online environment. Although the Recommendation did not prescribe a particular model of rights licensing, it deplored the fact that commercial users willing to operate on a European basis were forced to negotiate the clearance of rights in each Member State with each of the respective collecting societies. Advocating multi-territorial licensing, so as to promote the development of pan-European digital music services, the Recommendation stipulated that right holders should enjoy the right to entrust the management of online rights, on a territorial scope of their choice, to a collective rights manager of their choice, irrespective of nationality and residence considerations. Additional recommendations for a) equitable royalty collection and distribution without discrimination on the grounds of residence, nationality or category of right holder; b) increased collective rights managers' accountability; c) fair right holders' representation in the collective rights managers' internal decision-making; and d) effective dispute resolution procedures were made as well.

Making clear that right holders should, upon reasonable notice of their intention to do so, enjoy the right to withdraw any of their online rights from the entity entrusted with their management and transfer them to another collective rights management body, the Recommendation challenged the traditional structures of collective copyright management. It particularly called into question the highly developed system of reciprocal representation agreements between collecting societies representing authors and music publishers. As already explained, the latter allowed each national collecting society to represent the aggregated repertoire of its affiliates on its territory.

The European Parliament criticised recourse to a soft law instrument for such a sensitive and delicate matter, without prior consultation and without its formal involvement.¹⁷ Whilst accepting that right holders should in principle be free to choose a collective rights manager for their representation, it expressed concern about the potentially negative effects of the Recommendation on local and niche repertoires, given the risk of rights concentration in the bigger collective rights managers. Arguing for the introduction of a fair and transparent competitive system that would avoid downward pressure on authors' revenues, it invited the Commission to present a proposal for a flexible framework directive regulating the collective management of copyright and related rights for cross-border online music services. Nevertheless, the Commission took the position that in a fast-changing environment, it is preferable to allow markets to develop, and confined itself to monitoring emerging online licensing trends.¹⁸

Though not solely concerned with music, the 2008 Commission Communication 'Creative Content Online in the Internal Market' identified multi-territorial licensing as one of the main challenges raised by the uptake of online content services in Europe. Ascertaining that EU-based action was necessary in the field, the Communication launched a public

¹⁷ See European Parliament, Report on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC, 2006/2008(INI)), Committee on Legal Affairs, Rapporteur: Katalin Levai, A6-0053/2007, 5/3/2007. See also European Parliament, Resolution of 13 March 2007 on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC, 2006/2008(INI)), OJ C 301E, 13/12/2007, p. 64, and Resolution of 25 September 2008 on collective cross-border management of copyright and related rights for legitimate online music services, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-20080462+0+DOC+XML+V0//EN>.

¹⁸ European Commission, Monitoring of the 2005 Music Online Recommendation, 7/2/2008, available at: http://ec.europa.eu/internal_market/copyright/docs/management/monitoring-report_en.pdf.

consultation process, focusing *inter alia* on multi-territorial rights clearance, and created a stakeholders' cooperation platform, the 'Content Online Platform', to foster debate.

In the midst of profound market developments geared to multi-territorial (and essentially pan-European) licensing, the CISAC anti-trust decision, issued in July 2008, shed new light on the system of reciprocal representation agreements between European collecting societies and its compatibility with EC law. Centring on the conditions of management and licensing of authors' public performance rights by EEA-based collecting societies (members of CISAC, the International Confederation of Societies of Authors and Composers), the decision did not question the practice of reciprocal representation agreements. It found however that membership clauses, contained in the agreements, that obliged right holders to resort to their national collecting society for the provision of management services were incompatible with EC competition rules. Similarly, territorial exclusivity clauses preventing collecting societies from offering licences to commercial users outside the national territory were deemed to hamper competition. With respect to the granting of licences for internet, satellite and cable transmissions, in particular, the Commission held that the systematic and coordinated territorial delineation of the agreements by national territory constituted a concerted practice.¹⁹ Contesting the resulting *de facto* exclusivity for the licensing of the aggregated repertoire of the collecting societies participating in the system and the strict segmentation of the market on a national basis, the Commission required collecting societies to review their agreements, making clear that territorial mandate delineation, though still possible, should be decided independently, on a bilateral basis.²⁰

What becomes apparent from the preceding analysis is that EU action in the field of music rights management stems from various institutional actors. Notably, within the European Commission, different Directorate Generals (DGs) strive to seek an adequate response to the challenge of multi-territorial licensing. Whilst the 2005 Commission Recommendation was based on work carried out by DG Internal Market and Services, the CISAC decision and the 'Content Online' Communication derived respectively from DG Competition and DG Information Society and Media. DG Competition further hosted a roundtable on the opportunities and barriers to online retailing, where selected consumer and industry representatives were invited to submit their views.²¹ Interestingly, just a few weeks before the completion of this study, a new legislative initiative of DG Information Society and Media and DG Health and Consumers for the creation of a Europe-wide copyright licence for

¹⁹ In this respect, it should be noted that pursuant to Article 230 EC, CISAC brought before the CFI an action for annulment of Article 3 of the Commission's decision, according to which the collecting societies infringed Article 81 EC and Article 53 of the EEA agreement by coordinating the territorial delineation of the reciprocal representation mandates granted to one another in a way that licensing is limited to the domestic territory of each collecting society. In support of its application, the applicant submitted that the inclusion of a territorial delineation clause in all the reciprocal agreements concluded by its member collecting societies is not the product of a concerted practice to restrict competition. Rather, this state of affairs exists because the collecting societies find it in the interest of their members to incorporate such a clause in their reciprocal representation agreements. See in detail, Action brought on 3 October 2008 - *CISAC v Commission*, Case T-442/08, OJ C 82, 4/4/2009, p. 25. Similar actions for annulment of Article 3 of the CISAC decision were also lodged with the CFI by SAZAS, the Slovenian collecting society for authors, composers and music publishers, and SOZA, the Slovak collecting society for authors, composers and music publishers. See Action brought on 29 September 2008, *SOZA v Commission*, Case T-413/08, OJ C 301, 22/11/2008, p. 56, and Action brought on 29 September 2008, *SAZAS v Commission*, Case T-420/08, OJ C 313, 6/12/2008, p. 42.

²⁰ The European Commission originally set the collecting societies a time limit of 120 days for the revision of their agreements, which was extended until 15/03/2009.

²¹ The first meeting was held on 17 September 2008 (<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1338&format=HTML&aged=0&language=EN&gui>). A follow-up meeting, which focused on the online distribution of music, took place on 16 December 2008. The views of its participants were consolidated in a document 'Online commerce retailing: Report on opportunities and barriers to online retailing', published on 26 May 2009 at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/832&format=HTML&aged=0&language=EN&guiLanguage=en>.

online content was reported in the press.²² The involvement of all these institutional bodies, each one with its own remit and policy agenda, creates a confusing picture and complicates follow-up. Without proper coordination and constructive inter-service and inter-institutional consultation, policy development in the field of multi-territorial rights clearance might prove a very difficult venture.

1.5. Multi-territorial music rights licensing: The views of the sector

The 2005 Commission Recommendation and the 2008 CISAC prohibition decision have triggered major changes in the market, leading to a restructuring of rights management channels. The Commission is currently considering the outcome of the bilateral negotiations held by the collecting societies touched by the CISAC case for a new generation of reciprocal representation agreements. Whilst limited information has so far been disclosed in this respect, it is clear that following initial reluctance, collecting societies engaged in various rounds of negotiations, the ultimate result being a fierce battle of interests between larger and smaller actors. On the other hand, in the wake of Commission Recommendation 2005/737/EC, various multi-territorial licensing arrangements have been given consideration by right holders and collective rights managers. Developments have taken and continue to take place at a rapid pace, the world of collective rights management being in turmoil. New players have been introduced in the market, and new licensing models have been experienced with.

The market effects of the 2005 Commission Recommendation are discussed in detail in the following chapter. At this point of analysis, it suffices to state that the implementation of the Recommendation has primarily rested on the withdrawal of music publishers' rights from the system of reciprocal representation. Major publishers have withdrawn the mechanical rights they enjoy for specific types of repertoire – mainly the Anglo-American repertoire - and entrusted their management to specific collecting societies or newly created collective rights management bodies for pan-European digital exploitation.²³

Despite targeting copyright and related rights alike, the impact of the Recommendation has thus mainly been felt in the field of copyright management. There is indeed no evidence to suggest that the Recommendation has substantially affected the management of performers' and record producers' rights. Moreover, the 'freedom' for right holders to choose the collective rights manager they deem most appropriate for the management of their rights on an EU basis - so ardently supported by the Recommendation - has materialised only for music publishers. Composers and lyricists are not reported to have withdrawn their rights in an attempt to gain access to EU-wide licensing structures.

The abandonment of the reciprocal representation system for the management of major publishers' rights in what evidently represents the most commercially successful repertoire (i.e. the Anglo-American repertoire) has formed the object of much criticism. Many European collecting societies have argued against direct membership of large music publishers to specifically determined collective rights licensing bodies for the management of their online rights on a pan-European basis.²⁴ The main argument advanced has been

²² See K.J. O'Brien, 'EU to hear proposals on cross-border net copyright', available at: http://www.nytimes.com/2009/05/05/business/global/copyright.html?_r=3.

²³ Other licensing models, discussed in detail in chapter 2, have not yet materialised in the provision of pan-European licences.

²⁴ See Joint Position on the Recommendation on the collective cross-border management of copyright and related rights for legitimate online music services of the 18 October 2005 by the collecting societies AEPI (Greece), AKKA-LAA (Latvia), AKM (Austria), Artisjus (Hungary), Austro Mechana (Austria), Buma/Stemra (Netherlands), EAU (Estonia), HDS (Croatia), IMRO (Ireland), KODA (Denmark), LATGA-A (Lithuania),

that direct management without recourse to the system of reciprocal representation can lead to an over-centralisation of market power and repertoires at the EU level, creating undesired competition to the detriment of local or specialised repertoires. A great number of European collecting societies have actually submitted that the withdrawal of the commercially appealing Anglo-American repertoire will significantly reduce their turnover and undermine cost efficiency. The resulting increase in administration costs will cause a significant decrease in royalty revenues for members, namely local authors and music publishers. Investments in creativity and the pursuit of cultural and social objectives will also be harshly affected.

According to the information received by our interviewees, the entrustment of large publishers' rights to specific entities for digital exploitation will mainly disturb the workings of medium-sized and small collecting societies. In the absence of major repertoires to administer, economic sustainability will largely depend on the size of the remaining repertoire to manage and its commercial appeal. Should survival become conditional upon the volume of such repertoire, it is argued that Eastern European collecting societies will be the first to disappear because they enjoy a limited domestic portfolio. Western European collecting societies established in countries like Greece and Portugal will follow. Although the size of the domestic repertoire is significant in these countries, local collecting societies lack the required know-how for the provision of multi-territorial licences. Their economic sustainability will thus depend on their ability to extend their activities on wider territories and modernise their licensing processes. Scandinavian, Dutch and Belgian collecting societies will be in the third position. Despite being familiar with processes of multi-territorial licensing,²⁵ their domestic repertoire is not strictly indispensable to the launch of pan-European online music services. Commercial users willing to operate at EU level may very well be satisfied with an authorisation to exploit the repertoire of major music publishers only.

Crucially, authors seem largely unaware of the debate that is currently taking place in relation to multi-territorial licensing and the repercussions that different licensing models might have on the collecting societies managing their rights, and thus on their own creative endeavour. For most of the artists' associations contacted in the frame of this study, rights licensing represents a technical and extremely complex issue, and they need collecting societies to take care of this. Despite the limited awareness noted, some view positively a system of free competition, according to which each European collecting society is entitled to offer pan-European, multi-repertoire licences. As observed, competition should be limited to the conditions and quality of the administrative services provided, without extending to pricing or licensing terms. Otherwise, the activity of smaller collecting societies could be endangered, entailing severe effects on local artists' revenues.

Music publishers, on the other hand, are centrally concerned with the issue of multi-territorial licensing. Most of them generally perceive the 2005 Recommendation as a flexible instrument which allows the sector to identify and test various rights licensing models. Whilst collective rights management remains a very important, practical and effective mechanism for high volume usage of rights, publishers agree that there is a need to provide users with effective and cost efficient licensing structures for the territory/ies they wish to operate in, reinforce the accountability of collecting societies to their

Musicautor (Bulgaria), OSA (Czech Republic), SABAM (Belgium), SAZAS (Slovenia), SOZA (Slovakia), SPA (Portugal), STEF (Iceland), TONO (Norway), UCMR-ADA (Romania), ZAIKS (Poland), June 2007.

²⁵ Scandinavian collecting societies have centralised rights management covering all Scandinavian countries. Dutch and Belgian collecting societies have provided central licensing services to specific record companies and have thus upgraded their licensing systems to cover multiple territories.

membership and ensure that right owners benefit from transparent and appropriate compensation models. Some of the business models which currently emerge for multi-territorial licensing in the digital environment could provide an adequate answer in this respect.

Concern has nonetheless been expressed regarding the withdrawal of major music publishers' rights from the system of reciprocal representation. Such withdrawal is considered to create a two-speed market: one for international repertoire, as the rights withdrawn essentially pertain to Anglo-American repertoire, another for local repertoire. In this context, small publishers' repertoire is said to be at risk. Local and specialised music publishers are expected to become marginalised players in the pan-European online music market (if not already marginalised). EU-wide licensing through one stop-shop mechanisms with local agencies that are apt to provide the 'entire' music repertoire would be preferable.

Commercial users take the view that the licensing process is complicated and that efforts should be deployed to make it smoother. The withdrawal of major music publishers' rights from the system of reciprocal representation has caused a partitioning of repertoires. Users complain about such fragmentation, forcing them to make multiple deals in order to gain access to a large repertoire.²⁶ Under the system of reciprocal representation, online service providers could obtain a mono-territorial blanket licence from the national collecting society, covering the repertoire of all the collecting societies participating in the system. Now, pan-European licensing has become possible, but only as regards specific repertoire genres. Operators providing pan-European digital services a) need to negotiate with different collective rights managers, responsible for the licensing of major music publishers' rights, and b) resort to the traditional management services of the national collecting societies, if services with music works of a 'domestic' or 'specialised' flavour are also to be delivered. Their willingness and ability to enter into all these different deals is debatable.

Users also complain about the general legal uncertainty as to the identity of the collective rights management bodies entitled to grant licences, and the exact scope of such licences, namely who control what rights and in what works. The situation is even more complicated when one considers that the digital exploitation of music works necessitates the clearance of both mechanical and performing rights. Major music publishers have so far withdrawn their mechanical rights from the system of reciprocal representation.²⁷ For the licensing of performing rights, operators still need to make deals with the national collecting societies, as far as the repertoire of major music publishers' is concerned. Bundling of rights is generally considered as a means which could substantially facilitate rights clearance.

Works with split copyright ownership pose one of the most frustrating barriers to rights clearance. When one or several exploitation rights on a single work are owned by multiple right holders,²⁸ users are required to locate and obtain the authorisation of all of them. If these right holders are represented by different collective rights management entities, the number of deals to conclude increases and so do the costs. When a composer signs an

²⁶ Users further fear that the CISAC competition decision might increase trends towards repertoire fragmentation. Concerned with the impact that such fragmentation could have on the activities of its members, the European Broadcasting Union (EBU) submitted an application for leave to intervene in the actions of annulment of the CISAC decision lodged by CISAC (T-442/08) and SAZAS (T-420/08). See *supra*, n. 18. Intervention was admitted by orders of 2 June 2009.

²⁷ See however chapter 2, section 2.2.1 regarding the PEL initiative, which covers public communication rights (including making available rights) as well.

²⁸ This concerns around 40% of musical works. See 'Making online commerce a reality in the EU, input by MCPS-PRS Alliance further to the Online Commerce Roundtable initiated by DG Competition, available at http://ec.europa.eu/competition/consultations/2008_online_commerce/mcps_prs_alliance_contribution.pdf, p. 2.

agreement with a music publisher, he may chose to assign all or part of his copyright to the music publisher. As a result, publishers do not always enjoy the centralised management of copyright in a protected work. In such cases, an additional negotiation burden is imposed on users because multiple licences need to be obtained for the same work. Needless to say, music works written by several authors (for instance, 2 composers and 2 lyricists) or works involving different publishers holding different shares of the copyright further complicate the picture.

As regards final consumers, these are limitedly aware of the developments triggered by the 2005 Commission Recommendation. The growing rate of legitimate online music sales over the last few years indicates that at least some of them are willing to pay for digital music.²⁹ Nonetheless, piracy considerations should not be neglected.³⁰ Should new pan-European licensing models result in an increase in prices (e.g. because of excessive licence fees passed on by users to consumers) or limited availability of a wide range of musical works (e.g. because of copyright disputes or users' limited financial ability to clear rights for a variety of musical works), consumers are likely to be directed towards illegal music platforms.

Note on the collective management of neighbouring rights

Although recent EU action in the field of rights management has not significantly affected related rights licensing processes, with a view to inquiring into the structures currently in place for the collective management of performers' and record producers' rights and thus support informed policy-making at the EU level, a great amount of information has been gathered by the collecting societies administering related rights in Belgium, Germany, Italy, Spain and the UK. The data collected is presented in an annex in this study (Annex A) and focuses on the basic governance features of relevant institutions, the rights administered, the management methods used, and the level of the revenues generated for right holders. Analysis also explores the contribution of these collecting societies to creativity via the financing of cultural and social policy-related activities, and their licensing performance in the digital scene.

²⁹ According to the IFPI Digital Music Report 2009 – Key statistics, in 2008, digital music business internationally grew by around 25%. Digital platforms now account for around 20% of recorded music sales.

³⁰ According to IFPI estimates, the 2008 piracy rate was around 95% (ibid).

Key findings

- The exercise of copyright and neighbouring rights can generally take place in two ways: either individually by the right holders (i.e. composers, lyricists, music publishers, performers and record producers) or collectively via recourse to the services of collective licensing bodies. Whereas right owners are in principle free to decide whether to exercise their rights in person or not, in specific instances, mandatory collective rights management is prescribed by national or EU legislation.
- Given the economies of scale it generates, collective rights management may ensure higher revenues for right holders. It also functions as a cost efficient method for users to obtain licences for entire music repertoires. Collective rights management thus sustains creativity and enhances access to music content.
- Collecting societies managing copyright and related rights represent powerful institutions in most EU Member States. They are usually entrusted with the following tasks: a) negotiating licence fees and providing authorisations for the commercial exploitation of music content; b) collecting revenues for right holders; c) distributing royalties to right holders; and d) monitoring content usage. Some of them also undertake cultural and social activities. Their economic viability largely depends on their ability to attract a substantive number of members and secure appealing (to users) rights catalogues and repertoires.
- For decades, European collecting societies representing authors and music publishers have been connected to each other through reciprocal representation agreements, allowing them to provide licences for their aggregated repertoire on a national basis (i.e. multi-repertoire and mono-territorial licences).
- New technologies and the uptake of online music services have brought the issue of multi-territorial licensing to the forefront. Within the European Commission, different Directorate Generals deal with the matter.
- As a result of the 2005 Commission Recommendation on collective cross-border management of copyright and related rights for legitimate online music services, new licensing models are currently being experienced for rights clearance in the digital environment. The Recommendation's main outcome is the abandonment of the system of reciprocal representation by major music publishers for part of their rights. The mechanical rights they enjoy for specific types of repertoire, mainly the Anglo-American repertoire, have been withdrawn and entrusted to specific collecting societies or newly created collective rights management bodies for pan-European digital exploitation.
- Many European collecting societies (especially small and medium-sized collecting societies) representing authors and music publishers have criticised these market developments, arguing that the new licensing model will lead to an over-centralisation of market power and repertoires at the EU level, as well as undesired competition to the detriment of less commercially successful and local repertoires. The argument that their economic viability is endangered was also put forward.
- Composers and lyricists appear largely unaware of the new licensing trends and their effects on their creative activity. Music publishers, on the other hand, acknowledge the need for the introduction of effective multi-territorial licensing mechanisms but opinions diverge as to the optimum way to move forward. As to commercial users, these complain about the fragmentation of repertoires, caused by the abandonment of the reciprocal representation network by major publishers,

the legal uncertainty as to the identity of the collective rights management bodies entitled to grant licences and the exact scope of such licences.

- Should new pan-European licensing models result in an increase in prices for the final consumer or limited market availability of varied musical content, piracy rates might increase.

2. MULTI-TERRITORIAL LICENSING FOR THE DIGITAL EXPLOITATION OF MUSIC RIGHTS: MARKET DEVELOPMENTS

Licensing of digital services has undergone considerable change over the past few years and such development continues to proceed. Music publishers in particular, but also collecting societies have devoted much time and resources to the implementation of Recommendation 2005/737/EC, entering a series of agreements. With a view to identifying market developments and gain a better understanding of emerging business models, the collecting societies, as well as other collective rights licensing bodies established in the five countries from which the bulk of information for this study has been collected (i.e. Belgium, Germany, Italy, Spain and the UK), were invited to comment on their licensing strategies targeting EU-wide rights clearance.³¹ This chapter discusses relevant activities, presenting the new structures created for the provision of pan-European licences (section 2.1) and the various initiatives launched or envisaged for the same purpose (section 2.2). Section 3.1 concludes with an assessment of new licensing trends.

2.1. New entities created for multi-territorial licensing in the digital environment

2.1.1. Centralised European Licensing and Administrative Service (CELAS)

CELAS GmbH is a new entity established in 2007, with the seat in Munich that is jointly owned by GEMA and PRS for Music (i.e. the German and UK collecting societies for the administration of the rights of authors, composers and music publishers). CELAS was set up to provide cross-border licensing and administration services on a pan-European basis to right holders for online and mobile exploitations. The entity is 'open for all types of right holders',³² however, currently it only licenses the mechanical rights of EMI Music Publishing's Anglo-American repertoire. According to the information received, the company has no plans for repertoire expansion and does not undertake any activity related to cultural and social policy purposes.³³

CELAS is managed by a Chairman and two Managing Directors based in Germany and the UK. The Managing Directors are responsible for CELAS but are employed by GEMA and PRS for Music respectively. CELAS offices are located within the premises of GEMA and PRS for Music. Through service agreements concluded between them, CELAS has access to and uses GEMA and PRS for Music technical infrastructure and databases. According to CELAS, the costs of the services offered to EMI Music Publishing, but also the costs for its establishment, are covered by a commission charged to EMI Music Publishing.

CELAS represents approximately half a million works, a substantial part (40%) of which are 'split' copyright works (i.e. works with more than one right owner, see chapter 1, section 1.5). Since only a portion of these works is represented by CELAS, commercial users need

³¹ It should be noted, however, that collecting societies in other European countries have also taken steps to implement the 2005 Commission Recommendation. The joint framework, created by Universal Music Publishing Group (UMPG) and the French SACEM (Society of Authors, Composers and Publishers of Music) for the licensing and administration of the online rights owned and/or controlled by UMPG together with those works from SACEM's repertoire published by UMPG, is clearly a case in point.

³² CELAS response to study questionnaire.

³³ Ibid.

to resort to other collective rights managers as well, in order to clear all necessary rights for their digital activities.

CELAS licences for the online and mobile usage of EMI Music Publishing's Anglo-American repertoire cover all interactive and some non-interactive forms of exploitation, including ringtones, downloads, streaming and webcasting. In 2008, CELAS entered into agreements with several commercial users, amongst which featured 7Digital, iTunes, Nokia, Real and Omnifone. By the end of January 2009, licences have been granted to more than 20 of the largest digital providers in Europe.³⁴ With respect to tariff setting, the company indicated that it takes as a point of reference the tariffs made public by the collecting societies based in the territories of exploitation.³⁵

CELAS explained that EMI Music Publishing initially granted it exclusivity.³⁶ With its accord, the exclusivity was subsequently lifted, so that clearance of the rights entrusted to CELAS for management can in principle be performed by other agents and collecting societies too. Interestingly, CELAS appears willing to maintain its original vocation as the 'exclusive' licensor of the mechanical rights of EMI's Anglo-American repertoire. According to information provided at its website (accessed on 28/5/2009), 'these rights are only available through CELAS or CELAS approved agents'.³⁷ It can reasonably therefore be surmised that some commercial users concluded agreements with CELAS, assuming that it exclusively represents the above mentioned rights. Moreover, the status of exclusivity seems to be ambiguous also for collecting societies, some of which still describe CELAS as the exclusive licensor of EMI's repertoire.³⁸

CELAS maintains that its contract with EMI Music Publishing adheres to the principle of freedom of choice for right holders and introduces transparency and control for rights managers in accordance with Commission Recommendation 2005/737/EC.³⁹ It considers its collaboration with EMI Music Publishing as one that enhances cultural diversity: creators are properly rewarded for their music which in turn is made widely accessible.

CELAS has drawn particular attention to the steps taken to inform European collecting societies about its establishment and activities.⁴⁰ It also observed that it has offered them administrative assistance. Administrative support, as indicated, has taken the form of a) access to the CELAS database, so that European collecting societies can make the

³⁴ These are limited in scope to the territories of Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, the Republic of Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, FYROM, Malta, Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.

³⁵ It should be noted however that in some countries, there are no such published tariffs.

³⁶ CELAS response to study questionnaire and exchange of views with the study's research team.

³⁷ See <http://www.celas.eu/CelasTabs/Licensing.aspx>. In fact, in its reply to the European Commission's 'call for comments', launched on 17 January 2007 with a view to assessing Europe's online music sector in the light of Recommendation 2005/737/EC (http://ec.europa.eu/internal_market/copyright/management/management_en.htm#call), CELAS took the position that competition among rights managers for same repertoire licences could lead to downward pressure on the value of music in Europe.

³⁸ In particular, SABAM reply to study questionnaire.

³⁹ See CELAS reply to the European Commission's 'call for comments', cited above.

⁴⁰ As described, diffusion of information involved the following stages. In April 2006, local collecting societies were informed that certain rights were being withdrawn from their repertoire. In July 2006, GEMA and PRS for Music held a seminar in London open to all European collecting societies in order to inform them about the scope of the CELAS business and its plans for rights licensing. In December 2006, CELAS launched its website (www.celas.eu) and a month later, it informed all European collecting societies in writing about its licensing activity. In March 2007, CELAS made available online information regarding the rights, the repertoire and the territories it represents. In January 2008, the company issued a press release announcing its first multi-territory licence. In March 2008, it wrote to collecting societies explaining further changes in multi-territorial licensing.

necessary repertoire adjustments; and b) the offering of guidance on 'reporting' formats, in order to minimise disruption at the point of interface with digital service providers.⁴¹ Meanwhile, commercial users were informed directly and indirectly regarding the establishment and operation of CELAS. CELAS wrote to all significant users in December 2006/January 2007⁴² and communicated information about changes to rights representation and licensing through the public launch of its website and many press articles and releases.

A significant amount of data requested regarding the operation of the company has remained undisclosed, as it is deemed confidential. Specifically, no information has been provided about: a) the value of the gross income generated by the granting of EU-wide licences; b) the value of the royalties distributed to EMI Music Publishing; c) the fees commercial users are charged with; d) the administrative fee charged to EMI Music Publishing for the services provided; and e) cost deductions. No access has been granted to the CELAS standard sample of EU-wide licence either.

2.1.2. Pan-European Central Online Licensing GmbH (PAECOL)

PAECOL, a 100% subsidiary of GEMA, was established in July 2008 in Munich. It was set up for the multi-territorial licensing of the mechanical rights of Sony/ATV Music Publishing in the digital environment, and for the moment, has no concrete plans to expand its repertoire. According to the information received, rights assignment has taken place on a non-exclusive basis, and European collecting societies have been accordingly informed via a PAECOL newsletter and GEMA's website.⁴³ PAECOL may use GEMA's administration structures and data sources by means of a service contract signed with the latter.

The agreements offered by PAECOL cover all types of digital exploitation and are based on the country of destination principle with respect to tariffs (i.e. application of the local tariff where a local tariff has been established and is being applied). PAECOL indicated that it has already granted licences to various service providers but no information has been disclosed as to the identity of the licensees and the basic features of the agreements concluded. Along the same lines, no information was provided about: a) the gross income generated by its multi-territorial licensing activity; b) the value of the royalties distributed to Sony/ATV Music Publishing thus far; c) the fees commercial users are charged with; d) the administrative fee charged to Sony/ATV Music Publishing for the services provided; and e) cost deductions. Nonetheless, PAECOL has clarified that it undertakes no culture and social-policy related activity.

2.2. Other initiatives launched or envisaged for multi-territorial licensing in the digital environment

2.2.1. The Pan European Licensing Initiative of Latin American Repertoire (PEL)

SGAE, the Spanish collecting society representing authors, composers and music publishers, entered into mandate agreements with publishers (Sony/ATV Music Publishing and Peer Music) and Central and South American collecting societies⁴⁴ for the

⁴¹ Note that CELAS promotes DDEX (Digital Data Exchange) standards for reporting.

⁴² CELAS continues to contact the same users and new users that it becomes aware of.

⁴³ PAECOL response to study questionnaire.

⁴⁴ As regards Central and South American collecting societies, the mandate agreement consists of an extension of the geographical scope of the reciprocal representation agreements these collecting societies had with SGAE for online/mobile exploitations to cover the whole EEA and not just the Spanish territory.

administration of Latin American repertoire in online and mobile exploitations. SGAE's intention is to become the one-stop-shop licensor for the digital uses of Latin American repertoire in Europe and it is still negotiating with other publishers and collecting societies to reach that goal.

The PEL initiative has the following characteristics. The rights covered by the initiative are limited to rights for online and mobile uses, namely the reproduction and public communication rights (including making available rights) involved in the provision of internet and mobile music services. PEL's right holders are Sony/ATV Music Publishing and Peer Music (which represent the catalogue of their Latin American affiliates), as well as the authors, composers and publishers that are members of the Central and South American collecting societies that participate in the initiative. The PEL repertoire is the 'Latin American' repertoire of the right holders described above. The identification of the works included in such repertoire is made through an online database containing all the works for which SGAE has received a mandate from the right holders.⁴⁵ Tariffs are based on the tariff of destination principle. SGAE's general tariffs for online/mobile uses are applicable for exploitations on the territory of Spain.⁴⁶

According to SGAE, a specific implementation plan was followed to ensure smooth transition: publishers announced the withdrawal of their Latin American repertoire before signing the agreement with SGAE. After the entry into force of the agreement, SGAE sent information letters to all European collecting societies and instructed them to continue to collect royalties for local exploitations of Peer Music and SONY/ATV Music Publishing Latin American repertoire. Recently, SGAE has started negotiating with European collecting societies in order to conclude mandate agreements by which local societies would be SGAE's sub-agents in local territories for the administration of Latin American repertoire in the digital environment.

As the first PEL licences were granted very recently, no information is yet available regarding: a) the gross income generated by the PEL multi-territorial licensing activity; b) the value of the royalties distributed to right holders; c) the fees collected from users; d) the administrative fee charged to right holders for the services provided; and e) cost deductions.

2.2.2. The Pan-European Digital Licensing initiative (PEDL)

According to information collected from the press, the PEDL initiative was launched in June 2006 by Warner Chappell Publishing. European collecting societies representing authors and music publishers were invited to join, and currently five of them are reported to participate in it: PRS for Music (UK), STIM (Sweden), SACEM (France), SGAE (Spain) and BUMA-STEMRA (the Netherlands).⁴⁷ Collecting societies are designated as non-exclusive

⁴⁵ Access to such database is possible through SGAE's website but requires a login and password delivered by SGAE (<http://212.101.75.90:8080/spectrav/NAV/EN/index.jsp>).

⁴⁶ Whilst SGAE does not apply differentiated tariffs in function of the repertoire it licenses (i.e. the repertoire of its members and the PEL repertoire), in the case of PEL, only the turnover generated by the online/mobile music service provider with respect to the PEL repertoire shall be taken into consideration for determining the level of the licence fee. In the case of on-demand downloads, the identification of the downloaded works and their allocation to the repertoire to which they belong is relatively easy. In the case of streaming or other services where the online/mobile music provider's income is based on advertising or publicity, the licence fee percentage is applied on a weighted turnover corresponding to the use made of works which are included in the Latin American catalogue.

⁴⁷ Press articles also referred to the participation of GEMA, the German collecting society representing authors and music publishers, in the initiative. Contacted in the frame of this study, GEMA explained that although it initially showed interest in PEDL, it eventually decided not to join it.

licensing agents of Warner/Chappell Music for the mechanical rights of its Anglo-American repertoire and are authorised to grant pan-European licences for digital exploitation. Licences are granted on a short term basis (1-2 years) and tariffs are based on the country of destination principle. In principle, any European collecting society may join the initiative, provided it complies with a set of specific criteria intended to ensure transparency, efficiency and accountability. According to GESAC (European Grouping of Societies of Authors and Composers), the conditions imposed by Warner Chappell Publishing extend to maximum commission rates and the absence of deductions for cultural and social purposes.⁴⁸

PRS for Music, contacted for the purposes of this study, refrained from providing more detailed information on PEDL. It has simply confirmed that it was mandated by Warner Chappell Publishing to license the mechanical rights of its Anglo-American repertoire for digital exploitation and that collecting societies in Europe were properly informed about such development through its bilateral communication routes and the usual trade press. It abstained from disclosing information regarding the value of the royalties collected under the PEDL initiative, claiming confidentiality. SGAE neither confirmed, nor informed of its participation to PEDL.

2.2.3. The ARMONIA initiative

In January 2007, SGAE and SACEM, the Spanish and French collecting societies for authors, composers and music publishers, signed a Memorandum of Understanding for the establishment of a joint framework for the licensing of works for online and mobile exploitations. Later, the Italian collecting society for the same category of right holders, SIAE, joined the initiative. Throughout 2007 and 2008, the three collecting societies worked together to solve various corporate, tax and technical issues related to the ARMONIA project.⁴⁹ Although a number of points are still under discussion, the general idea behind the project would be as follows. ARMONIA would be jointly managed by SGAE, SACEM and SIAE and would grant EU-wide licences. The repertoire licensed would be the aggregated repertoire of SGAE, SACEM and SIAE, entrusted to them by means of right holders' membership agreements.

SGAE has disclosed that the European Commission's CISAC competition case has substantially delayed the development of ARMONIA, notably because it imposed bilateral negotiations among collecting societies for the amendment of the traditional reciprocal representation agreements. As of today, the entity is not yet operational, no licences have been granted, and no specific steps have been taken vis-à-vis foreign collecting societies with the aim to inform them about the withdrawal of the joint SACEM, SGAE and SIAE repertoire.

SIAE explained that should it become operational, ARMONIA would be active at two different levels: a) creating new technical tools that enable joint collective management; and b) attracting users providing innovative services. With regard to technical features, the main challenge for the three collecting societies involved in the project is the creation of a repertoire database which will serve to determine the share of each collecting society in the

⁴⁸ GESAC paper on 'Collective management as regards cross-border music services', presented to a conference organised by Association Belge pour le Droit d'Auteur in Brussels on 9 March 2009.

⁴⁹ Initially, the three collecting societies sought to establish a new and independent legal entity for the licensing of their aggregated repertoire at pan-European level. The main difficulty faced in this respect has been the taxation regime that would apply to such a new structure and issues of double taxation.

licensing services provided.⁵⁰ As to commercial users, the brand favours structured negotiations with operators of specifically defined territories, in order to increase synergies, combine know-how and share experience and information.

2.2.4. The SOLEM Initiative

SOLEM is a structure created by SABAM, the collecting society established in Belgium for authors and music publishers, directly after the 2005 Commission Recommendation in order to secure one-stop-shop access to worldwide repertoire through the provision of multi-territorial licences. SABAM invited foreign collecting societies to become shareholders of SOLEM. These would be in charge of collecting royalties in their territory. Since no foreign collecting society showed interest in joining the structure, at the time of writing the SOLEM initiative is put on hold.

2.3. Multi-territorial licensing for the digital exploitation of music rights: An assessment

Following the adoption of Commission Recommendation 2005/737/EC, various business models have been developed for EU-wide licensing of music rights for digital exploitation. These have essentially taken the form of:

- new entities established and appointed as non-exclusive licensing agents of major music publishers (i.e. CELAS and PAECOL);
- agreements concluded between major music publishers and several collecting societies, appointing the latter as non-exclusive licensing agents of the publishers' repertoire (i.e. the PEDL initiative);
- agreements concluded between music publishers (including major music publishers) and several collecting societies, enabling one of the latter to provide one-stop-shop licences for the aggregated repertoire of all the actors involved (i.e. the PEL initiative);
- agreements concluded between several collecting societies for the exclusive joint representation of their repertoires (i.e. the ARMONIA project); and
- new structures created with various collecting societies as shareholders for the provision of multi-territory and multi-repertoire licences (i.e. the SOLEM initiative).

Although some of these business models have not yet materialised in the provision of EU-wide licences, it is clear that a variety of new multi-territorial licensing patterns are currently being explored. From this perspective, it could be argued that the 2005 Commission Recommendation has reached its objective of overcoming territorial segmentation of copyright management. At the same time, however, it has also induced new market trends in terms of repertoire representation: it has actually entailed repertoire fragmentation.

With the exception of SOLEM and ARMONIA, which though not operational, aim at the provision of multi-repertoire licences, all other business models identified have given vent to mono-repertoire licensing formats. Pan-European licences can in principle be granted for Anglo-American and Latin American repertoires only. The former one-stop-shop system, founded on the reciprocal representation network of Europe's collecting societies, allowed a

⁵⁰ Work identification should be automatic and billing should take place separately per collecting society on the basis of a common, shared format.

single collecting society to grant access to the entire repertoire of the collecting societies participating in the system on its territory. The newly created licensing channels allow for the provision of mono-repertoire licences for multiple territories. In other words, there is no truly multi-territorial and multi-repertoire system in place.

It is important to mention that information regarding the royalties collected on behalf of right holders, consisting mainly of major music publishers, has not been released by our interviewees. This type of information is considered market sensitive because it associates particular market players to their revenues. Other relevant data, for example, in relation to administrative fees charged for EU-wide licensing and cost deductions, have not been disclosed either. This obstructs an assessment of the impact of the new licensing models on the workings of national collecting societies, their economic sustainability and thus their ability to properly cater for the needs of local authors and music publishers. Data on a sizeable amount of music repertoire appear to have effectively become inaccessible.

This said, it should also be noted that the establishment of new entities for rights clearance in the digital environment raises important legal questions. The German Patent and Trade Mark Office (DPMA), which is responsible for the supervision of collecting societies in Germany, has inquired into the legal status of CELAS, examining whether CELAS should be considered as a new (or different) collecting society within the meaning of the German law on collective rights management. Following a preliminary assessment, in April 2009, the DPMA decided to bring the issue before the Federal Ministry of Justice (FMJ) for verification. Although the FMJ has not yet concluded its assessment, should CELAS be found not to be a collecting society, as understood under domestic law, this would essentially mean that CELAS could oppose to the supervision and transparency rules commonly applied to collecting societies in Germany.⁵¹ It could refuse, for instance, to grant licences to specific commercial operators or decide to grant licences under discriminatory terms.

The issue of '(non-) exclusivity' also merits attention. Both CELAS and PAECOL maintain that they are non-exclusive agents of EMI Music Publishing and Sony/ATV. Non-exclusivity makes sense if the rights entrusted to these entities are also licensed by third parties. This has been confirmed by none of our interviewees. Moreover, no official statement by EMI Music Publishing and Sony/ATV, communicating other agents or collecting societies mandated to license the same rights that are entrusted to CELAS and PAECOL, has come to our knowledge. Of course, one should not rule out the possibility of EMI Music Publishing and Sony/ATV retaining the right to grant relevant licences themselves.

Finally when collecting societies are mandated to license the repertoire of major music publishers on a pan-European and non-exclusive basis (i.e. the PEDL initiative) parallel to the licensing of their own domestic repertoire, the issue is whether equal treatment is afforded to the domestic and the major publishers' repertoire. According to the principle of non-discrimination contained in the Recommendation itself, collecting societies should not treat their members under less favourable terms. Information collected in the frame of this study has not enabled us to confirm whether this is actually the case.⁵²

⁵¹ Note however that CELAS could also be considered as a licensing arm of GEMA. This would bind it to domestic supervision and transparency rules.

⁵² Note that Warner Chappell Publishing is reported to impose specific conditions on the collecting societies that join its PEDL initiative covering *inter alia* maximum commission rates (see section 2.2.2 above).

Key findings

- With a view to implementing the 2005 Commission Recommendation, the following models have been given consideration by market operators:
 - a) appointment of newly created management bodies as non-exclusive licensing agents of major music publishers (i.e. CELAS and PAECOL);
 - b) appointment of various collecting societies as non-exclusive licensing agents of major music publishers (i.e. the PEDL initiative);
 - c) appointment of one collecting society as the one-stop-shop licence provider of the repertoire of various music publishers (including major music publishers) and collecting societies belonging to the same music genre (i.e. the PEL initiative);
 - d) joint representation by several collecting societies of their aggregated repertoire on an exclusive basis (i.e. the ARMONIA initiative); and
 - e) creation of new structures with various collecting societies as shareholders for the provision of multi-territorial licences that cover the repertoire of all the affiliated collecting societies (i.e. the SOLEM initiative).
- The 2005 Commission Recommendation has thus fulfilled its objective of overcoming territorial segmentation of copyright management in the digital environment.
- The new licensing channels that have been created and are operational allow for the provision of pan-European licences for Anglo-American and Latin American repertoires only. There is no truly multi-territorial and multi-repertoire system that is currently in place.
- The non-disclosure of information regarding the royalties collected by the newly created EU-wide licensing platforms on behalf of right holders hampers a clear analysis and assessment of the effects of the new licensing models on the operation of national collecting societies, and more broadly, on the music rights management market.
- One of the main legal questions raised by the creation of new entities for music rights management in the digital environment is whether such entities should be considered as collecting societies within the meaning of the law of the country of their establishment. The qualification of their legal status will condition whether they are subjected to the same transparency and supervision rules that apply to collecting societies. This will also have an impact on how collecting societies and the new licensing entities compete against each other.
- In the case of collecting societies mandated to license the repertoire of major music publishers on a pan-European and non-exclusive basis, parallel to the licensing of their own domestic repertoire, ensuring respect for the principle of non-discrimination is crucial. Members should not be treated less favourably than major music publishers.

3. COLLECTIVE RIGHTS MANAGEMENT IN EUROPE: STATE OF THE ART

One of the main challenges when designing and implementing music rights management policies that effectively protect and promote cultural diversity at the EU level is access to objective and reliable data regarding the size of payments to creators and the presence of various types of music repertoires on the market.

In the context of the present restructuring of digital music rights management in Europe, the argument that the implementation of Commission Recommendation 2005/737/EC has negatively affected the traditional functions and operations of national collecting societies has been heard several times. Many European collecting societies have taken the position that the withdrawal of commercially successful repertoire from the system of reciprocal representation undermines their ability to cater for the needs of all their members, to the detriment of local and specialised repertoires, artists, and thus cultural diversity.

As already explained in chapter 2, the non-disclosure of quantitative information regarding the royalties generated by the licensing of the repertoire major music publishers have entrusted to specific agents and collecting societies for pan-European digital management hampers an examination of the impact of the new licensing methods first, on the digital licensing activity of national collecting societies and secondly, on their music rights management activity overall. Nonetheless, an examination of the performance of the collecting societies in both the offline and online world may serve as a proxy for gaining a better understanding of the size of payments generally made to the creative community and the relative importance of the various types of repertoires available on the market.

On this basis, and despite the fact that the 2005 Commission Recommendation only applies to the online environment – a still relatively small market in Europe (less than 10% of total music sales⁵³), yet with much untapped potential - the following sections (3.1-3.5) provide a cross-country overview of collective music rights management prior and following the adoption of the 2005 Commission Recommendation. By establishing a sound knowledge base on the operation of European collecting societies *before* and *after* the emergence of new licensing trends for the digital exploitation of music works, the intention is not to identify the *actual effects* of the 2005 Recommendation on European collecting societies (as these are largely un-reflected in figures yet), their ability to discharge their duties and thus, as explained in chapter 1, the contribution they make to the protection and promotion of cultural diversity. Rather, the objective is to provide the European institutions with reliable information about the *potential effects* of the systemic changes that currently take place in the field of music rights management on cultural diversity and more specifically, on the creation and market diffusion of varied music content. Analysis in this respect enables the drawing of meaningful conclusions regarding the cultural policy considerations that should guide the European institutions when taking action that targets or affects the music sector (see in detail chapter 4).

Sections 3.1-3.5 should be seen as 'reference', 'country case-studies' that are roughly representative of the EU27. Based on detailed information obtained from the collecting

⁵³ See indicatively sections 3.1.1, 3.2.1, 3.3.1 and 3.4.1, providing data obtained from the IFPI 2008 Report 'Recording industry in numbers'.

societies established in Belgium, Germany, Italy, Spain⁵⁴ and the UK for the representation of authors and music publishers, they attest to the broader reality of authors' and music publishers' collective rights management in Europe. Their principal aim is to investigate the value and diversification of the music repertoires enjoyed in the countries selected and hence, more generally in Europe. Data pertain to the period before and after the adoption of the 2005 Commission Recommendation and concern four different types of repertoire: the domestic repertoire, the European repertoire, the Anglo-American repertoire and the international repertoire.

'Domestic' repertoire is considered to be the repertoire that consists of the works of the members of the local collecting society. 'European' repertoire stands for the repertoire that consists of the works of the members of the collecting societies established in the EU Member States. A distinction is commonly drawn between: a) an 'aggregated' or 'combined' European repertoire, which includes the works of the members of the UK collecting society; and b) a 'non-aggregated' European repertoire, excluding the works of the members of the UK collecting society. This allows for important qualifications in analysis, given the important position the UK repertoire generally enjoys in the worldwide music market. 'International' repertoire, in turn, refers to the repertoires administered by the collecting societies of third, non-EU member countries, the US excluded. Finally, the Anglo-American repertoire is the repertoire that consists of the works represented by the collecting societies of the UK and the US.

With regard to the domestic repertoire, the study assumes that the size of the royalties distributed by the local collecting society to its members may serve as an indication of its value.⁵⁵ Consideration is also afforded to the financial support the local collecting society provides for cultural and social activities (if any). Resources channelled for such purposes may generally be viewed as contributing to the value of domestic repertoire.

With respect to the European, Anglo-American and international repertoires, analysis is based on the reciprocal representation network of collecting societies. The study is built on the premise that the size of the royalties the local collecting society distributes to foreign collecting societies for the exploitation of foreign repertoire on its territory indicates the value and the diversification of the foreign repertoire enjoyed in the country of its establishment. A comparison between the revenues distributed to foreign collecting societies and the royalties received from foreign collecting societies for the exploitation of the domestic repertoire abroad then allows for an investigation of trade patterns in the music sector. Such trade patterns mirror the position of the various repertoires in the European and worldwide music markets.

In addition to the value of repertoires and trends in intra-Community and international trade in the field of music, sections 3.1-3.5 also provide a brief analysis of the main features of the domestic music market and the main governance rules local collecting societies apply in their daily operation. This kind of information is revealing of the interests the various players in the area of collective rights management pursue. Attention is finally

⁵⁴ As regards Spain, the information provided by SGAE, the collecting society for authors, composers and music publishers, did not extend to quantitative data.

⁵⁵ An attempt to provide the most precise data possible, efforts were made to exclude from the figures provided 'central licensing' revenues and revenues channelled to sub-publishers. Whereas the former commonly stem from a system of centralised licence distribution, according to which multinational record companies may clear mechanical rights for multiple repertoires and territories from a single collecting society, sub-licensing revenues are revenues allocated by the local collecting society to one of its publisher members, the latter enjoying the rights of another (usually major) foreign publisher on the basis of a sub-licensing deal. Both types of revenues are not strictly connected to the concept of 'domestic' repertoire, as understood by the authors of this study.

given to the local collecting society's licensing performance specifically in relation to the digital exploitation of music works, since this represents the activity of collecting societies on which the effects of the 2005 Commission Recommendation are (or could be) first manifested.

3.1. Belgium

3.1.1. Main characteristics of the Belgian music market

According to IFPI figures, the Belgian music market was internationally ranked 15th in physical sales, 19th in digital sales and 10th in performance rights income in 2007.⁵⁶ In the same year, the total industry trade revenue of the Belgian music market was €136,4 million, with a breakdown in physical sales of 85%, in performance rights of 9% and in digital sales of 6%.⁵⁷ Percentages in physical sales split in 89% for CDs, 8% for music videos and 3% for other formats.⁵⁸ As regards digital sales, 46% corresponded to online single tracks, 17% to online albums, 12% to mastertones and 25% to other formats.⁵⁹ Domestic repertoire had a share of 11% of total album sales in 2008 (13% in 2007 and 15% in 2006).⁶⁰

Figures related to the Belgian market converge towards a clear drop in physical sales of recorded music (-17% in the period 2004-2007), reflected in table 1 below. Although digital sales increased over the same period, they did not recoup the decrease in physical sales. The revenues derived from performance rights also increased. However, total recorded music sales in 2007 remained below the 2004 level.

Table 1, IFPI, Recording industry in numbers, 2008

Recorded music sales (\$ million)	2004	2005	2006	2007
Physical	190	174	167	157,9
Digital	1	3,3	10,6	11,3
<i>Online</i>	34%	70%	54%	67%
<i>Mobile</i>	62%	23%	46%	33%
<i>Subscriptions</i>	-	7%	-	-
Performance rights	-	-	11,1	17,6

The digital market is far from being mature in Belgium. As table 1 indicates, the source of digital revenues (online, mobile or subscription) fluctuated widely across the years, but tended to indicate a preference for online uses of digital music.⁶¹

The most important record companies in Belgium are Universal Music, Sony Music, EMI Music, Warner Music, Pias and CNR, followed by a variety of smaller companies. The Belgian music market is characterised by large differences in the industry, which are due to the media's approach to music and the taste of the public in the North (Flemish speaking

⁵⁶ IFPI Recording industry in numbers, 2008, p. 25.

⁵⁷ Ibid.

⁵⁸ Other includes singles, cassettes, vinyl etc.

⁵⁹ Other includes music videos, streams, ringback tones, mobile single tracks and other non-categorised sales.

⁶⁰ IFPI market research of May 2007 (for 2006 figures) and SIMIM response to study questionnaire (for 2007 and 2008 figures).

⁶¹ This strikes with other European countries such as Spain or Italy, where the main use of digital music is made via mobile phones.

part) and South (French speaking part) of the country⁶² that notably results in different charts.⁶³ The influence of Anglo-Saxon music prevails in both parts of the country. Such North/South divided market is argued to be one of the reasons why Belgian music exports are generally limited.⁶⁴

In a press release dated January 2009, BEA (Belgian Entertainment Association), the professional association for the music, video and game industry and the Belgian branch of IFPI, stressed the high rate of illegal downloading of music in Belgium. BEA referred to a study by GfK Retail & Technology Benelux, according to which over a two-month period, 80% of downloads of 'Almost Bangor' (the album of the Belgian Artist Novastar) were illegal.⁶⁵

3.1.2. Collecting societies and music repertoires

Articles 65-78 of the Belgian Copyright Law lay down the legal regime of collecting societies in Belgium.⁶⁶ In a nutshell, collecting societies must be authorised by the government to carry out their activities on Belgian territory.⁶⁷ They must be supervised by an auditor and monitored (notably as to the application of the tariffs and the collecting and distribution rules decided by the Board) by a representative of the Minister of Economics. Collective management is imposed for certain kind of rights,⁶⁸ as well as for the equitable remuneration that is to be paid to performers and producers for broadcasting or communication to the public in a public place. In all other cases, collective management is not compulsory. Right holders may manage such rights directly themselves or mandate a collecting society to do so. The Belgian Copyright Law enables them to split the management of such rights among various collecting societies. Accordingly, right holders can freely entrust all or part of their rights to the collecting societies of their choice, as recommended by the 2005 Commission Recommendation.⁶⁹

There are three collecting societies active in the music sector in Belgium: SABAM, SIMIM and URADEX. SABAM and SIMIM participated actively in the study. The former is presented below. SIMIM's activities are analysed in Annex A.

3.1.2.1. SABAM

SABAM is the collecting society for authors, publishers and composers, in particular of musical works. It is a private cooperative company with limited responsibility.

⁶² Responses to study questionnaire by BIMA (Belgium Independent Music Association), GALM (Genootschap Auteurs Lichte Muziek, the Flemish Authors of Light Music Association) and CONSTANT vzw (a non-profit multi-disciplinary artist association active notably in the development of copyright alternatives and free licences).

⁶³ See ULTRATOP, the Belgian hit-parade (www.ultratop.be), which shows that Northern Belgium is influenced by releases in the Netherlands, and Southern Belgium by releases in France.

⁶⁴ GALM response to study questionnaire.

⁶⁵ BEA Press Release of 16 January 2009, available at www.belgianentertainment.be/index.php/fr/. BEA indicated that the study was carried out upon its request during two months at the end of 2008 and disclosed 90 to 100 daily illegal downloads of the album.

⁶⁶ Law of June 30, 1994 on Copyright and Neighbouring Rights. This legal regime is completed by several laws and royal decrees. In May 2006, a bill (*Projet de loi modifiant, en ce qui concerne le statut et le contrôle des sociétés de gestion des droits, la loi du 30 juin 1994 relative au droit d'auteur et aux droits voisins*, DOC 51 2481/001) was introduced to amend the Copyright Law as regards the collecting societies' status and supervision.

⁶⁷ This also applies to collecting societies having their headquarters in other EU countries.

⁶⁸ Notably for cable retransmission, private copy, reprography and public lending.

⁶⁹ Such regime was already in force prior to the 2005 Commission Recommendation.

The following table reflects the number of SABAM members over the years. Approximately 10% of SABAM members are not Belgian nationals. This was already the case before the adoption of the 2005 Commission Recommendation.

Table 2: SABAM membership

SABAM members	2003	2004	2005	2006	2007	2008
Total members	28.487	29.708	30.361	31.919	32.588	33.416
Members who received royalties	8.454	9.352	10.270	9.980	9.225	9.842

The figures relate to musical and non musical works.

As indicated in Annex B (Table A), SABAM's gross and net distributable revenue for the period 2001-2007 has increased by 109% and 135%, respectively. The net revenue represented 77,5% of the gross revenue in 2001. The ratio increased to 87,2% in 2007, showing an increased level of distribution of royalties. SABAM explained that this resulted from the implementation of new management methods which were revealed as being more efficient.

SABAM's Board of Directors is elected by members enjoying voting rights.⁷⁰ It consists of 16 members, of which twelve are active in musical works. Among this group there are 8 authors and composers of musical works and 4 publishers (one of which is a 'major' publisher). SABAM Statutes reserves 1/3 of the Board seats allocated to musical works for publishers. SABAM explained that this resulted from a common declaration by GESAC (European Grouping of Societies of Authors and Composers) and ICMP (International Confederation of Music Publishers) on *minima* rules on governance in collecting management societies. The declaration is dated 7 July 2006 and was triggered by the 2005 Commission Recommendation.

SABAM finances itself mainly by charging administrative fees for its services. Such fees take the form of a percentage applied to any royalties distributed to right holders or transferred to foreign collecting societies with which SABAM has concluded reciprocal representation agreements.

To date, in the context of wide reorganisation of collecting societies described under Chapter 1, full access to information regarding management fees was not granted. It is therefore difficult to assess whether, and to what extent, the 2005 Commission Recommendation has achieved its purpose of improving transparency as well as equal treatment among right holders. The following points can nonetheless be established.

Fee percentages vary from 0 to 20%⁷¹ and are deemed to reflect the investments made for royalty collection.⁷² Applicable percentages are identical in the case of SABAM directing royalties to members or transferring royalties to a foreign collecting society on the basis of

⁷⁰ According to SABAM Statutes, any member deciding to subscribe to a full SABAM company share of a value of 125€ enjoys voting rights.

⁷¹ SABAM indicated that on average, the percentage applied is 9%.

⁷² Accordingly, in the offline world, the percentage fee for mechanical rights (where SABAM's role mainly consists in responding to user requests for CD reproduction authorisation and charging a licence fee) is far below the percentage for performing rights (where SABAM needs to dedicate personnel resources to the monitoring of the use of music made in concert venues, radio playlists, etc.).

a reciprocal representation agreement, unless another percentage has been agreed.⁷³ Conversely, where royalties are collected by foreign collecting societies on the basis of reciprocal representation agreements, SABAM's mission is limited to allocating the transferred royalties among the various right holders. Applicable percentages are therefore lower, from 0 to 3,5%, but the justification for their variation is unclear, as one could assume that the allocation mission involves identical workload for SABAM.

Fee percentages are decided by the Board of Directors, whose composition arguably ensures appropriate representation of all categories of right holders: authors, composers and music publishers. Notwithstanding, major publishers have proved successful in influencing the level of commission fees outside the political bodies of SABAM as well. According to SABAM, maximum commission fees for management services in relation to mechanical rights were 'imposed' by major publishers through the Cannes agreements, negotiated among all EU collecting societies and major publishers in 1997 (then re-negotiated in 2002).⁷⁴ These agreements reveal that, in the offline world, major publishers enjoyed bargaining power enabling them to gain decreased management fees.⁷⁵ To date, major publishers asked for the early termination and renegotiation of these agreements.⁷⁶ The scope of relevant discussions is unknown. In the present context, if major publishers were to decide to influence discussions in a way that favours their repertoire, disregarding the ensuing effects on other types of repertoire and cultural diversity, it is questionable what would prevent them from doing so, especially since the threat to withdraw repertoires enhanced their bargaining power vis-à-vis the collecting societies. This raises the question of balance of right holders' interests: discussions are held outside the political bodies of collecting societies and without representation of smaller right holders.

3.1.2.2. The value of repertoires

Tables 3 and 4 provide information on the royalties SABAM distributed to authors/composers and music publishers for the period 2002-2008.⁷⁷

Table 3: SABAM distributions to authors and composers

(€)	2003	2004	2005	2006	2007	2008
Mechanical	1.474.678	1.736.969	1.596.053	1.628.332	1.571.029	1.664.386
%	17,1	18,7	15,4	16,6	15,5	16,7
Performing	7.104.600	7.562.558	8.721.071	8.124.688	8.553.635	8.283.830
%	82,7	81,3	84,3	83,1	84,5	83,3
Online use	14.255	0	25.417	29.135	n/a	n/a
%	0,2	0	0,3	0,3	n/a	0
Total	8.593.533	9.299.527	10.342.541	9.782.155	10.124.664	9.948.216

⁷³ The extent to which such percentage is different, and the number of foreign collecting societies benefiting from such treatment was not revealed. It is therefore difficult to assess whether, and if confirmed the extent to which, such differentiated treatment would discriminate domestic artists vis-à-vis those which are members of a foreign collecting society.

⁷⁴ According to SABAM, the presence of at least one major publisher at the Board, though not prescribed by SABAM's Statutes, resulted from the Cannes agreements as well.

⁷⁵ Discounted rates of 7% (where royalty collection is made by SABAM) and 0% (where it is made by foreign collecting societies) are applied to major publishers for mechanical rights.

⁷⁶ The 2002 Cannes extension agreement is due to expire by the end of June 2009.

⁷⁷ Figures concern mechanical and performing rights, as well as rights from online use. Central licensing distributions are included under the mechanical rights category and sub-publishing revenues are not incorporated in the figures provided.

Table 4. SABAM distributions to publishers

(€)	2003	2004	2005	2006	2007	2008
Mechanical	2.991.456	2.263.278	2.667.162	1.634.624	1.648.720	1.571.357
%	52	44,2	40,7	29,6	30	32,4
Performing	2.474.764	2.853.140	3.312.954	3.256.091	3.855.437	3.272.100
%	43	55,8	50,5	59,1	70	67,6
Online use	291.821	0	579.536	621.751	n/a	n/a
%	5	0	8,8	11,3	n/a	n/a
Total	5.758.041	5.116.418	6.559.652	5.512.466	5.504.157	4.843.457

Drawing from this data, the value of domestic repertoire increased from €14.351.574 in 2003 to €14.791.673 in 2008, representing a 3,1% growth.⁷⁸ Royalties for mechanical rights decreased, whereas revenues for performing rights increased. As to the royalties derived from the digital exploitation of musical works, these increased from 2003 to 2006 (data for 2007 and 2008 was not available).

The value of foreign repertoire enjoyed in Belgium increased by 23,3% over the reporting period, as reflected in table 5 below.⁷⁹ For all the categories of foreign repertoires under study, royalties for mechanical rights decreased and royalties for performing rights increased. The amounts associated with the digital exploitation of foreign repertoire in Belgium represented only a small portion of the revenues transferred by SABAM to foreign collecting societies.

The increase in value of foreign repertoire in Belgium mainly resulted from an increase in value of the UK (25,7%), the US (26,1%) and the international repertoires (22,6%). With respect to European repertoire (i.e. the combined repertoire of the EU Member States), its value only increased by 3,6%. If we subtract there from the royalties distributed for the repertoire of the UK (i.e. the royalties distributed to UK collecting societies), a decrease by 3,4% can be observed.

Data under table 5 confirms that the Anglo-American repertoire enjoys a significant position in the Belgian market. In 2008, the aggregated value of the royalties distributed to the collecting societies of the UK and the US represented 42,8% of total SABAM distributions for foreign repertoire. The European repertoire also enjoys a large share, as, the UK repertoire excluded, SABAM royalties for the repertoires of the EU Member States amounted to 40,5% of its total distributions abroad the same year (57,3% if the UK repertoire is included). The remaining 16,7% of SABAM's distributions pertained to international repertoire, that is the repertoire of third countries.

The information above indicates that the Anglo-American repertoire generates a very significant part of SABAM's turnover, as it is the leading foreign repertoire (for all

⁷⁸ Total distributions to authors and composers increased by 15,8% over the examined period, with royalties distributed for mechanical rights increasing by 12,9% and royalties for performing rights increasing by 16,6%. As regards total distributions to publishers, these decreased by 15,9%, with royalties for mechanical rights decreasing by 47,5% and royalties for performing rights increasing by 32,2%.

⁷⁹ The table presents the value of the royalties transferred to foreign collecting societies with respect to mechanical and performing rights, as well as rights from online use. Mechanical rights include central licensing revenues and concern musical works only. The performing rights category incorporates royalties for use of musical works in audiovisual creations.

categories of rights aggregated). Additionally, it is the only repertoire showing a substantial growth in recent years, the European repertoire (the UK repertoire excluded) showing a decreased rate. Were SABAM to be deprived of the management of such repertoire, this would have a strong impact on how it recoups its management costs. To keep its activities profitable, it could be obliged to increase its management fees vis-à-vis the remaining repertoire. The remuneration of domestic repertoire would hereby be affected. This reality should be taken into consideration while assessing the need of undertaking EU action that is supportive of cultural diversity.

Table 5: SABAM distributions for foreign repertoire (n/a: not available; n/d: no distribution)

SABAM distributions for foreign repertoire (€)	2003	2004	2005	2006	2007	2008
Aggregate EU	15.693.552	15.020.972	15.175.487	14.672.304	16.706.689	16.263.156
%	68,1	64,5	58	57,4	58	57,3
<i>Mechanical</i>	5.141.557	3.262.058	3.780.028	2.495.685	2.514.021	2.546.492
<i>Performing</i>	10.474.089	11.758.915	11.216.785	12.039.811	14.088.634	13.598.840
<i>Online use</i>	77.905,53	n/d	178.674	136.808	104.034	117.824
EU (excl. the UK)	11.907.327	10.876.127	10.667.712	10.536.595	11.746.344	11.505.010
%	51,7	46,7	40,8	41,2	40,8	40,5
<i>Mechanical</i>	4.674.636	2.728.540	2.902.135	2.366.917	2.369.703	2.419.593
<i>Performing</i>	7.165.106	8.147.587	7.610.620	8.044.973	9.286.430	8.988.415
<i>Online use</i>	67.585	n/d	154.957	124.705	90.211	97.001
UK	3.786.225	4.144.845	4.507.775	4.135.709	4.960.345	4.758.146
%	16,4	17,8	17,2	16,2	17,2	16,8
<i>Mechanical</i>	466.921	533.518	877.893	128.768	144.318	126.899
<i>Performing</i>	3.308.983	3.611.328	3.606.165	3.994.838	4.802.204	4.610.425
<i>Online use</i>	10.320,53	n/d	23.717	12.103	13.823	20.823
US	5.866.744	5.949.496	7.030.022	7.374.704	7.660.218	7.396.674
%	25,5	25,5	26,9	28,9	26,6	26
<i>Mechanical</i>	79.478	45.980	59.677	36.736	34.951	24.114
<i>Performing</i>	5.743.854	5.903.516	6.898.115	7.282.314	7.552.868	7.334.448
<i>Online use</i>	43.412,20	n/d	72.230	55.654	72.398	38.112
UK/US	9.652.969	10.094.341	11.537.797	11.510.413	12.620.563	12.154.820
%	41,9	43,3	44,1	45	43,8	42,8
<i>Mechanical</i>	546.399	579.498	937.570	165.504	179.269	151.013
<i>Performing</i>	9.052.837	9.514.844	10.504.280	11.277.152	12.355.072	11.944.873
<i>Online use</i>	53.732,73	n/d	95.947	67.757	86.221	58.935
Rest of the world	1.466.740	2.340.282	3.950.618	3.508.628	4.435.418	4.732.580
%	6,4	10	15,1	13,7	15,4	16,7
<i>Mechanical</i>	173.376	84.216	153.770	110.814	119.963	84.929
<i>Performing</i>	1.291.503	2.256.066	3.777.745	3.380.698	4.241.642	4.639.595
<i>Online use</i>	1.860,68	n/d	19.103	17.116	73.814	8.056
Total	23.027.035	23.310.750	26.156.127	25.555.637	28.802.324	28.392.410
<i>Mechanical</i>	5.394.411	3.392.254	3.993.476	2.643.235	2.668.934	2.655.535
<i>Performing</i>	17.509.446	19.918.496	21.892.645	22.702.823	25.883.144	25.572.883
<i>Online use</i>	123.178	n/d	270.007	209.578	250.246	163.992

3.1.2.3. Trade flows in music

Table 6 provides information about the presence of Belgian repertoire in foreign markets.⁸⁰

Figures reveal that over the examined period the value of the Belgian repertoire abroad increased by 12,3%. Such an increase only resulted from the revenues transferred by EU collecting societies, which increased by 15,3% (20,1% if royalties originating in the UK are excluded). In fact, corresponding revenues from the UK, the US and third countries decreased by 39,1%, 45,1% and 8,9% respectively.

EU audiences are the main contributors to the foreign income of the Belgian repertoire. In 2008, revenues from the EU Member States represented 88,7% of the total value of the royalties SABAM received from foreign collecting societies for its repertoire (92,7% if the UK is included). Revenues from the UK, the US and third countries amounted to 3,9%, 0,9% and 6,4% respectively.

⁸⁰ Revenues involve performing rights and mechanical rights. Whereas mechanical rights only pertain to musical works, the performing rights category includes rights from music use in audiovisual works as well. Central licensing royalties and royalties from online use are included under mechanical rights. Figures generally pertain to musical works except for performing rights, which also cover audiovisual works.

Table 6: SABAM international revenue for domestic repertoire

SABAM international revenue for domestic repertoire (€)	2003	2004	2005	2006	2007	2008
From the EU Member States	9.291.669	9.334.909	8.944.268	8.103.445	7.681.726	10.716.491
%	90,3	88,7	88,6	89	91,4	92,7
Mechanical	5.417.471	4.990.077	4.685.028	4.151.508	3.535.401	3.850.196
Performing	3.874.198	4.344.832	4.259.241	3.951.937	4.146.325	6.866.294
From the EU Member States (excl. the UK)	8.544.486	8.584.543	8.341.296	7.556.549	7.380.413	10.261.834
%	83	81,6	82,6	83	87,8	88,8
Mechanical	5.156.784	4.661.318	4.389.258	3.706.453	3.260.069	3.479.353
Performing	3.387.702	3.923.225	3.952.038	3.850.096	4.120.344	6.782.481
From the UK	747.183	750.366	602.972	546.896	301.313	454.657
%	7,3	7,1	6	6	3,6	3,9
Mechanical	260.687	328.759	295.770	445.055	275.332	370.843
Performing	486.496	421.607	307.203	101.841	25.981	83.813
From the US	190.039	223.677	237.457	169.946	157.413	104.246
%	1,8	2,1	2,4	1,9	1,9	0,9
Mechanical	11.680	23.797	19.946	15.481	3.786	25.260
Performing	178.359	199.879	217.511	154.464	153.627	78.986
From the UK and the US	937.222	974.043	840.429	716.842	458.726	558.903
%	9,1	9,3	8,3	7,9	5,5	4,8
Mechanical	272.367	352.556	315.716	460.536	279.118	396.103
Performing	664.855	621.486	524.714	256.305	179.608	162.799
From the rest of the world	811.449	964.654	911.286	834.080	565.728	740.020
%	7,9	9,2	9	9,1	6,7	6,4
Mechanical	361.147	444.722	334.034	530.144	164.665	316.678
Performing	450.302	519.932	577.252	303.936	401.063	423.341
Total	10.293.157	10.523.240	10.093.012	9.107.470	8.404.867	11.560.839
Mechanical	5.790.298	5.458.597	5.039.007	4.697.133	3.703.851	4.192.134
Performing	4.502.859	5.064.644	5.054.005	4.410.337	4.701.015	7.368.704

Table B, provided in Annex B, gives an overview of trade flows with respect to the various types of repertoires investigated for the period 2003-2008. In 2008, revenues coming from the EU Member States for the Belgian repertoire represented 66% of the revenues collected in Belgium and distributed abroad for the European repertoire. If we exclude the transactions between Belgium and the UK for their respective repertoires, revenues from the EU Member States for the Belgian repertoire amounted to 89% of the revenues collected in Belgium and distributed for the European repertoire. Revenues from the UK and the US for the Belgian repertoire decreased from 10% of the revenues SABAM distributed for the aggregated UK and US repertoire in 2003 to 5% in 2008. The ratio decreased more dramatically regarding the interface between Belgian and third countries repertoires: from 55% in 2003, it fell to 16% in 2008.

In short, the value of SABAM transfers to foreign collecting societies (gathered under the groups EU, US and UK, and third countries) exceeds what SABAM receives from them. Such imbalance is particularly striking vis-à-vis the UK and the US.

3.1.2.4. The pursuit of cultural and social objectives

In Belgium, there is no legal obligation imposed on collecting societies to pursue social and cultural policies.⁸¹ Notwithstanding, SABAM finances activities of a cultural and social nature benefiting its members. In the field of music, it provides financial support to concerts/festivals taking place in Belgium and scheduling SABAM members. It also distributes 'postponed royalties' to any of its members, including publishers, reaching the age of 60.⁸²

SABAM finances such activities by retaining 10% of the royalties that are to be distributed to right holders for performing rights, after deduction of the management fee described under point 3.1.2.1. The same rate of 10% after deduction of costs is applied by SABAM to the amounts collected on behalf of foreign collecting societies for performing rights. SABAM indicated that a maximum 10% deduction for cultural and social purposes was agreed in discussions held within CISAC. The allocation of these incomes among social or cultural activities is decided by the Board on a yearly basis.

According to information provided by SABAM for the period 2001-2008, resources spent yearly on cultural and social activities fluctuated, ranging from €4M to €6,5M. Collection of income to be dedicated to social activities grew constantly over the period, except in 2008 (where it decreased by 26% compared to 2007). The same growth trend is observed for cultural activities until 2007, where the collections suddenly fell by 67% (and the level for 2008 remained 50% below the 2006 level). Whether such reductions could be a result of the 2005 Commission Recommendation, requiring collecting societies to 'specify whether and to what extent' deductions other than management fees are carried out, is unknown.

SABAM indicated that the deduction carried out for cultural and social purposes was criticised by some EU collecting societies, in particular those that are not applying such deductions. Whether this point was addressed within the frame of the bilateral reviews of reciprocal representation agreements following the CISAC Decision (on these renegotiations, see *supra* Chapter 1 point 1.4) is unknown.

⁸¹ Although Article 58(2) of the Belgian Copyright Law enables the Federal State to compel collecting societies to transfer 30% of the income arising from private copy levies to the Federal State for creation and promotion purposes, the Federal State has not applied such provision so far.

⁸² Each publisher is represented by a natural person, who, at the age of 60, receives such postponed royalties calculated in the same way as for individual members.

3.1.2.5. Digital licensing activity

The first digital licence agreements were granted by SABAM in 2003. Data tracking down the number of licences provided are available from 2007 onwards and are presented in the table below.⁸³

Table 7: SABAM licensing activity

Licensing activity*	Download	Ringling Tunes	Streaming	Webcasting**	Podcasting
2007	41	22	368	3	9
First semester 2008	33	15	143	2	5

* There are no licence agreements dealing with simulcasting specifically. These are part of the wider broadcasting agreement.

** Concerts on line

Traditionally, such licences covered domestic and foreign repertoire, the latter being entrusted to SABAM via reciprocal agreements with foreign collecting societies. Their geographic scope was the Belgian territory for download and ringing tunes, whereas for streaming, webcasting and podcasting it was the world.⁸⁴ The time coverage of the licences was generally one year, and could be renewed by tacit agreement for an unlimited period. Tariffs were adapted yearly, mainly in order to take into consideration new types of exploitation, but did not differ in function of the repertoire used, nor did they suffer major modifications over the years. They generally consisted of a percentage varying from 8% to 12% (depending on the type of music service provided), applied to the general turnover (including the revenues arising from advertising) of the online music service provider.

SABAM indicated that it still grants digital licences according to the above mentioned model, though the 2005 Commission Recommendation as well as the Commission CISAC Decision have had a serious impact on its licensing activity.

SABAM explained that it is directly affected by the withdrawals of repertoires that followed the Recommendation (*supra*, Chapter 1, points 1.4 and 1.5). In its opinion, the withdrawals had the following consequences:⁸⁵

First, they created legal uncertainties around the repertoire that SABAM is entitled to grant digital licences for. The withdrawal of repertoires raises numerous legal and practical issues (see Chapter 1, point 1.5), which do not appear to be solved. Such legal uncertainties were relied on by users as a justification for not paying licence fees to SABAM or requiring financial guarantees prior to obtaining a licence from it.⁸⁶

Secondly, the withdrawal of repertoires reduced incentives for large users to enter into a licence agreement covering SABAM's smaller domestic repertoire. Whereas prior, a single agreement gave access to the repertoire of all the collecting societies participating in the reciprocal representation network, to date, users need to enter into several repertoire-specific agreements. Agreements with large collecting societies and/or publishers are

⁸³ Online music service providers which requested authorisation to use musical works and were invoiced accordingly by SABAM are not reflected in the table. In view of the emerging nature of the digital music online uses in Belgium, a number of providers relied on this method, especially in the period 2003-2007 instead of being granted a licence.

⁸⁴ It should be noted however that SABAM's format licence agreement for such exploitations dated January 2009 does not refer to any territory.

⁸⁵ SABAM response of 19 May 2009 to questionnaire addressed on 14 May 2009.

⁸⁶ SABAM indicated that Apple, the Belgian leader on the market for online music sales, relied on such argument to refrain from paying licence fees for 2007 and 2008, and required financial guarantees from SABAM to cover the risk of being accused of copyright infringement by right holders.

preferred, since these accumulate a larger number of works, among which is the successful Anglo-American repertoire. Deprived from such repertoires, SABAM's bargaining power is affected and accordingly the remuneration of its domestic repertoire: large users are not ready to enter into a licence agreement with SABAM anymore, or are willing to do so only under discounted conditions.

Third, as a corollary, SABAM also referred to the difficulty of recouping its costs. As licence fees are calculated on the basis of the users' playlists, SABAM needs to identify works belonging to its repertoire before invoicing users. Such identification task is described as complex, and remuneration arising there from low, in view of the limited repertoire managed by SABAM. According to SABAM, this renders the profitability of its digital licensing activity questionable. Such situation further jeopardizes its ability to invest in new services to retrieve withdrawn repertoires, and on the whole its ability to offer profitable pan-European digital licensing services though it has the know-how and the management tools to do so.⁸⁷

The CISAC decision entailed the re-negotiation of the collecting societies' reciprocal representation agreements. Within such discussions, SABAM explained, large collecting societies opted for direct management of their repertoires abroad. SABAM would only be entitled to grant local licences to small users, under very strict conditions regarding commission fees, timing of royalty allocation and reporting. SABAM pointed out that the CISAC decision did not remedy the negative consequences it encountered following the 2005 Commission Recommendation, as described above.

The data collected within this study does not allow for a quantification of the loss of profit encountered by SABAM further to the withdrawal of repertoires, but SABAM's dependence on non-domestic and in particular Anglo-American repertoire is reflected under sections 3.1.2.2 and 3.1.2.3. The position held by users today, which also directly results from the segmentation of repertoires, could further impair the remuneration of its domestic repertoire.

In this context, the Belgian Intellectual Property Advisory Board indicated, while confirming the importance of efficient and transparent collective copyright management, that it was in favour of the adoption of a European Directive to harmonise certain aspects related to the collective management of authors and neighbouring rights that take into account the objectives of the EU Treaty, in particular cultural diversity.⁸⁸

⁸⁷ SABAM referred to the improvement and modernisation of its processes following the central licence agreement entered into with Universal Music in 2004.

⁸⁸ See 'Avis concernant la Recommandation de la Commission européenne relative à la gestion collective transfrontière du droit d'auteur et des droits voisins dans le domaine des services licites de musique en ligne', February 15, 2008, available at: http://mineco.fgov.be/intellectual_property/patents/news/advice_author_rights_fr.htm.

Key findings

- Even though Belgium is a small country, it was ranked 15th in physical sales, 19th in digital sales and 10th in performance rights revenue in 2007. In the same year, the total trade value was €136,4M. Physical sales faced a decrease of 17% compared to 2004. Conversely, the digital sales market increased significantly from 2005 to 2006 (+220%), and to a lesser extent in 2007 (+7%), but still represents a small percentage of total revenues (6% in 2007). It cannot therefore be described as a mature market at this time.
- Revenues for domestic repertoire collected in Belgium have increased by 3,1% since 2003. The royalties transferred to SABAM by foreign collecting societies have also increased over the period 2003-2008 (+12,3%). This mainly resulted from transfers from European collecting societies (+20,1% the UK excluded). In fact, revenues transferred from the UK (-39,1%), US (-45,1%) and international collecting societies (-8,9%) have largely decreased. EU collecting societies (excluding the UK) are the main contributors to domestic repertoire income, representing 89% of the total royalties distributed to SABAM in 2008. The UK and US collecting societies represented 3,9% and 1% respectively.
- In terms of foreign repertoires most enjoyed in Belgium, the Anglo-American repertoire is predominant (42,8%), followed by the 'European-non UK' repertoire (40,5%). Data further suggests that the combined UK and US repertoire keeps on growing in Belgium (+25% over the period 2003-2008) whereas, the UK repertoire excluded, the European repertoire would be decreasing by 3,4% (+3,6% if the UK repertoire is included). The trade flows between domestic repertoire and foreign repertoire are also largely in favour of foreign repertoires.
- SABAM is under no legal obligation to pursue social and cultural objectives, yet offers financial support to such activities (from €4M to €6,5M yearly over the period 2001-2008) by retaining 10% on the royalties to be distributed to right holders and foreign collecting societies for performing rights. Although a drop in income collection was noticed in 2007 and 2008, it is unknown whether this results from market developments driven by the 2005 Commission Recommendation. It is also unknown whether the provisions enabling such deductions in relation to the royalties distributed to foreign collecting societies were affected by the bilateral reviews of reciprocal representation agreements requested by the CISAC decision.
- As a result of the 2005 Commission Recommendation, major repertoires were withdrawn from SABAM's management. The extent to which such withdrawals are fully effective today is however still unclear and their precise impact difficult to quantify. The emerging nature of digital music distribution in Belgium, the modest number of formal digital licence agreements granted, and the limited revenues arising from such activities further strengthen such difficulty. Nevertheless, the share represented by the Anglo-American repertoire over SABAM's turnover suggests that withdrawals of Anglo-American repertoire could impair the profitability of SABAM activities. The remuneration of domestic repertoire could be at risks, as a) SABAM costs would have to be recouped on a smaller flow of repertoire (leading to a possibly increased management fee), and b) users try to negotiate lower licensing fees (arguing that a repertoire where the repertoires of the majors are withdrawn is less attractive). The CISAC decision did not remedy the situation. In this context, the Belgium Intellectual Property Advisory Board indicated it favoured the adoption of a harmonisation directive, ensuring efficient and transparent collective rights management, respectful of the EU Treaty objectives, in particular cultural diversity.

3.2. Germany

3.2.1. Main characteristics of the German music market

According to IFPI figures, the German music market was internationally ranked 4th in physical sales, 5th in digital sales and 2nd in performance rights income in 2007.⁸⁹ In the same year, the total industry trade revenue of the German music market was €1.142 million, with a breakdown in physical sales of 89%, 6% in digital sales and 5% in performance rights. Percentages in physical sales split in 85% for CDs, 10% for music videos and 5% for other formats.⁹⁰ As regards digital sales, 38% corresponded to online single tracks, 23% to online albums, 11% to master ringtones, 5% to mobile single tracks, 5% to subscriptions, 2% to ringback tones and 16% to other formats.⁹¹

The German music market is characterised by the presence of four major recording producers (i.e EMI, Sony BMG, Universal Music and Warner Music) and more or less 1400 small and medium size enterprises. Music consumption in Germany denotes a strong presence of German-speaking repertoire alongside the Anglo-American repertoire. Although the latter represents a distinct market in the area of 'light' music, according to the German Union of Music Publishers (DMV) and the International Confederation of Music Publishers (ICMP), in recent years, German-produced works have re-established themselves in this particular music segment.⁹² The revival is not limited to German hit songs and folk music, but extends to pop and rock. The market share of German productions in the German charts is reported to be around 50% for singles and 40% for albums.⁹³ Moreover, Germany constitutes an important market for classical and contemporary music, and is home to a lively and multi-faceted concert scene for all types of music. In accordance with IFPI figures, performance revenues amounted to \$83 million in 2006 and \$85,8 million in 2007 (Table 1).

Changing consumption patterns, namely the increased use of digital music services (especially by the age-group of the under 30-years old) account for the most significant changes in the German music market during the last years.⁹⁴ According to Table 1, the trade value of the recorded industry fell 4,4% in 2007, having fallen 3,2% in 2006, but digital music sales rose by 77,6% in 2006 and 13,5% in 2007.⁹⁵

In 2007, digital sales accounted for 5,5% of total recorded music sales.⁹⁶ Online and mobile music consumption represented 75% and 20% of total digital revenues respectively. Online single track downloads totalled \$37,4 million in 2008, a 22% growth on 2007, and digital album sales increased by 57%, with a total of \$4,4 million.⁹⁷

⁸⁹ IFPI, Recording industry in numbers 2008, p. 30.

⁹⁰ Other includes singles, cassettes, vinyl etc.

⁹¹ Other includes music videos, streams etc.

⁹² DMV and ICMP responses to study questionnaire.

⁹³ Ibid.

⁹⁴ West German Broadcasting (WDR) response to study questionnaire.

⁹⁵ Figures do not incorporate performance rights revenues, as data is not available for all the years reported.

⁹⁶ Performance rights revenues are included in the figures provided.

⁹⁷ IFPI, Digital Music Report 2009, p. 6.

Table 1: IFPI, Recording industry in numbers, 2008

Recorded music sales (\$ million)	2004	2005	2006	2007
Physical	1.574,6	1.554,4	1.470,3	1.392,1
Digital	16,4	42,9	76,2	86,5
<i>Online</i>	63%	65%	58%	75%
<i>Mobile</i>	36%	35%	39%	20%
<i>Subscriptions</i>	1%	-	3%	5%
Performance rights	-	-	83	85,8

Despite the increase in digital music sales, it is generally acknowledged that the recording industry has been in crisis for some years now, with proceeds from record sales dropping by half in the past ten years.⁹⁸ For some, this endangers the future of sound carriers as a music medium at least in the long run.⁹⁹ According to GEMA, the German collecting society representing authors, composers and music publishers, revenue losses for sound carriers cannot be compensated by revenue generation from the online environment. For DMV, it is in fact the internet and digital copying which have led to a lot of music being consumed but no longer paid for. According to data provided by IFPI, 77% of all music downloads are illegal.¹⁰⁰

Efforts to contain illegal downloading have been systematically deployed during the last couple of years. In 2007, the number of downloaded files from p2p-services has decreased by almost 17% compared to 2006.¹⁰¹ This is partly attributed to the fact that Germany is the country with the highest number of legal actions against illegal file-sharers. Research undertaken by GfK has revealed that about 74% of all Germans are aware of the illegality of file-sharing on p2p platforms.¹⁰² Awareness appears to be higher amongst young professionals and students (20-29 years old).

3.2.2. Collecting societies and music repertoires

Collecting societies are an essential part of the German copyright system. The German Copyright Act (Urheberrechtsgesetz, UrhG) actually stipulates that specific rights can only be exercised by collecting societies.¹⁰³ The transfer of rights to collecting societies for management – in some cases even by means of depriving the creators of their right to legal action – is a precise legal policy choice. The legislator aims to assist right holders in comprehensively and effectively exploiting their rights through resort to a central collecting body. This stems from the recognition of their weak economic position in relation to the users of their work, with increasingly easy means to copy and distribute protected works.

The German Copyright Administration Act (Urheberrechtswahrnehmungsgesetz, UrhWG) regulates the establishment and the activities of collecting societies in Germany. These are supervised by the German Office for Patents and Trademarks (Deutsches Patent- und Markenamt).

One of the most important collecting societies in Germany is the Society for Musical Performing and Mechanical Reproduction Rights (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte - GEMA). Whoever wants to e.g. entertain

⁹⁸ DMV response to study questionnaire.

⁹⁹ WDR response to study questionnaire.

¹⁰⁰ IFPI, Recording industry in numbers, 2008, p. 30.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ See for instance §§20b para. 1, 26 para. 6, 27 para. 3, 45a para. 2, 49 para. 1, 52a para. 4 and 54h para. 1 UrhG.

customers in their shop with background music or play CDs at a public party will have to pay royalties to GEMA. After deduction of administrative costs, GEMA will transfer payments to the right holders it represents. Another collecting society active in the music sector in Germany is GVL, which mainly represents performers and record producers. Both GEMA and GVL participated actively in the study. The former is presented below. GVL's activities are analysed under Annex A.

3.2.2.1. GEMA

GEMA is the collecting society for authors, composers and publishers of musical works. It is an economic association with legal capacity pursuant to §22 of the German Civil Code (BGB). Its field of activity, 'the protection of authors and the administration of their rights', is defined by Article 2 of its Statute and its agreements with composers, songwriters and music publishers. The society acts as a trustee for the right holders and enters into agreements with commercial users of musical content for rights clearance. It acts on its own behalf and is a party to the agreements it concludes.

GEMA currently represents 62.888 right holders, 54.398 of which are composers and lyricists, 4.931 music publishers and 3.559 legal successors. It administers rights collectively and is responsible for 'rights of use', 'rights of consent' (see §11 UrhWG) and claims for remuneration. A list of the administered rights, as listed in §1 of the Rights Owners Agreement can be found in Annex C.

Pursuant to §5 of the GEMA Statutes, GEMA is governed by the General Assembly, the Executive Board and the Board of Supervisors. It is managed by the Executive Board and the Board of Supervisors. The Board of Supervisors is elected by the General Assembly and consists of 7 music publishers, 8 composers and 6 lyricists. GEMA thus complies to the Common Declaration on Governance in Collective Management Societies and on Management of Online Rights in Music Works, issued by ICMP (International Confederation of Music Publishers) and GESAC (European Grouping of Societies of Authors and Composers), according to which '[m]usic 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'.¹⁰⁴

As indicated in Annex C (Table A), GEMA's gross and settled revenue remained relatively stable over the period 2001-2008. The gross revenue increased by 1,5% and the settled revenue increased by 1%. The ratio of the gross to the settled revenue remained stable across the reporting period (the gross revenue exceeds the settled revenue by approximately 17%).

GEMA is generally financed by an admission fee, a membership fee and various commissions. The admission fee is currently set at €51,13 (excluding turnover tax) for authors and €102,26 (excluding turnover tax) for music publishers. The membership fee is paid every year and is fixed at €25,56 for all members. As to commissions, bearing in mind the current reorganisation of collecting societies in Europe, full access to information was not granted. This hinders an assessment of whether, and to what extent, the 2005 Commission Recommendation has achieved its purpose of improving transparency, as well as equal treatment among right holders. Notwithstanding, in the light of the information gathered, the following remarks can be made.

¹⁰⁴ See ICMP/GESAC Common Declaration on governance in collective management societies and on management of on-line rights in music works, 7 July 2006.

Three different types of cost rates are applied to cover administration costs: a) a cost rate for the performing and broadcasting rights; b) a cost rate for the mechanical right of reproduction and the right of online utilisation; and c) an average cost rate.

Cost allocation for performing rights occurs pursuant to §1 no. 2 of the 'Common Principles for the Distribution Plan for the Performing Right'.¹⁰⁵ A uniform cost rate is applied on the revenues collected for performing and broadcasting rights. This is calculated taking into account GEMA's total gross income from these rights and the total costs incurred for their administration. It is fixed every year and only applies to the categories of domestic income established for distribution. GEMA proceeds for foreign collecting societies are subjected to a reduced cost rate of about 5% for performing rights.

To cover the costs incurred for the administration of mechanical rights, GEMA charges a commission. Pursuant to §1 no. 1 of the 'Common Principles for the Distribution Plan for the Mechanical Right of Reproduction',¹⁰⁶ this may rise up to 25% of GEMA's gross income from mechanical rights. The precise cost rate to be applied is decided by the Supervisory Board and may extend to several business years. A similar provision can be found at §1 nos. 2 and 3 of the 'Common Principles for the Draft Distribution Plan for Online Use',¹⁰⁷ regarding the commission charged by GEMA on all types of income collected for online uses (covering mechanical and performing rights alike).

The earnings, which are transferred to GEMA by foreign collecting societies and are already reduced by the expenses of these societies, are subjected to a diminished cost rate. This rate amounts to 2% in the environment of rights of reproduction.

Finally, an average cost rate is calculated on the basis of the total gross income and the total costs incurred by GEMA, valid for GEMA members and foreign collecting societies alike.¹⁰⁸ This rate amounted to 14,5% in 2001, 14,6% in 2002, 14,7% in 2003, 14,4% in 2004, 14,1% in 2005, 13,9% in 2006, and 14,2% in 2007.¹⁰⁹

With respect to mechanical rights, and though not confirmed by GEMA, it can reasonably be surmised that in the light of the Cannes agreements, major music publishers have benefited from reduced GEMA cost rates. Due to expire by the end of 2009, music publishers have requested the renegotiation of these agreements but the outcome of relevant discussions remains unknown.

3.2.2.2. The value of repertoires

Table 2 presents GEMA royalties for authors/composers and music publishers for the period 2001-2008.¹¹⁰ Royalty distributions to sub-publishers pertain to the repertoire of major publishers which is represented on German territory by means of sub-publishing deals. Hence, sub-publishing does not strictly relate to domestic repertoire. For an accurate picture of the value of the German repertoire, one needs to draw upon the figures provided under the category 'distributions to authors/composers and music publishers'. Data reveal

¹⁰⁵ See GEMA business report 2008/2009, p. 285.

¹⁰⁶ Ibid., p. 322.

¹⁰⁷ Ibid., p. 336.

¹⁰⁸ The total income also includes interest earnings from GEMA funds.

¹⁰⁹ GEMA business report 2008/2009, p. 54.

¹¹⁰ Aggregated numbers are provided, covering mechanical, performing and online rights.

that the value of domestic repertoire increased from €188.380.000 in 2001 to €210.138.000 in 2008, representing an 11,6% growth.¹¹¹

¹¹¹ The ratio of the distributions to authors/composers and music publishers to the total GEMA distributions to members increased from 59,3% in 2001 to 68,3% in 2004. In the remaining period, it remained around 65%. The value of total royalty distributions fluctuated. In 2008, it was 1,6% higher than in 2001.

Table 2: GEMA distributions to members

GEMA distributions (€)	2001	2002	2003	2004	2005	2006	2007	2008
Authors/composers and music publishers	188.380.000	188.975.000	241.854.000	223.972.000	222.163.000	204.167.000	209.635.000	210.138.000
%	59,3	60,6	68,3	68,3	66,4	65,4	64,4	65,1
Sub-publishers	129.550.000	122.975.000	112.484.000	104.047.000	112.343.000	108.079.000	115.986.000	112.771.000
%	40,7	39,4	31,7	31,7	33,6	34,6	35,6	34,9
Total	317.930.000	311.916.000	354.338.000	328.019.000	334.506.000	312.246.000	325.621.000	322.909.000

The value of foreign repertoire enjoyed in Germany increased by 15% over the same period, as shown in table 3 below.¹¹² Such an increase mainly resulted from an increase in value of the repertoire of the UK (35,5%) and the repertoire of the US (34%).¹¹³ The size of international repertoire (i.e. the repertoire of third countries, the US excluded) also increased by 23,7%. European repertoire (i.e. the combined repertoire of the EU Member States) only increased by 3,3%. In fact, if we subtract the royalties distributed for the repertoire of the UK, a decrease of 9,2% can be observed.

¹¹² Data regarding the value of foreign repertoire enjoyed in Germany draw on mechanical and performing rights revenues, collected for various types of exploitation, including by digital means. The size of the royalties distributed in relation to mechanical rights remained the same with respect to the UK, US and third countries' repertoires. It decreased for European repertoire. For most of the categories of foreign repertoire under study, royalties for performing rights increased. They remained stable with regard to the US repertoire.

¹¹³ The combined value of the UK and the US repertoires increased by 34,5%.

Table 3: GEMA distributions for foreign repertoire

GEMA distributions for foreign repertoire (€)	2001	2002	2003	2004	2005	2006	2007	2008
Aggregate EU	55.889.744,32	54.295.897,99	54.398.516,98	57.378.182,06	60.311.720,66	58.000.053,78	59.051.633,60	57.754.632,59
%	59,4	55,6	56,1	55,3	56	54,5	54,1	53,3
<i>Mechanical</i>	20.625.164,65	18.707.969	15.409.400,41	17.107.142,67	17.075.252,12	15.266.093,44	15.002.256,88	14.634.890,82
<i>Performing</i>	35.264.579,67	35.587.928,99	38.989.116,57	40.271.039,39	43.236.468,54	42.733.960,34	44.049.376,72	43.119.741,77
EU (excl. the UK)	40.185.571,25	37.997.146,51	38.115.793,61	39.442.169,27	40.959.407,69	37.902.195,28	36.977.961,42	36.472.790,64
%	42,7	38,9	39,3	38	38	35,6	33,9	33,7
<i>Mechanical</i>	18.625.440,49	16.397.740	13.566.805,94	14.886.038,30	14.922.006,28	13.120.625,45	12.860.226,97	12.493.463,14
<i>Performing</i>	21.560.130,76	21.599.406,51	24.548.987,67	24.556.130,97	26.037.401,41	24.781.569,83	24.117.734,45	23.979.327,50
UK	15.704.173,07	16.298.750,84	16.282.723,40	17.936.012,79	19.352.312,97	20.097.859,21	22.073.672,18	21.281.841,95
%	16,7	16,7	16,8	17,3	18	18,9	20,2	19,6
<i>Mechanical</i>	1.999.724,16	2.310.228,36	1.842.594,47	2.221.104,37	2.153.245,84	2.145.467,99	2.142.029,91	2.141.427,68
<i>Performing</i>	13.704.448,91	13.988.522,48	14.440.128,93	15.714.908,42	17.199.067,13	17.952.391,22	19.931.642,27	19.140.414,27
US	31.458.075,23	35.237.024,95	34.085.254,93	38.835.875,54	38.609.555,95	39.253.485,93	41.699.164,03	42.138.711,42
%	33,4	36,1	35,2	37,4	35,8	36,9	38,2	38,9
<i>Mechanical</i>	440.799,65	551.027,40	611.646,14	531.761,96	546.063,48	434.083,97	332.116,11	312.745,02
<i>Performing</i>	31.017.275,58	34.685.997,55	33.473.608,79	38.304.113,58	38.063.492,47	38.819.401,96	41.367.047,92	41.825.966,40
UK/US	47.162.248,30	51.535.775,79	50.367.978,33	56.771.888,33	57.961.868,92	59.351.345,14	63.772.836,21	63.420.553,37
%	50,1	52,8	52	54,7	53,8	55,8	58,4	58,5
<i>Mechanical</i>	2.440.523,81	2.861.255,76	2.454.240,61	2.752.866,33	2.699.309,32	2.579.551,96	2.474.146,02	2.454.172,70
<i>Performing</i>	44.721.724,49	48.674.520,03	47.913.737,72	54.019.022,00	55.262.559,60	56.771.793,18	61.298.690,19	60.966.380,67
Rest of the world	6.821.815,30	8.084.696,99	8.408.732,31	7.604.380,69	8.825.464,83	9.102.702,38	8.457.971,29	8.436.815,01
%	7,2	8,3	8,7	7,3	8,2	8,6	7,7	7,8
<i>Mechanical</i>	1.847.287,76	1.892.208,14	1.493.875,68	1.734.638,70	1.678.362	2.018.852,88	1.685.590,77	1.644.916,81
<i>Performing</i>	4.974.527,54	6.192.488,85	6.914.856,63	5.869.741,99	7.147.102,83	7.083.849,50	6.772.380,52	6.791.898,20
Total	94.169.634,85	97.617.619,93	96.892.504,22	103.818.438,29	107.746.741,44	106.356.242,09	109.208.768,92	108.330.159,02
<i>Mechanical</i>	22.913.252,06	21.151.204,54	17.514.922,23	19.373.543,33	19.299.677,60	17.719.030,29	17.019.963,76	16.592.552,65
<i>Performing</i>	71.256.382,79	76.466.415,39	79.377.581,99	84.444.894,96	88.447.063,84	88.637.211,80	92.188.805,16	91.737.606,37

Despite its limited increase in value, the European repertoire enjoys an important position in the German market. In 2008, GEMA royalties for the repertoires of the EU Member States amounted to 53,3% of its total distributions abroad. However, if we subtract the royalties distributed for the UK repertoire, GEMA royalties for the European repertoire amounted to 33,7% of total distributions to foreign collecting societies. The Anglo-American repertoire enjoys a much better position. The aggregated value of the royalties distributed to the collecting societies of the UK and the US represented 58,5% of total GEMA distributions for foreign repertoire.¹¹⁴ Royalties for international repertoire amounted only to 7,8% of total GEMA distributions.

The fact that the Anglo-American repertoire generates a very significant part of GEMA's turnover whilst showing substantial growth during the last few years might explain the readiness of GEMA to implement the 2005 Commission Recommendation through the creation of entities mandated to license such repertoire on a pan-European basis. As already explained at Chapter 2, PAECOL is a 100% subsidiary of GEMA. CELAS, on the other hand, is jointly owned by GEMA and PRS for Music (i.e. the UK collecting society representing authors, composers and music publishers).

3.2.2.3. Trade flows in music

Table 4 provides information about the presence of German repertoire in foreign markets.¹¹⁵

Figures reveal that over the period 2001-2008, the value of the German repertoire abroad fluctuated.¹¹⁶ Revenues in 2008 were 1,9% higher than 2001 revenues. Royalties transferred by EU collecting societies increased by 4,3% (8,9% if royalties originating in the UK are excluded). Corresponding revenues from the UK, the US and third countries decreased by 22,9%, 23% and 14,6% respectively.

EU audiences are the main contributors to the foreign income of the German repertoire. In 2008, revenues from the EU Member States represented 75% of the total value of the royalties GEMA received from foreign collecting societies (67,1% if the UK is excluded). Revenues from the UK, the US and third countries amounted to 7,9%, 6% and 19% respectively.

¹¹⁴ The corresponding shares of the US and UK repertoires were 38,9% and 19,6% respectively.

¹¹⁵ Revenues pertain to mechanical and performing rights. Revenues from digital exploitation are included under both categories.

¹¹⁶ Regarding mechanical rights, the size of the royalties stemming from the EU Member States (with and without the UK) decreased. The value of the royalties, distributed to GEMA by the collecting societies of the UK, the US and third countries, also decreased. As to performing rights, revenues transferred to GEMA by the collecting societies established in the EU Member States and in third countries increased. Revenues from the US and the UK decreased.

Table 4: GEMA international revenue for domestic repertoire

GEMA international revenue for domestic repertoire (€)	2001	2002	2003	2004	2005	2006	2007	2008
From the EU Member States	39.767.000	41.564.000	39.860.000	38.011.000	39.145.000	38.909.000	43.412.000	41.491.000
%	70,5	71,7	74,4	73,9	75,5	74,7	78,9	75
Mechanical	17.739.000	17.645.000	15.565.000	13.883.000	14.524.000	14.575.000	16.799.000	14.658.000.000
Performing	22.028.000	23.919.000	24.295.000	24.128.000	24.621.000	24.334.000	26.613.000	26.833.000
From the EU Member States (excl. the UK)	34.083.000	36.718.000	35.097.000	32.999.000	33.566.000	33.303.000	37.460.000	37.108.000.000
%	60,4	63,4	65,5	64,2	64,7	63,9	68,1	67,1
Mechanical	14.450.000	15.420.000	13.340.000	11.666.000	11.480.000	11.598.000	13.159.000	12.445.000
Performing	19.633.000	21.298.000	21.757.000	21.333.000	22.086.000	21.705.000	24.301.000	24.663.000
From the UK	5.684.000	4.846.000	4.764.000	5.013.000	5.579.000	5.606.000	5.952.000	4.383.000
%	10,1	8,3	8,9	9,7	10,8	10,8	10,8	7,9
Mechanical	3.289.000	2.225.000	2.226.000	2.218.000	3.044.000	2.977.000	3.640.000	2.213.000
Performing	2.395.000	2.621.000	2.538.000	2.795.000	2.535.000	2.629.000	2.312.000	2.170.000
From the US	4.323.000	4.380.000	2.672.000	2.480.000	2.887.000	2.603.000	2.708.000	3.329.000
%	7,7	7,6	5	4,8	5,6	5	4,9	6
Mechanical	1.780.000	1.937.000	928.000	714.000	809.000	512.000	493.000	1.087.000
Performing	2.543.000	2.443.000	1.744.000	1.766.000	2.078.000	2.091.000	2.215.000	2.242.000
From the UK and the US	10.007.000	9.226.000	7.436.000	7.493.000	8.466.000	8.209.000	8.660.000	7.712.000
%	17,8	15,9	13,9	14,6	16,3	15,8	15,7	13,9
Mechanical	5.069.000	4.162.000	3.154.000	2.932.000	3.853.000	3.489.000	4.133.000	3.300.000
Performing	4.938.000	5.064.000	4.282.000	4.561.000	4.613.000	4.720.000	4.527.000	4.412.000
From the rest of the world	12.284.000	11.990.000	11.013.000	10.929.000	9.825.000	10.602.000	8.887.000	10.484.000
%	21,8	20,7	20,6	21,3	18,9	20,3	16,2	19
Mechanical	6.079.000	5.222.000	4.330.000	3.808.000	3.186.000	3.800.000	2.909.000	3.578.000
Performing	6.205.000	6.768.000	6.683.000	7.121.000	6.639.000	6.802.000	5.978.000	6.906.000
Total	56.374.000	57.934.000	53.545.000	51.420.000	51.857.000	52.114.000	55.007.000	55.304.000
Mechanical	25.598.000	24.804.000	20.823.000	18.405.000	18.519.000	18.887.000	20.201.000	19.323.000
Performing	30.776.000	33.130.000	32.722.000	33.015.000	33.338.000	33.227.000	34.806.000	35.981.000

Table B provided in Annex C gives an overview of trade flows with respect to the various types of repertoires investigated. Revenues coming from the EU Member States for the German repertoire are less than the revenues collected in Germany and distributed for the European repertoire. In 2008, they represented 72% of the latter. Nevertheless, if we exclude the transactions between Germany and the UK for their respective repertoires, revenues from the EU Member States for the German repertoire amounted in 2008 to 102% of the revenues collected in Germany and distributed for the European repertoire. Revenues from the UK and the US for the German repertoire are much smaller than those collected in Germany and distributed for the UK and US repertoires. The ratio of the royalties received for the German repertoire to the royalties distributed for the aggregated UK and US repertoires decreased from 21% in 2001 to 12% in 2008. As to revenues for the German repertoire originating in third countries, these generally exceed the revenues distributed for international repertoire. The ratio, however, decreases. From 180% in 2001, it fell to 124% in 2008.

The above indicate that the value of the royalties received from the EU Member States (with the exception of the UK) and third countries exceeds the value of the royalties transferred for European and international repertoires. Conversely, the amount of the royalties transferred to the collecting societies of the UK and the US is greater than the amount of the royalties received from these countries for domestic repertoire.

3.2.2.4. The pursuit of cultural and social objectives

Domestic legislation does not impose a legal obligation on collecting societies to pursue cultural and social policy objectives but rather invites them to do so. According to paragraph 7 sentence 2 UrhWG, collecting societies may support 'culturally important works and achievements'. Moreover, according to paragraph 8 UrhWG, 'supportive institutions' for the members of the collecting societies should be established.

GEMA acts in fulfilment of these requirements. In accordance with paragraph 1 (4) (A) of its 'Common Principles of the Distribution Plan for the Performing Right', it directs 10% of its net revenue from performing and distribution rights (i.e. after deduction of administrative costs) to cultural and social activities.¹¹⁷ The same rate of 10% is applied to the amounts collected on behalf of foreign collecting societies for performing and distribution rights. Interest earnings, administration fees and non-licence revenues can also be used for social and cultural purposes. Whereas cultural funding displays variety, social funding has taken the form of a social security fund and a pension fund for members.¹¹⁸

GEMA has not commented on its cultural and social spending in more detail. It is therefore not possible to assess whether the 2005 Commission Recommendation has had any sort of impact on relevant GEMA activity.

3.2.2.5. Digital licensing activity

From 2001 to 2008, GEMA granted about 300 licences for the provision of music-on-demand services (with or without the provision of downloading services) and about 100

¹¹⁷ See GEMA business report, p. 285

¹¹⁸ The social security fund exists since 1976. It serves to provide members with an 'old-age pension' and assist them in emergency situations. It is financed by the 10% rate applied on the revenues of performing and distribution rights. The pension fund is financed by members. Once they reach the age of 60, they receive an annual amount.

licences for the exploitation of its repertoire through ringtones.¹¹⁹ The licences provided covered rights in the repertoire of musical works assigned to GEMA for management by its members or by associate collecting societies under agreements of reciprocal representation. Licences were commonly granted on a yearly basis and concerned the right of reproduction (§16 UrhG) and the making available right (§19a UrhG). They involved uses in Germany or for Germany.¹²⁰ Tariffs did not change substantially over the years.

GEMA's digital licensing activity has recently undergone considerable change as a result of the 2005 Commission Recommendation. In order to implement the Recommendation, GEMA established two entities which are active in the field of EU-wide licensing of rights for digital exploitation: CELAS (together with PRS for Music) and PAECOL. The activities of both entities are presented in detail under chapter 2.

Key findings

- In 2007, the German music market internationally ranked 4th in physical sales, 5th in digital sales and 2nd in performance rights income. In the same year, the total industry trade value amounted to €1.142 million. Physical sales faced a decrease of 5,4% in 2006 and 5,3% in 2007. By contrast, digital music sales rose by 77,6% in 2006 and 13,5% in 2007. In 2007, digital sales accounted for 5,5% of total recorded music sales. They thus still represent an infant market.
- Revenues for the domestic repertoire collected and distributed in Germany increased by 11,6% since 2001. The royalties transferred to GEMA by foreign collecting societies only increased by 1,9%. Royalties from the EU countries increased by 4,3% (8,9% if the UK is excluded). Revenues transferred from the UK (-22,9%), the US (-23%) and third countries (-14,6%) decreased. In 2008, revenues from the EU Member States represented 75% of the total value of the royalties received by GEMA (67,1% if the UK transfers are excluded). Revenues from the UK, the US and third countries amounted to 7,9%, 6% and 19% respectively.
- In terms of foreign repertoires most enjoyed in Germany, the Anglo-American repertoire is predominant (58,5 %), followed by the European repertoire (53,3% [33,7% if the UK repertoire is excluded]). Data further discloses that the combined UK and US repertoire keeps on growing in Germany (+34,5% over the period 2001-2008), whereas the UK repertoire excluded, the European repertoire would be decreasing by 9,2% (+3,3% if the UK repertoire is included). The trade flows between domestic and foreign repertoires show that, in 2008, the value of the royalties GEMA received from the EU Member States (the UK excluded) exceeded the value of the royalties transferred for the European repertoire. Conversely, the amount of the royalties transferred to the collecting societies of the UK and the US was greater than the amount of the royalties received from these countries for the domestic repertoire.
- Although national legislation does not impose a strict legal obligation on collecting societies to pursue cultural and social policy objectives, GEMA finances cultural and social activities by retaining 10% of its net revenue from performing and distribution rights. Interest earnings, administration fees and non-licence revenues are also used for such purposes. In the absence of detailed information regarding GEMA's cultural and social spending, the impact of the 2005 Commission Recommendation on the undertaking of relevant activities remains unclear.

¹¹⁹ Certain licensees combined the provision of music-on-demand services with ringtones services.

¹²⁰ The end consumer was domiciled in Germany or the content provider was domiciled in Germany or the use of the GEMA repertoire was the subject matter of an agreement between a content provider established in Germany and an end consumer domiciled outside Germany.

- Finally, with respect to digital licensing, from 2001 to 2008 GEMA has granted about 300 licences for the provision of music-on-demand services and 100 licences for the exploitation of its repertoire through ringtones. Relevant licences involved uses in/for Germany and covered rights in the domestic repertoire and foreign repertoires (the latter being represented by GEMA under reciprocal representation agreements). GEMA has also ventured into the area of pan-European rights clearance by establishing CELAS (with PRS for Music) and PAECOL.

3.3. Italy

3.3.1. Main characteristics of the Italian music market

According to IFPI figures, the Italian music market was internationally ranked 8th in physical sales, 10th in digital sales and 8th in performance rights income in 2007.¹²¹ In the same year, the total industry trade revenue of the Italian music market was €266.000.000, with a turnover in physical sales of 87%, in digital sales of 7% and in performance rights of 6%.¹²² Percentages in physical sales split in 94% for CDs, 5% for music videos and 1% for other formats.¹²³ Regarding digital sales, 21% corresponded to online single tracks, 15% to online albums, 27% to master ring tones, 17% to mobile single tracks, 2% to ring back tones and 7% to other formats.¹²⁴

Table 1: IFPI, Recording industry in numbers, 2008

Recorded music sales (\$ million)	2004	2005	2006	2007
Physical	467,1	452,4	393,8	317,2
Digital	4	17,2	26	26,3
<i>Online</i>	23%	30%	30%	44%
<i>Mobile</i>	77%	69%	57%	53%
<i>Subscriptions</i>	-	1%	1%	-
Performance rights	-	-	20,3	21,2

Percentages may not add up to total due to rounding and non-categorised sales

The above-mentioned figures of the recorded music sales is evidence that the trade value of the recorded industry fell 18,2% in 2007 and decreased by 10,6% in 2006. Physical sales decreased by 30% from 2005 to 2007, but digital music sales increased by 51,2% in 2006 and stabilised in 2007.¹²⁵ Still however, the impact of the revenues generated from online and mobile services on the whole economic outcome of the music industry in Italy is limited. In 2007, digital sales accounted for 7,2% of total recorded music sales.¹²⁶ Royalties stemming from mobile phone services generally outnumbered revenues from licensed online uses, but decreased from 77% of total digital revenues in 2004 to 53% in 2007.

The Italian music industry market is characterised by the presence of four major recording producers (i.e. EMI, Sony BMG, Universal Music and Warner Music) and, more or less, 400

¹²¹ IFPI, Recording industry in numbers 2008, p. 34.

¹²² Ibid.

¹²³ Other includes singles, cassettes, vinyl etc.

¹²⁴ Other includes other non-categorised sales.

¹²⁵ Figures do not incorporate performance rights revenues as data is not available for all the years reported.

¹²⁶ Performance rights revenues are included in the figures provided.

small and medium size enterprises. They are all collectively represented by umbrella associations such as Federazione Industria Musicale Italiana (FIMI), which represents major and a few independent labels, and Associazione Italiana Fonografici (AFI), Produttori Musicali Indipendenti (PMI) and AudioCoop, all of which represent independent recording producers. Whereas AFI and AudioCoop play the role of collecting societies themselves, the members of FIMI and PMI (together with 200 producers not associated to any organisation) rely on the licensing and collecting activities carried out by consortium Società Consortile Fonografici (SCF). SCF covers approximately 95% of the market. AFI represents about 4% of the market, and Audiocoop approximately 1%.¹²⁷

Available data show that the Italian music industry is continuing to face heavy financial losses that are deemed to be directly related to one of the highest physical piracy rates in Western Europe, at a level of over 20%, although enforcement activity remains strong.¹²⁸ Italy also has a high rate of illegal P2P activity. More than 8 million Italians are users of P2P applications.

3.3.2. Collecting societies and music repertoires

The legal regime of collective copyright management in Italy is provided under the Italian Copyright Act.¹²⁹ According to domestic legislation, SIAE is the only entity that is entitled to represent, on an exclusive basis, all copyright holders (i.e. authors, composers and publishers). Therefore, no other entity, according to Italian law, can be established for the same purpose. Collective management is imposed for certain exclusive or remuneration rights (notably for cable retransmission, private copying of sound recordings and audiovisual works, and reprography). In all other cases, collective management is optional. Right holders can administer such rights directly themselves or confer this contractual power to a collecting society.

Italian law also regulates the activities and competences of IMAIE, the collecting society which manages, on behalf of *all* music performers, independently of membership, the equitable remuneration rights established for public broadcasting and private copying of sound recordings.¹³⁰

In Italy, there are five collecting societies active in the music sector: SIAE, IMAIE, SCF, AFI, and Audiocoop. Whereas SIAE's and IMAIE's legal regime is regulated by specific law provisions, recording producers' societies SCF, AFI and Audiocoop are shaped as ordinary non-profit institutions (i.e. associations), in accordance with Italian private law. SIAE, IMAIE, SCF and AFI participated actively in this study. The former is presented below. An analysis of the activities of the rest can be found in Annex A in the study.

3.3.2.1. SIAE

SIAE carries out the necessary intermediation for the enforcement of exclusive rights of public performance, radio and TV broadcasting, communication to the public, and the mechanical and cinematographic reproduction of copyright protected works on behalf of right holders. SIAE represents, by associative relation or mandate agreements, authors, composers, publishers and distributors of copyrighted works. In particular, the associated

¹²⁷ This data was disclosed in a report emailed to the authors of this study by SCF on 25 March 2009.

¹²⁸ IFPI, Recording industry in numbers 2008, p. 34 (according to which over 1,5 million pirate CD-Rs and DVD-Rs were seized in 2007 with more than 5.000 high speed burners).

¹²⁹ See Articles 180-182 of Law No 633/1941 and subsequent amendments.

¹³⁰ See in detail Annex A to the study.

(i.e. registered) members of the Music Section are classified as a) composers, b) authors of the literary part of music works or c) music publishers, for whom the Music Section administers the above mentioned rights on the works they own, in accordance with the provisions of the collecting society's Charter and its Regulation.

SIAE's Music Section has approximately 77.000 members. These are Italian citizens but also EU nationals and citizens of third countries. Citizens from the EU Member States can become ordinary members of SIAE. Third-country nationals may establish with SIAE a non-associative relationship based on a contractual mandate. Among all members of SIAE's Music Section, at the end of 2007, about 700 were non-EU citizens and 7.000 were EU nationals. Table 2 below provides information on the number of SIAE members and the number of those who received royalties for the period 2001-2008.

Table 2: SIAE members and members who received royalties

SIAE members	2001	2002	2003	2004	2005	2006	2007	2008
Total members	53.620	57.130	61.171	64.558	68.035	72.811	74.640	75.797
<i>Authors</i>	51.814	55.237	59.209	62.511	65.787	70.504	72.406	73.456
<i>Publishers</i>	1.806	1.893	1.962	2.047	2.248	2.308	2.234	2.341
Members who received royalties	39.963	41.969	45.111	48.306	51.266	55.223	59.050	60.442

SIAE's Music Section usually manages the rights of public performance, mechanical reproduction, and communication to the public, both by cable and satellite.¹³¹ However, according to the General Regulation approved in June 2007 and modified in November 2008, it is possible to exclude some of the rights managed in the ordinary way by SIAE as well as rights concerning the licensing of works in certain countries or territories. In particular, the option for SIAE members to exclude the management of rights of reproduction and communication to the public, aimed at clearing online and mobile phone uses (i.e. digital licensing), from the scope of their mandate agreements was a clear consequence of SIAE's intent to comply with the 2005 Commission Recommendation.

The management bodies of SIAE are composed by a) the President, who is appointed by decree by the President of the Republic, upon initiative of the Prime Minister (in agreement with the Minister for Cultural Heritage and Activities) after designation of the society's Assembly, which legally represents SIAE; b) the Board of Directors which is the administrative body of the Society, responsible for the drafting of internal regulations and the preparation of the annual budgets; c) the Assembly, which has a general duty of supervision, thanks to its power to finally approve most regulations and budgets; and, finally, d) a Committee, which is established in each of the Society's sections with consultative functions. In particular, the Board of Directors is composed by SIAE's

¹³¹ Normally, with a few exceptions, the rights of synchronisation, exploitation in advertising and commercials and graphic or visual reproduction of protected works are excluded from the subject matter of SIAE's intermediation. According to the SIAE Charter and Regulation, SIAE is empowered to represent even holders of rights related to copyright (i.e. so-called 'neighbouring rights'), but for the time being this is the case of only very few representation relationships.

President and 8 members, 5 of which are designated every 4 years by the Assembly, in such a way that authors and publishers are adequately represented. The remaining 3 members are designated every 4 years by the Ministry for Cultural Heritage and Activities, which acts as SIAE's supervision authority.¹³²

As indicated in Annex D (Table A), SIAE's gross and net distributable revenues increased from 2001 to 2005. From 2006 to 2008, their value remained rather stable. Over the whole period (2001-2008), SIAE's gross revenue increased by 18,8% and its net revenue by 20,1%. The ratio of the net revenue to the gross revenue increased from 82,3% in 2001 to 83,7% in 2008.

Essentially, SIAE finances itself with a) commission fees on collected royalties, b) financial gains made by investment of cash resulting from non-allocated royalties, and c) proceeds coming from the supply of other services, including services carried out in cooperation with the Italian Ministry of Finance and ENPALS (i.e. Institute for Welfare and Assistance of Performers) for the collection of – respectively - taxes on public performances and mandatory contributions to musicians' pension accounts. The complexity of SIAE's funding management comes from its mixed functions: on the one hand, SIAE is a generalist company which manages a number of repertoires; on the other hand, it is a company which provides a series of services to the State and other authorities, a few of which have to be provided in accordance with statutory provisions.

To date, full access to information on SIAE's management fees was not granted, with the consequence that assessing whether, and to what extent, the 2005 Commission Recommendation has achieved its purpose of improving transparency, as well as equal treatment among right holders is very hard. Nonetheless, in light of the information gathered, it is possible to make the following remarks.

SIAE deducts its commissions from gross (i.e. pre-taxation) proceeds, distinguished in accordance with the type of the administered right and the type of music exploitation that gives rise to each royalty. As indicated in Annex D (Table B), percentages of administrative fees vary from 3 to 22%, according to the investments made for each type of royalty collection. The percentages are set out by the Board of Directors, whose composition, as mentioned above, ensures appropriate representation of both authors/composers and publishers. Applied percentages are identical for both works of SIAE's members and repertoires administered on behalf of foreign collecting societies under mutual representation agreements. Conversely, where royalties are collected by foreign collecting societies on the grounds of the same agreements, SIAE merely allocates the royalties transferred from abroad among the various right holders while applying lower commission fees (i.e. 3%, as shown in the category 'Uses abroad' of Table B, found in Annex D).¹³³

¹³² See Article 6 of SIAE's Charter.

¹³³ SIAE also retains certain additional revenues of smaller size, such as annual membership fees and some rates for other services, anyhow not relating to the management of copyrights of the Music Section. For members of the Music Section, the only additional revenues for SIAE deriving from its relationship with authors, composers and publishers are, respectively, a) membership fees and b) administrative costs incurred for other services (e.g. supply of copies of documents or of registered works; fees for the examination of works, elaborating works in the public domain, etc).

3.3.2.2. The value of repertoires

Table 3 below presents the size of SIAE royalties to members for the period 2001-2007.¹³⁴ According to the data provided, SIAE distributions to members increased from €251.853.457 in 2001 to €319.133.651 in 2007, representing a 26,7% growth.

Table 3: SIAE distributions to members

SIAE distributions to members (€)	2001	2002	2003	2004	2005	2006	2007
Authors/composers	96.488.375	97.149.141	103.362.072	108.251.724	118.182.352	120.882.634	127.933.686
%	38,3	38	38,2	38,7	39,5	38,8	40,1
Publishers	155.365.082	158.781.416	166.971.112	171.153.456	180.797.648	190.352.609	191.199.965
%	61,7	62	61,8	61,3	60,5	61,2	59,9
Total	251.853.457	255.930.557	270.333.184	279.405.180	298.980.000	311.235.243	319.133.651

Royalty distributions to publishers incorporate revenues from sub-publishing deals (i.e. deals that allow for the representation of foreign repertoire on Italian territory) and therefore do not allow for an effective measuring of the value of the domestic repertoire. For an accurate picture of the size of the Italian repertoire, one needs to make recourse to figures concerning SIAE distributions to authors/composers.¹³⁵ These royalties increased by 32,6% over the reported period. From €96.488.375 in 2001, they reached €127.933.686 in 2007.¹³⁶

The value of foreign repertoire enjoyed in Italy increased by 56,7% over the period 2001-2008, as indicated in Table 4 below.¹³⁷ With respect to European repertoire (i.e. the combined repertoire of the EU Member States), values increased by 51,1%. If we subtract the royalties distributed for the UK repertoire (i.e. the royalties distributed to UK collecting societies), an increase of 33,7% proves to have occurred. The value of the Anglo-American repertoire increased as well, with a 85,8% growth for the UK repertoire and a 59,8% growth for

¹³⁴ Aggregated figures are provided for both authors/composers and music publishers, covering mechanical and performing rights, as well as revenues from digital use. Figures also incorporate the so-called 'proportional allocations' distributed to members. These are revenues channelled to members in proportion to the number of their works that generate royalties. Figures thus reflect the 'effective' income produced by the repertoire of SIAE's members. This particular type of income subtracted, authors/composers received €80.992.879,38 in 2001, €81.329.919,75 in 2002, €87.567.392,27 in 2003, €91.184.517,55 in 2004, €93.723.368,46 in 2005, €100.960.032,19 in 2006 and €103.576.097,66 in 2007. Publishers received €67.008.524,45 in 2001, €68.871.457,24 in 2002, €71.325.307,14 in 2003, €73.944.213,33 in 2004, €76.803.38,90 in 2005, €80.548.032,21 in 2006 and €79.748.171,56 in 2007.

¹³⁵ Note however that royalties in the music sector are, in the vast majority of cases (i.e. 95% of publishing contracts), equally divided (50%-50%) between authors/composers and publishers. As a result, what is annually gained by authors/composers for domestic repertoire amounts roughly to what their publishers also gain.

¹³⁶ If we subtract the 'proportional allocations' (see above), distributions to authors/composers increased by 27,9% over the reported period.

¹³⁷ Table 4 presents the value of the royalties transferred to foreign collecting societies, providing aggregated numbers for mechanical and performing rights as well as rights for digital exploitation.

the US repertoire.¹³⁸ Finally, with respect to international repertoire, that is third countries' repertoire (excluding the US repertoire), royalty distributions increased by 64,7%.

Table 4: SIAE distributions for foreign repertoire

SIAE distributions for foreign repertoire (€)	2001	2002	2003	2004	2005	2006	2007	2008
Aggregate EU	18.513.058	17.872.660	20.740.865	21.443.587	23.658.877	25.609.161	25.670.862	27.979.150
%	41,1	39,3	39,2	38	39	39,6	40,3	39,7
EU (excl. the UK)	12.313.103	11.542.835	13.361.573	13.526.135	15.009.773	15.253.111	15.257.463	16.461.219
%	27,3	25,4	25,3	24	24,8	23,6	23,9	23,4
UK	6.199.955	6.329.825	7.379.292	7.917.453	8.649.104	10.356.050	10.413.399	11.517.931
%	13,8	13,9	13,9	14	14,3	16	16,4	16,3
US	22.413.597	23.917.458	26.729.813	29.818.452	31.517.339	33.271.916	32.841.156	35.830.410
%	49,8	52,5	50,6	52,7	52	51,5	51,5	50,8
UK/US	28.613.552	30.247.283	34.109.105	37.735.905	40.166.442	43.627.966	43.254.555	47.348.341
%	63,6	66,4	64,5	66,8	66,3	67,5	67,9	67,1
Rest of the world	4.080.633	3.740.602	5.372.365	5.269.785	5.428.746	5.720.559	5.208.307	6.721.765
%	9,1	8,2	10,2	9,3	9	8,9	8,2	9,5
Total	45.007.288	45.530.720	52.843.042	56.531.825	60.604.962	64.601.636	63.720.325	70.531.325

The data reveals that the Anglo-American repertoire enjoys a dominant position in the Italian market. In 2008, SIAE royalties for the combined UK and US repertoire amounted to 67,1% of the total amount of the royalties distributed abroad. The UK share was 16,3% and the US share was 50,8%. SIAE royalties for the European repertoire represented 39,7% of the total revenues directed to foreign collecting societies (23,3% if the UK repertoire is excluded). Royalties collected and distributed for international repertoire amounted only to 9,5% of total SIAE distributions for foreign repertoire.

¹³⁸ Their combined value increased by 65,5%.

3.3.2.3. Trade flows in music

Table 5 provides information on the presence of Italian repertoire in foreign markets for the period 2001-2008.¹³⁹

Figures disclose that the value of the Italian repertoire abroad decreased by 16,3%. Revenues from all EU countries decreased by 14,2% (12,8% if royalties originating in the UK are excluded). Corresponding revenues from the UK, the US and third countries decreased by 29,4%, 22,6% and 20,1% respectively.

Table 5: SIAE international revenue for domestic repertoire

SIAE international revenue for domestic repertoire (€)	2001	2002	2003	2004	2005	2006	2007	2008
From the EU Member States	25.516.243,43	25.099.317,05	24.215.190,74	22.804.750,14	21.342.730,54	21.445.899,09	22.671.296,80	21.880.113,91
%	71,7	68,7	76,8	72,3	73,4	72,9	75,1	73,4
From the EU Member States (excl. the UK)	23.314.684,69	23.131.690,25	22.558.013,68	20.672.553,28	19.294.462,90	19.487.572,57	20.314.787,99	20.327.085,12
%	65,5	63,3	71,5	65,5	66,4	66,3	67,3	68,2
From the UK	2.201.558,74	1.967.626,8	1.657.177,06	2.132.196,86	2.048.267,64	1.958.326,52	2.356.508,81	1.553.028,79
%	6,2	5,4	5,3	6,8	7	6,6	7,8	5,2
From the US	3.373.575,27	5.145.149,70	1.875.458,48	2.380.545,99	2.166.357,94	2.404.894,51	2.027.074,11	2.610.833,81
%	9,5	14,1	6	7,5	7,4	8,2	6,7	8,8
From the UK and the US	5.575.134,01	7.112.776,50	3.532.635,54	4.512.742,85	4.214.625,58	4.363.221,03	4.383.582,92	4.163.862,60
%	15,7	19,5	11,2	14,3	14,5	14,8	14,5	14
From the rest of the world	6.721.361,39	6.288.701,90	5.430.047,31	6.363.188,38	5.585.465,06	5.559.049,76	5.502.337,57	5.310.328,36
%	18,8	17,2	17,2	20,2	19,2	18,9	18,2	17,8
Total	35.611.180,09	36.533.168,65	31.520.696,53	31.548.484,51	29.094.553,54	29.409.843,36	30.200.708,48	29.801.276,08

¹³⁹ Aggregated figures are provided, covering mechanical rights, performing rights and rights from digital exploitation.

Even if revenues from the EU Member States decreased, figures show that the Italian music repertoire is clearly appreciated in the EU. In 2008, revenues from the EU Member States represented 73,4% of the total value of the royalties SIAE received from foreign collecting societies for its repertoire. The UK excluded, royalties collected in the EU Member States represented 68,2% of the total royalties collected abroad for the Italian repertoire. Revenues from the US and third countries amounted to 8,8% and 17,8% respectively.

Table C provided in Annex D gives an overview of trade flows with respect to the various types of repertoires investigated for the period 2001-2008. The ratio of the international revenues received for the Italian repertoire to the revenues distributed to foreign collecting societies for foreign repertoire generally decreased. More specifically, from around 80% in 2001 and 2002, it fell to 42,2% in 2008. During the reporting period, only the revenues from the EU countries (the UK excluded) exceeded the distributions to these countries for their repertoires (though the ratio decreased over time). In 2008, revenues from the EU Member States for the Italian repertoire (the UK excluded) amounted to 123,5% of the revenues collected in Italy and distributed for European repertoire (78,2% if the UK is included). Royalties collected in the UK and the US for the Italian repertoire represented 13,5% of the royalties collected in Italy for the Anglo-American repertoire. As to trade in music with third countries, revenues received for the Italian repertoire amounted to 7,3% of the royalties collected in Italy and distributed for international repertoire.

The above information indicates that the value of the royalties received from the EU Member States (with the exception of the UK) for the Italian repertoire exceeds the value of the royalties transferred for the European repertoire. Conversely, the amount of the royalties transferred for the Anglo-American and international repertoires is greater than the amount of the royalties received for the domestic repertoire.

3.3.2.4. The pursuit of cultural and social objectives

Italian law does not oblige SIAE to pursue cultural and solidarity objectives. Nonetheless, SIAE finances the pursuit of both these objectives to the sole benefit of its members. Cultural activities have been funded, so far, for the Music Section, by not allocated proceeds, within the limit of 10% of the after-tax proceeds coming from the revenue of public performance rights. Cultural policies are further supported by the allocation of 'additional' royalties on the benefit of sole members of SIAE. These royalties are aimed at supporting certain categories of works that SIAE deems to be deserving for their intrinsic artistic value. Classical contemporary music works provide a good example of these aided works, since they usually generate revenues that are much lower than those related to pop and rock music. In addition to that, SIAE members obtain additional revenues also for uses of their works abroad and as a reward for the exceptional amount of royalties generated by their most successful works.

According to SIAE's Charter, solidarity initiatives are funded by a 4% deduction on authors' after-tax proceeds and by a 2% deduction on publishers' proceeds: these funds add to the society's Solidarity Fund that, according to its own Regulation, provides various services, such as pensions and welfare insurances.¹⁴⁰ The allocation of funds for cultural and social objectives is carried out by the Board of Directors through a yearly Ordinance of Distribution after consultation with the Music Section Commission (which is composed of 10 authors and 10 publishers elected by SIAE's Assembly).

¹⁴⁰ See Article 20 of SIAE's Charter.

According to information provided by SIAE for the period 2001-2008, total expenditure for cultural and social purposes fluctuated, ranging from 11M Euro to 23M Euro. From 2004 onwards the funding of cultural activities and that of social activities display a certain similarity, though in 2008 cultural expenditures were 8,3% higher than social expenditures. Over the whole period, cultural financing increased by 30%, whereas social financing by 56%. Total expenditures increased by 41,3%, ranging from 3,34 to 5,73% of SIAE's net revenue. Whether such allocations could be influenced somehow by the 2005 Commission Recommendation requiring collecting societies to specify whether and to what extent deductions other than management fees are carried out is still unknown. However, the fact that SIAE's deductions have increased significantly in the last years suggests that the Recommendation transparency requirement has not fostered the contraction of relevant funding.

3.3.2.5. Digital licensing activity of SIAE

So far, SIAE has developed several standard licences to authorise digital uses of copyrighted music works on the internet and on mobile phones. As of 1999, SIAE has developed its main multimedia licensing model for online uses called 'Music service provider' licence, under which users such as web radios, online content retailers and website devisers (i.e. both physical and legal persons) exploiting protected music obtain uploading, streaming (i.e. communication to the public) and downloading rights in respect of all music works embodied into SIAE's Music Section repertoire, including the works that SIAE manages on the grounds of mutual representation agreements concluded with foreign collecting societies. SIAE makes it clear that this blanket licence, which is limited to the Italian territory and lasts 1 year (with the possibility of automatic renewal), does *not* authorise uses of sound recordings over which neighbouring rights (i.e. recording producers', performers' and broadcasters' rights) exist and for whose clearance each website deviser needs to obtain an explicit authorisation from the respective right holders.

Under the 'Music service provider' scheme, depending on the business model of each licensee, users are obliged to pay either a royalty of 8% on the retail price of the works sold or on website advertising revenues. Additional criteria adopted by SIAE for the setting of royalties in this licensing area are, respectively, minimum fees (so-called *minima*) per work streamed or downloaded and, if protected works are transmitted free of charge to end-users, specific layers of compensation calculated in proportion to the proceeds gained by the website operator from either advertising and sponsorship revenues or other commercial profits.

The main multimedia licence described above comprises usage rights that are granted under separate and narrower licence agreements concluded with users wishing to provide both non-interactive and interactive web-services, such as radio- and TV- web-casting, podcasting, background music, web-based commercials, etc.

With specific regard to copyright clearance of 'simulcasting', it must be considered that such activities are licensed for the Italian territory by an extension of the licensing agreements that SIAE's Broadcasting Section concludes with radio and TV stations wishing to transmit online the same programs they broadcast through public frequencies, cable and satellite.

Another set of licence models has been developed by SIAE in relation to uses of music works on mobile phones (i.e. 'Music on mobile phones'). By the first of these models, SIAE authorises the technical adaptation, uploading, making available and downloading of music

works taken from its Music Section's repertoire to be used as ringtones for mobile phones. SIAE makes it clear that this licence does not clear neighbouring rights existing on original sound recordings used to produce ringtones and for which the user needs an express authorisation from the respective right holders. Under this licence, which applies solely to the Italian territory, royalties amount to 12% of the work retail price and, in any event, cannot be lower than 0,10 cents per work. Under similar terms and conditions, SIAE issues another licence for the downloading of so-called 'full tracks' (i.e. music songs and video clips) on mobile phone devices, by imposing a royalty of 8% on the retail price of each music track (in the same way as it does for music works downloaded through the internet). From the information gathered, it appears that licences for uses of tracks and ringtones are equally granted by SIAE to both intermediaries such as music providers DADA and BUONGIORNO and Italian mobile phone operators (i.e. TIM, VODAFONE, WIND and H3G).

SIAE emphasised that it still grants digital licences in accordance with the above mentioned models, in spite of the strong impact that the European Commission's 2005 Recommendation and the 2008 CISAC Decision have had on its licensing activity. According to SIAE, the most evident and direct consequence of the Recommendation on SIAE's digital licensing has been the progressive loss of economically relevant mandates to administer online and mobile phone uses by major publishers, including EMI Music Publishing, SONY/BMG Music Publishing, UNIVERSAL Music Group and Peer Music. These publishers exercised the right, recognised under the society's Charter, to exclude SIAE from the management of online and mobile phone uses occurring on the Italian territory and whose management was conferred, in compliance with one of the main Recommendation principles, to a collective rights manager of their choice, representing them for such uses on a pan-European level.

The majors' withdrawal had clear consequences. First, it created uncertainty about the repertoire for which SIAE is entitled to grant digital use licences, raising various technical issues that have not been solved yet. One of these is the inability of SIAE to implement automated methods of work identification, aimed at distinguishing works that the society has the right to administer for online and mobile phone uses from other works which fall out of the scope of its mandate.

Secondly, the above uncertainties have reduced larger users' (e.g. 'iTunes') incentive to enter into licence agreements with SIAE for digital uses of its smaller domestic repertoire. Whereas these users were previously able to have access to the worldwide repertoire to be exploited in Italy by a single agreement, now they need to enter into several repertoire-specific agreements in order to achieve the same result. This new scenario worsens the already disadvantaged position of owners of the Italian music repertoire, whose value is much lower than that of the dominant one, i.e. the Anglo-American repertoire. This implies that large users wishing to obtain wide licences covering the Italian territory for digital uses are encouraged to deal mostly with entities which manage major publishers' successful repertoires, rather than entering into costly and time-consuming negotiations with managers of smaller repertoires like that of SIAE. Obviously, any measures taken at EU level to preserve cultural diversity in the music sector should take this troublesome picture into consideration.

Finally, as regards the 2008 Commission CISAC Decision, its most direct impact on SIAE's digital licensing was the establishment of the joint venture ARMONIA by SIAE and collecting societies SACEM (France) and SGAE (Spain). The Commission Decision obliged SIAE to re-negotiate its reciprocal representation agreements in order to remove from them a few clauses that, according to the Commission's analysis, resulted in concerted and anti-

competitive practices, ending up to the partitioning of the EU territory into rigidly delimited national markets. In particular, the Decision forced collecting societies like SIAE to repeal clauses which restricted them from issuing multi-territorial licences of their repertoires for satellite, cable and online uses and accepting mandates for these uses from right holders affiliated to another society or resident in another jurisdiction. As shown in chapter 2, in order to react to the withdrawal of major publishers' mandates while meeting the CISAC Decision requirements, SIAE opted for an *author-based* model of multi-territorial licensing by conferring to ARMONIA the power to grant EU-wide licences for online and mobile phone uses of music works covering all its repertoire, together with the ones originally administered by SACEM and SGAE. This licensing model opposes the *publisher-based* model embraced by other collecting societies and majors by the establishment of entities like CELAS (see Chapter 2), which are designed to issue multi-territorial licences for a single publisher's repertoire. Contrasting the scope of licensing models based on publishers' portfolios, ARMONIA was designed to simplify and make more effective and economically viable the EU-wide digital licensing of all national music repertoires that it is empowered to administer.

So far, ARMONIA has sought to foster relationships with major users of copyrighted work (like mobile phone manufacturer NOKIA, which recently launched a program called 'Nokia comes with music', allowing owners of mobile phones unlimited access to ARMONIA's repertoires through their devices for a certain time frame) and with owners of important music libraries (like Universal Music Group, which conferred an exclusive mandate for the licensing of digital uses on a EU-wide basis to a company owned by SACEM).

Key findings

- Italy was worldwide ranked 8th in physical sales, 10th in digital sales and 8th in performance rights income in 2007. In the same year, the total industry trade revenue of the Italian music market was €266M. This turnover was generated by physical sales for 87%, digital sales for 7%, and performance rights exploitation for 6%. Physical sales decreased by 30% from 2005 to 2007. Conversely, digital music sales rose by 51,2% in 2006 and rather stabilised in 2007, but still represent a small percentage (in 2007, they accounted for 7,2% of total recorded music sales). This means that the digital music market cannot be seen as a mature market yet.
- Revenues for domestic repertoire distributed in Italy increased by 26,7% from 2001 to 2007. The royalties transferred to SIAE by foreign collecting societies decreased over the period 2001-2008 (-16,3%), as a result of large decreases in the revenues received from the UK (-29,4%), US (-22,6%) and third countries collecting societies (-20,1%) for the exploitation of the Italian music repertoire abroad. Even if revenues from EU countries also decreased by 14,2% in the examined period, EU collecting societies (excluding the UK) are the most significant contributors to the domestic repertoire income, representing 68,2% of the royalties collected abroad for the Italian repertoire in 2008. In the same year, revenues from the US and third countries collecting societies amounted to 8,8% and 17,8% respectively.
- As regards foreign repertoire enjoyed in Italy, the Anglo-American repertoire is largely predominant, representing 67,1% of the total amount of the royalties that SIAE distributed abroad in 2008, followed by the 'European-non UK' repertoire (23,3%). Data suggests that both the UK and US repertoires keep on growing in Italy (respectively, by 85,8% and 59,8% over the period 2001-2008), whereas the combined repertoire of the EU Member States (excluding the UK repertoire)

increased by 33,7% (+51,1% if the UK repertoire is included). The trade flows between domestic and foreign repertoires show that, in 2008, SIAE received from a) the UK and US collecting societies (aggregated), b) the EU collecting societies (excluding the UK), and c) third countries' collecting societies, respectively, 13,5%, 123,5% and 7,3% of what it transferred to them for their repertoires.

- Although Italian law does not oblige SIAE to pursue any cultural and solidarity objectives, its total expenditure for the funding of cultural and social initiatives to the benefit of SIAE members over the period 2001-2008 increased by 41,3%, ranging from 3,34 to 5,73% of SIAE's net revenue. Even if the impact of the 2005 Commission Recommendation on the pursuit of these objectives is still unclear, this significant increase in the last years suggests that the Recommendation transparency requirements have not fostered the contraction of relevant expenditure.
- Finally, as regards digital licensing, all standard licence models developed by SIAE for uses of its music repertoire over the internet and on mobile phones have a 1-year duration (with possibility of renewal) and authorise uses on the sole Italian territory of both the Italian repertoire and the repertoires of the foreign collecting societies that have concluded mutual representation agreements with SIAE. However, SIAE's digital licensing activity has undergone considerable change in the last years as a result of both the 2005 Commission Recommendation and the 2008 CISAC Decision. On the one hand, the progressive withdrawal of major publishers' repertoires for digital uses raised legal uncertainties on the repertoires effectively managed by SIAE in this sector, while highlighting several technical problems including methods of work identification and royalty collection that have not been solved yet. Due to the small dimension of digital music sales, it is still unclear how these withdrawals impact on the Italian music market. Nonetheless, from an economics-based perspective, it is evident that the legal necessity to enter into multiple licences in order to have access to wide and successful repertoires for digital uses reduces large users' incentives to enter into licence agreements with SIAE for its smaller domestic repertoire. On the other hand, the establishment of the joint venture ARMONIA with collecting societies SACEM (France) and SGAE (Spain) – as a consequence of the amendments of mutual representation agreements requested by the Commission CISAC decision – pursued the objective of simplifying and making the EU-wide digital licensing of all national music repertoires that this new entity administers more effective and economically viable.

3.4. Spain

Note on the Spanish case-study

From the beginning of the study, SGAE, the Spanish collecting society for authors, composers and music publishers, offered its cooperation and provided information on the basis of which the following paragraphs (and Chapter 2) were drafted. However, SGAE did not provide any form of quantitative data requested. As a result, the quantification of the value of different types of repertoires (i.e. the domestic, European, Anglo-American and international repertoires) and the assessment of intra-Community and international trade flows in the field of music were rendered impossible for the case of Spain. Relevant aspects are therefore not addressed in the following sections.

3.4.1. Main characteristics of the Spanish music market

According to IFPI figures, the Spanish music market was internationally ranked 9th in physical sales, 11th in digital sales and 6th in performance rights income in 2007.¹⁴¹ In the same year, the total industry trade revenue of the Spanish music market was €223 million,¹⁴² with a breakdown in physical sales of 83%, in digital sales of 8% and in performance rights of 6%. Regarding digital sales, 37% corresponded to master ringtones, 22% to mobile single tracks, 7% to online single tracks, 7% to online albums, 6% to ringback tones, 5% to music videos and 16% to other formats.¹⁴³

Physical sales of recorded music have fallen by 40% since 2004, as reflected in the table below. Regarding the digital sector, revenues have largely increased over the 2004-2007 period, but certainly not to the extent of compensating the drop in physical sales. The revenues arising from performance rights also increased. However, total recorded music sales in 2007 remained below the 2004 level.

Table 1: IFPI, Recording industry in numbers, 2008

Recorded music sales (\$ million)	2004	2005	2006	2007
Physical	423,7	399,7	339,6	252,4
Digital	2,2	4,5	18,6	25
<i>Online</i>	7%	24%	17%	18%
<i>Mobile</i>	93%	76%	80%	71%
<i>Subscriptions</i>	-	-	-	-
Performance rights	-	-	23,3	28,1

The digital market showed a substantial growth between 2005 and 2006 (+310%), and continued to grow thereafter at a lower rate (+36% in 2007¹⁴⁴). Consumption preferences were directed towards uses of digital music on mobile phones, a trend which seems to have stabilised over the years.

National music has a share of 58% of total album sales, while foreign music and classical music enjoy respectively a 41% and a 1% share.¹⁴⁵ Broadly speaking, music preferences go to Spanish language repertoire as well as the Latin American repertoire rather than English or other language repertoires.

The most important record companies in Spain are multinational, and altogether, represent more than the 90% of the market share.

¹⁴¹ IFPI, Recording industry in numbers 2008, p. 40.

¹⁴² Yearly reports by Promusicae, the Spanish Association of record producers, indicate turnovers of €284 million in 2007 and €254M in 2008, comprising physical sales, online and mobile services. On Promusicae, see <http://promusicae.es/english.html>.

¹⁴³ Other includes streams and other non-categorised digital uses.

¹⁴⁴ Data extracted from Promusicae 'Mercado discografico 2008' ([www.promusicae.org/EditorRamon/imagenes/file/MERCADODISCOGRAFICO\(FisicoDigital\)2008WEB.pdf](http://www.promusicae.org/EditorRamon/imagenes/file/MERCADODISCOGRAFICO(FisicoDigital)2008WEB.pdf)) suggests similar conclusions for 2008 (+19% growth).

¹⁴⁵ Data extracted from Promusicae, 'Mercado digital 2008'. See www.promusicae.org/EditorRamon/imagenes/file/MARKETSHAREPORCIASMERCADODIGITAL2008.pdf.

Table 2: The most important record producers in Spain¹⁴⁶

2008	Physical market (aggregated)	Digital market (aggregated)	Digital market split	Digital market split
			Internet	Mobile
Sony BMG	29 %	35%	28%	39%
Universal Music	31%	35%	41%	32%
EMI Music	12%	13%	16%	11%
Warner	19%	12%	12%	13%
Blanco y Negro [1]	3%	4%	2%	5%
Others [2]	6%	1%	0,99%	<1%

[1] The most important national record producer.

[2] Mainly nationals.

IFPI reports that the Spanish market is affected by 'one of the highest levels of internet piracy in Europe' and refers to a 2007 research commissioned by the Spanish Ministry of Culture. The research shows that 5 million Spaniards (13% of the total Spain population) illegally download music while 0,5 million buy music legally online.¹⁴⁷

3.4.2. Collecting societies and music repertoires

Articles 147 and seq. of the Spanish Copyright Law lay down the legal framework applicable to Spanish collecting societies.¹⁴⁸ Collecting societies must obtain the authorisation of the Minister of Culture and be constituted as non-profit entities. The law defines the conditions for such authorisation, certain points that collecting societies' Statutes must observe, some specifications for the contracts they enter into with members, the main criteria for the distribution of the incomes collected, and some social and cultural obligations. Collective management is imposed in certain instances,¹⁴⁹ including for the performers' right of making available, whereby there is a presumption that performers have transferred it to the record producer. In those cases where collective management is not compulsory, right holders may conclude a *contrato de gestion* (administration contract) with a collecting society for the management of their rights. The Spanish Copyright Law limits the term of such contract to 5 years (though it can be renewed indefinitely) and enables right holders to reserve some forms of exploitation, as well as future works, to themselves or to other collecting societies.¹⁵⁰

There are three collecting societies active in the music sector in Spain: SGAE, AGEDI and AIE. All of them participated actively in the study. SGAE is presented below. AGEDI and AIE are discussed in Annex A.

¹⁴⁶ Ibid.

¹⁴⁷ IFPI, Recording industry in numbers 2008, p. 40.

¹⁴⁸ Consolidated version of the Real Decreto Legislativo 1/1996, de 12 de abril, 'por el que se aprueba el Texto Refundido de la Ley de Propiedad Intelectual, regularizando, aclarando y armonizando las disposiciones legales vigentes sobre la materia'.

¹⁴⁹ Notably for cable retransmission, remuneration related to private copying and public communication of phonograms.

¹⁵⁰ Such regime was in force prior to the 2005 Commission Recommendation.

3.4.2.1. SGAE

The *Sociedad General de Autores y Editores* (SGAE) manages the exclusive rights of authors and publishers,¹⁵¹ notably for musical works. It also manages their remuneration rights.¹⁵²

The SGAE Statutes provides the rights and duties of its affiliates, as well as its governing bodies.¹⁵³ The main bodies of SGAE are the General Assembly, the Board of Directors, and the Management Board. The Board of Directors is formed by 38 members elected by the Assembly, among which 24 are related to musical works. 10 of them are composers, 6 are lyricists, and 8 are music publishers. Such allocation of seats is provided in SGAE Statutes and is consistent with the GESAC/ICMP Common Declaration on Governance in Collective Management Societies and on Management of Online Rights in Music Works, adopted in July 2006 and providing that 1/3 of the Board seats should be allocated to publishers.

SGAE finances itself by deducting administrative fees on the royalties it distributes. The level of such deduction depends on the costs encountered for the management of the type of right or the type of use involved. The percentage of the administrative fees mainly varies from 5 to 15%, except in the case of public communication in public premises, where the percentage is way higher in view of the high costs encountered for royalty collection. SGAE indicated that its administrative fees have been reduced to be nowadays one of the lowest in the EU. Their level is decided by the General Assembly upon proposal by the Management Board.

Applicable percentages are the same in the case of SGAE collecting royalties and distributing them to its members or transferring royalties to foreign collecting societies on the basis of a reciprocal representation agreement, unless another percentage has been agreed with the foreign collecting society.¹⁵⁴

With respect to the royalties collected by foreign collecting societies and transferred to SGAE, SGAE explained that it allocates the royalties to its members while retaining a management fee of the same level as if it had proceeded to the collection itself (unless other conditions are agreed in the reciprocal representation agreements). This contrasts the practice of other EU collecting societies, which apply reduced management fees in such a case due to decreased workload.

Discounted management fees for mechanical rights are granted to the four major publishers,¹⁵⁵ as well as to another large publisher. This results from the Cannes agreements mentioned above, and confirms the ability of the majors to influence the level of management fees. Relevant discussions have been held outside the political bodies of SGAE, without proper representation of smaller right holders' interests.

¹⁵¹ I.e. the reproduction, communication and making available to the public and distribution rights.

¹⁵² In particular for private copy remuneration, rental of phonograms or audiovisual recordings and the communication to the public of audiovisual works.

¹⁵³ For additional information, see Articles 33-78 of the SGAE Statutes.

¹⁵⁴ The extent to which such percentage is different, and the number of foreign collecting societies benefiting from such treatment was not revealed. It is therefore difficult to assess whether, and if confirmed the extent to which, domestic artists bear the functioning costs of their own collecting society to a larger extent than foreign artists which are members of a collecting society benefiting from lower administrative fee percentages.

¹⁵⁵ The non discounted fee is not significantly higher than the discounted fee (+9%) compared to other collecting societies.

3.4.2.2. The pursuit of cultural and social objectives

Article 155 of the Spanish Copyright Law recommends that collecting societies promote social activities or services in the interest of their members, as well as training and promotion activities for authors and performers. Moreover, it requires that 20% of the private copy remuneration be allocated, in equal parts, to social and training/promotion activities.¹⁵⁶

Besides the obligations imposed by the Spanish Copyright Law, SGAE applies the 'principle of solidarity', elaborated and promoted by CISAC, according to which all collecting societies may retain up to 10% from royalty payments for cultural and social activities. This is reflected in Article 90 of the SGAE Statutes, which provides that SGAE will deduct maximum 10% on royalties to be paid for any rights to its members for these purposes. The wording of Article 90 further suggests that no deduction will be applied on royalties received from foreign collecting societies. Regarding the revenues collected by SGAE and transferred to foreign collecting societies, the level of deduction is provided in the reciprocal representation agreement concluded with the foreign society. Whether this point was addressed within the frame of the bilateral reviews of reciprocal representation agreements following the CISAC Decision (on this renegotiations, see *supra* Chapter 1, section 1.4) is unknown.

Article 88 of the SGAE Statutes further states that SGAE will carry out training and promotional activities, look after the preservation of the cultural patrimony, and create services related to the study, research, exchange and dissemination of its repertoire. Over the last years, SGAE has held active policies in several cultural fields, for example, by means of research collaborations with the most significant universities and other public and private entities.¹⁵⁷

Finally, Article 89 of the SGAE Statutes deals with SGAE's social activities and services. In particular, it refers to the possibility of promoting the incorporation of SGAE members to a special social security regime and of making economic contributions to Mutualidad de protección social, pension funds and other funds for special needs. Within this framework, SGAE created, in 2001, Fundación Autor, which is mainly devoted to social assistance, education and repertoire promotion. According to the information provided, in 2007, Fundación Autor responded to more than 600 assistance requests and allocated more than €2 million to social activities and services. Over €6 million were further channelled by Fundación Autor to Mutualidad de Previsión Social de Autores y Editores (Mutual Benefit Society for Authors and Publishers), which ensured funds for retirement, widows' pensions and orphanage to almost 1.500 affiliates. Fundación Autor also invested over €4 million in a special insurance policy in case of death or invalidity, benefiting about 3.500 affiliates.

SGAE did not provide any quantitative information as regards the amounts yearly collected and spent for cultural and social activities. Whether the 2005 Commission Recommendation had any impact on the level of collection and allocation can not therefore be assessed. Nor can it be established whether the right holders are informed about the deductions retained for purposes other than management services, as recommended by the 2005 Commission Recommendation.

¹⁵⁶ Article 155 of the Spanish Copyright Law and Article 39 of the Royal Decree RD 1434/1992.

¹⁵⁷ To illustrate, SGAE offers through CEDOA (Centro de Documentación y Archivo) a history archive of 100 years of life in music and theatre, and it is involved in the promotion of specific festivals. Femina, for example, after 9 editions, has become a reference point for the promotion of works authored by women.

3.4.2.3. Digital licensing activity

Since 2001, SGAE has been providing licences for the following types of online exploitation of its repertoire: a) music on-demand services (including downloads);¹⁵⁸ b) music on-demand streaming services;¹⁵⁹ c) mobile phone ringtone services;¹⁶⁰ d) webcasting services;¹⁶¹ e) simulcasting services;¹⁶² and f) background music for websites.¹⁶³ SGAE indicated that, from 2003 to 2008, the following licences were granted (without supplying the split by form of exploitation):

Table 3: Number of licences granted by SGAE

Year	2003	2004	2005	2006	2007	2008
Number of licences ¹⁶⁴	30	45	150	204	306	502

Over that period, all standard licences granted by SGAE offered access to the worldwide repertoire on the territory of Spain. Tariffs varied according to the online use made of the works (streaming, download or ringing tones), yet followed the same scheme: the licence fee amounted to a certain percentage, applied on the yearly turnover¹⁶⁵ of the online music service provider, with minimum fees (applicable if they were greater than the royalty rate applied on the turnover). The duration of the licences depended on the type of the online music service provider involved and the type of exploitation. Generally, SGAE granted licences of one-year duration, with automatic extension, unless the licence was terminated by either party.

In certain cases, SGAE also offered licences on a pan-European basis, in which case the repertoire covered by the licence was strictly defined as SGAE's repertoire (i.e. the repertoire entrusted to it directly by its members). The tariffs applied were the tariffs of the country of destination (i.e. the tariffs of the collecting society of the territory in which work exploitation takes place), unless these were not public, in which case SGAE relied on its own tariffs. The number of licences under that format, and their evolution over the years was not revealed. In all likelihood, in view of the development of EU copyright policy, which encourages multi-territorial initiatives, SGAE continues to grant such licences.

SGAE has also recently started to grant Pan-European licences for Latin American repertoire within the frame of the PEL initiative. It is also cooperating with French SACEM and Italian SIAE collecting societies for the creation of a framework allowing for pan-European licensing of their respective repertoires (i.e. the ARMONIA initiative). Both initiatives result from the 2005 Commission Recommendation and are discussed under Chapter 2.

¹⁵⁸ The licence includes the reproduction right and the making available right of the musical works covered by SGAE's repertoire.

¹⁵⁹ The licence includes the reproduction right and the public communication rights, including the making available right, of the musical works covered by SGAE's repertoire.

¹⁶⁰ The licence includes the reproduction right and the public communication right, including the making available right, of the musical works covered by SGAE's repertoire for the purposes of ringtone services.

¹⁶¹ The licence includes the reproduction right and the public communication right of the musical works covered by SGAE's repertoire which are compiled automatically as part of an individual streaming audio program.

¹⁶² The licence includes the public communication right of the musical works covered by SGAE's repertoire for the simultaneous, unaltered and integral transmission of a traditional terrestrial/hertzian radio program.

¹⁶³ The licence includes the public communication rights of the musical works covered by SGAE's repertoire for background of commercial and private websites.

¹⁶⁴ Information prior to 2003 could not be tracked back, as SGAE does not use the same software today.

¹⁶⁵ Defined as comprising 'the totality of the income obtained from the licensed service, including, for example, the price paid by the consumer, payment for access, quotas or subscriptions, subventions received for the exercise of the business activity or advertising income'.

SGAE did not provide any figures regarding the amount of royalties collected in the digital environment but indicated that revenues are not significant.

SGAE did not comment at length on the impact of the 2005 Commission Recommendation, nor the CISAC decision on its activities. It observed, nonetheless, that both have deeply modified the organisation of the market and emphasized the increased competition among collecting societies arising from that. According to SGAE, the digital market is a place in continuous development,¹⁶⁶ where market players are observing each other to see what the next moves are, and which business models can be developed. SGAE also indicated that it is in the course of negotiating with major music publishers for the management of their repertoire for online exploitation.

¹⁶⁶ All SGAE format licence agreements stress that 'because of the relative technical novelty of the exploitations subject to this agreement and, consequently, given the absence of properly consolidated minimum business practice in the online service market, the terms of this agreement are to be construed in a consciously experimental context, as established by the principle of contractual good faith and demanded by the most elementary mercantile prudence'.

Key findings

- The Spanish music market belongs to the top 10 worldwide markets, ranked 9th in physical sales, 11th in digital sales and 6th in performance rights income in 2007. In the same year, the trade value of the recorded industry amounted to €223 million, showing a 19,9% decrease compared to 2006. Such decrease results from the continuous fall in physical sales (-25,6% between 2006 and 2007). Digital (+36%) and performance rights (+17%) increased between 2006 and 2007 but not to the extent of compensating the drop in physical sales.
- The digital market boomed in 2006 (+310% compared to 2005) and continues to grow, although at a lower rate. In 2007, it represented 8% of the total recorded music sales. Mobile phone uses represent the main format of digital music consumption (71% versus 17% for online uses).
- Due to the lack of quantitative information, the evolution of the Spanish repertoire over the years, the importance of such repertoire abroad, as well as the significance of foreign repertoire in Spain could not be analysed. Nor could trends be identified in terms of trade flows. IFPI market data suggests nonetheless that foreign music is important in Spain, representing 41% of total album sales.
- SGAE is under a legal obligation to promote social activities or services in the interest of its members by allocating 20% of the private copy revenues to social and training/promotion activities. Moreover, pursuant to the 'principle of solidarity' agreed within CISAC and reflected in SGAE Statutes, SGAE applies a 10% deduction on the royalties it pays to its members for financing social and cultural activities. The level of deduction applied in the case of transferred royalties to foreign collecting societies depends on the percentage agreed in the reciprocal representation agreement. The amounts retained and spent for cultural and social purposes were not revealed. The information provided does not therefore allow for an assessment of the impact of the 2005 Commission Recommendation and the CISAC decision in the field.
- Regarding digital licensing, SGAE granted more than 500 licences covering the territory of Spain in 2008. These licences offer access to worldwide repertoire and are generally of one year duration. Next to such national licences, SGAE provides multi-territorial licences for its own domestic repertoire. The number of such licences was not revealed. Recently, SGAE started offering pan-European licences for Latin American repertoire through PEL, and is prepared to follow a joint framework licensing system agreed with French SACEM and Italian SIAE collecting societies for the representation of their repertoires through ARMONIA. These initiatives are direct consequences of the 2005 Commission Recommendation and are addressed under Chapter 2.
- SGAE indicated that the 2005 Commission Recommendation and the CISAC decision, has caused deep modifications in the market for the management of copyrights for online exploitation. It mainly referred to the increased competition among collecting societies and the current negotiations with major publishers, suggesting that the market is still developing and that business models are still under construction.

3.5. The UK

3.5.1. Main characteristics of the UK music market

According to IFPI figures, the UK was worldwide ranked 1st in performance rights and 3rd in digital and physical sales in 2007.¹⁶⁷ In the same year, the total industry trade revenue of the UK music market was £1.020,8 million, with a breakdown in physical sales of 86%, in digital sales of 8% and in performance rights of 6%.¹⁶⁸ Percentages in physical sales split in 94% for CDs, 4% for music videos and 2% for other formats.¹⁶⁹ As regards digital sales, 40% corresponded to online single tracks, 28% to online albums, 11% to master ringtones, 8% to mobile single tracks, 6% to music videos, 3% to subscriptions and 4% to other formats.¹⁷⁰ The country benefits from a robust music sector and a set of some of the most significant collecting societies in Europe. Moreover, in cultural terms, the UK music sector benefits from the widespread use of the English language across the world, across nations and cultural settings not only in producing but also consuming music.

The most significant changes during the last decade in the UK music sector concern the digitalisation of communications, and changing production patterns and consumption habits. Specifically, the digital environment allows for a higher degree of independence and flexibility for the recording and production of music, down to its distribution, for independent and new musicians, performers and producers. Another characteristic is that there is a rise in music consumption, although it is estimated that in the online environment for every paid-for download, between 14-20 downloads take place in fringe of copyright laws.¹⁷¹ Not-paid-for downloading of music is claimed to cost the industry well over £1 billion, however a combination of fear of legal consequences and contracting computer viruses through peer to peer file sharing seems to have proven effective in changing the behaviour of music users. It is reported that the total number of those engaging in legal downloading exceeds the number of those who do not.¹⁷²

In terms of revenue generation, the UK music sector saw the biggest increase in digital sales up by 45% in the first half of 2008; 110 million single tracks were downloaded, 47% more than in 2007. Digital albums sales increased by 65%, accounting for 7,7% of the total UK albums market.¹⁷³ The trade value of the recorded industry fell 13,7% in 2007, having fallen 6,7% in 2006, but digital music sales rose by 73,5% in 2006 and 28,2% in 2007 (Table 1).¹⁷⁴ In 2007, digital sales accounted for 8,3% of total recorded music sales.¹⁷⁵

Table 1 shows the steady increase in digital music sales from 2004-2007: the music industry has achieved to establish a business model, which although still developing, is aiming to monetise music consumption at every point of demand. This business model primarily involves online and mobile platforms. Online music consumption is on the rise. In 2007, it reached 72% of total digital revenues. By contrast, mobile music consumption fell from 32% of total digital revenues in 2004 to 25% in 2007. The combination of both has

¹⁶⁷ IFPI Digital Music Report 2009, p. 7.

¹⁶⁸ IFPI, Recording industry in numbers, 2008, p. 44.

¹⁶⁹ Other includes singles, cassettes, vinyl etc.

¹⁷⁰ Other includes streams, ringback tones etc.

¹⁷¹ PPL response to study questionnaire and IFPI, 'The hidden dangers of illegal downloading', available at: www.ifpi.org/content/section_news/20080307.html.

¹⁷² See IFPI Report, Illegal music file-sharers targeted by fresh wave of legal action, available at: http://www.ifpi.org/content/section_news/20060404.html.

¹⁷³ IFPI Digital Music Report 2009, p. 6.

¹⁷⁴ Figures do not incorporate performance rights revenues as data is not available for all the years reported.

¹⁷⁵ Performance rights revenues are included in the figures provided.

generated increasing revenues between 2004 and 2007. During this period the total digital value has increased eightfold. It is unclear how the current economic climate will affect the sector, although it is reasonable to expect that music users and other end-users will be attracted to contracts that offer a variety of services in their mobile and online transactions, including music.

Table 1: IFPI, Recording industry in numbers, 2008

Recorded music sales (\$ million)	2004	2005	2006	2007
Physical	2.428,7	2.302,3	2.086	1.743,8
Digital	20,1	76,2	132,2	169,5
<i>Online</i>	58%	58%	64%	72%
<i>Mobile</i>	32%	38%	34%	25%
<i>Subscriptions</i>	10%	4%	2%	3%
Performance rights	-	-	122	128,3

A relevant recent development is the changing consumption habits that concentrate on the purchase of single tracks through digital platforms, possibly replacing to a certain extent purchase of 'hard copy' CD albums. Other formats, such as vinyl, are popular predominantly with collectors but according to PRS for Music, the new brand for the combination of two major UK collecting societies for mechanical and performing rights (see below for full presentation), this is 'unlikely to offset the value gap caused by declines in physical CD sales'.¹⁷⁶

Meanwhile, live music is reported to be booming, with new festivals being added each year and it is expected that the retail value of live music might well exceed that of recorded music before or during 2010. Although Glastonbury, the largest music festival event in the UK, failed to sell out in 2008 for the first time in a generation, it managed to do so in 2009.

3.5.2. Collecting societies and music repertoires

In contrast to the European model, there is no legal provision governing the function or structure of collecting societies in the UK. These are companies limited by guarantee and as such are not formally regulated. The Copyright Design and Patents Act 1988 makes reference to 'licensing bodies' which collecting societies are understood to be. Any complaints with regard to the rates charged or any other conditions imposed by UK collecting societies can be taken to the Copyright Tribunal. This is an independent body whose jurisdiction is defined in Sections 149, 205B and Schedule 6 of the Copyright, Designs and Patents Act 1988. The Copyright Tribunal has also the authority to investigate an issue under the referral of the Secretary of State. Collecting societies are subject to Competition Law and the Office of Fair Trading that oversaw the merger of the Association of United Recording Artists (AURA) and the Performing Artists' Media Rights Association Ltd (PAMRA) into Phonographic Performance Ltd (PPL) in 2007.

¹⁷⁶ PRS For Music response to study questionnaire.

3.5.2.1. PRS for Music

PRS for Music is the new brand (since 2009) for the two UK collecting societies: Mechanical Copyright Protection Society (MCPS) and Performing Right Society (PRS). Previously it was formed as the MCPS-PRS Alliance.¹⁷⁷ Legally, MCPS and PRS remain two separate societies. The collection and administration of data is handled by PRS for Music, which also collects royalties for the music sector of the Republic of Ireland.

MCPS is a private company limited by shares and since 1976 has been wholly owned by the Music Publishers Association, the trade association for the UK music publishing business. MCPS acts as agent for its music publisher and writer members in licensing the reproduction and distribution rights in musical works (mechanical rights) and reproduction and communication to the public rights in the production of music (library) sound recordings.

The operations of MCPS are managed by its Board of Directors in accordance with its Articles of Association and pursuant to the membership agreement between MCPS and its members. The Board comprises of 18 directors, 4 of whom are writer members of MCPS. MCPS thus exceeds the 1/3 minimum of seats for publishers, laid down in the Common Declaration on Governance in Collective Management Societies and on Management of Online Rights in Music Works, issued by ICMP (International Confederation of Music Publishers) and GESAC (European Grouping of Societies of Authors and Composers).¹⁷⁸ The members of the board are appointed by the Music Publishers Association.

MCPS pays royalties collected for the exploitation of mechanical rights in the UK to publishers.¹⁷⁹ Publisher members of MCPS control their rights either as original publishers of musical works or from the chain of agreements by which the sub-publisher has obtained the rights from the original publisher in the country of origin of the songwriter. Once royalties are distributed to publishers, the publishers have to distribute royalties to authors/composers.

PRS licenses and administers the performing rights of its composer, writer and music publisher members. About 10% of PRS members are overseas members. The numbers of UK resident members and overseas resident members which received royalties ranged respectively from 42,496 and 4,601 in 2006 to 47,272 and 4,855 in 2008. The rights administered by PRS are the exclusive right of communication to the public including the right to make a work available to the public and the right to perform a work directly or indirectly in public. PRS is a company limited by guarantee and was incorporated in 1914 under the UK Companies Acts 1908 and 1913.

The business and operations of PRS are managed by the Board of Directors pursuant to its Articles of Association. The Board consists of 25 directors, comprising 11 writer and 11 publisher members of PRS. There is also 1 executive director (a senior executive employee) and 2 external directors (appointed from outside the membership and employees).

According to Table A provided in Annex E, between 2003-2008 PRS for Music Group's total (gross) revenue increased by 19,2%. Broadcast and online rights increased by 58,9% while public performance rights increased by 44,6%. On the other hand, mechanical rights

¹⁷⁷ Since 1997.

¹⁷⁸ See ICMP/GESAC Common Declaration on Governance in Collective Management Societies and on Management of On-line Rights in Music Works, 7 July 2006.

¹⁷⁹ Legally, MCPS can (and does) pay writers, but in practice 95% of MCPS royalties are paid to publishers.

declined by 11,7%. Royalties received from foreign collecting societies on the basis of reciprocal representation agreements increased by 51,6%. As Table B (provided in Annex E) indicates, from 2003 to 2008, the costs associated with the administration of mechanical rights increased by 12,3% while the costs for the administration of performing rights by 13,1%.

MCPS earns a commission on distributed royalties, which is set according to the costs of administration (see in detail Table C in Annex E). Commission rates vary from 3,6% for audio products with Universal as source to 20% for the royalties received from foreign collecting societies under international representation agreement schemes. 12,5% is the most common commission rate. Reduced commission rates apply for the processing and administration of royalties paid under central licensing agreements with major record companies.¹⁸⁰

PRS deducts the costs of administration from the royalties it collects (see in detail Table D in Annex E). Costs, and therefore, deductions vary according to each type of exploitation. For UK broadcasting the rates range between 12,5 to 16%; public performance is cost at 20% (with the exception of cinema at 16%) and other uses, such as online services and ringtones/ringbacks services, at 12% and 12,5%. Administration deductions for the revenues to be channeled to foreign collecting societies vary according to the collecting society concerned and range between 1% (USA) to 8%, which is actually the most common rate and applies to more than 50 collecting societies.¹⁸¹

3.5.2.2. The value of repertoires

Tables 2, 3 and 4 provide information on the royalties the PRS for Music Group distributed to members. Building on the data provided, the value of the UK repertoire was £386,042 in 2004, £428,233 in 2005, £435,066 in 2006, £434,268 in 2007 and £454,118 in 2008. Figures disclose a 17,6% increase over the examined period but should be read with care since they incorporate revenues from sub-publishing deals.

The net distributable income of MCPS (excluding central licensing) has generally remained stable from 2001 to 2008. The value of royalty distribution increased the period 2001-2005 and decreased the period 2006-2008. The importance of audio products, which represent the main category of MCPS distributions, is declining. While in 2001, 75,1% of the royalties distributed pertained to audio products, figures dropped to 51,7% in 2008. Conversely, the value of the royalties distributed for broadcasting and online exploitation of music content increased by 92%. Royalty distribution for 'other' types of exploitation increased by 127,5% over the same period.

¹⁸⁰ 4,7% for EMI and Sony BMG, 4,64% for Warner etc.

¹⁸¹ Collecting societies in France, Germany, Ireland, Italy, Japan and the Netherlands benefit from a 2% rate. A 3% rate is applied on the revenues to be transferred to the collecting societies of Australia, Canada and New Zealand. The collecting societies of Austria, Belgium, Finland, Denmark, Hungary, Norway, Poland, Spain, Sweden and Switzerland benefit from a 4% rate.

Table 2: MCPS distributions to members

MCPS distributions to members (£)	2001	2002	2003	2004	2005	2006	2007	2008
Audio products (CDs, DVDs, vinyl albums and singles) – domestic	129.337.000	129.960.000	124.705.000	122.115.000	132.784.000	125.413.000	109.893.000	95.427.000
%	75,1	74,2	69	65,9	63,6	60,8	57,8	51,8
Broadcasting and Online	24.361.000	26.183.000	23.779.000	27.081.000	38.774.000	39.050.000	42.019.000	46.723.000
%	14,1	15	13,1	14,6	18,6	18,9	22	25,3
Other	18.602.000	18.926.000	32.386.000	36.255.000	37.152.000	41.888.000	38.368.000	42.322.000
%	10,8	10,8	17,9	19,5	17,8	20,3	20,2	22,9
Total	172.300.000	175.069.000	180.870.000	185.451.000	208.710.000	206.351.000	190.280.000	184.472.000
Central licensing	54.502.000	46.338.000	46.011.000	33.865.000	3.731.000	3.239.000	238.000	0

'Other' refers to mechanical rights from novelty goods, free CDs provided with publications etc.

For the period 2004-2008, the total amount of the royalties PRS paid to writers and publishers increased by 40% and 27% respectively. Amounts increased for all different types of exploitation.

Table 3: PRS distributions to writers

PRS distributions to writers (£)	2004	2005	2006	2007	2008
Public Performance	13.921.000	16.549.000	18.490.000	19.632.000	21.400.000
%	12,1	13	13,8	13,5	13,3
Broadcast & Online	29.077.000	29.350.000	31.744.000	36.481.000	37.501.000
%	25,3	23	23,8	25	23,3
International revenue	69.164.000	79.010.000	80.718.000	87.646.000	98.603.000
%	60,1	62	60,5	60,2	61,2
Other	2.821.000	2.575.000	2.485.000	1.893.000	3.475.000
%	2,5	2	1,9	1,3	2,2
Total	114.983.000	127.484.000	133.437.000	145.652.000	160.979.000

Table 4: PRS distributions to publishers

PRS distributions to publishers (£)	2004	2005	2006	2007	2008
Public Performance	33.638.000	39.485.000	41.974.000	41.671.000	47.220.000
%	39,3	42,9	44,1	42,4	43,5
Broadcast & Online	41.685.000	40.579.000	42.150.000	45.881.000	47.907.000
%	48,7	44,1	44,2	46,7	44,1
International revenue	8.612.000	9.909.000	9.425.000	9.592.000	11.230.000
%	10	10,8	9,9	9,7	10,3
Other	1.673.000	2.048.000	1.729.000	1.192.000	2.310.000
%	2	2,2	1,8	1,2	2,1
Total publishers	85.608.000	92.039.000	95.278.000	98.336.000	108.667.000

The value of foreign repertoire enjoyed in the UK increased by 68,7% over the period 2003-2008.¹⁸² The European repertoire experienced an increase of 90%, whilst the US and international repertoires increased by 61,4% and 96,1% respectively.

¹⁸² Data regarding the value of foreign repertoire enjoyed in the UK draws on performing rights (i.e. royalties distributed by PRS to foreign collecting societies).

Clearly, the US repertoire enjoys a dominant position in the UK market when compared to the repertoires of the EU Member States and third countries. In 2008, the value of the royalties distributed for the US repertoire amounted to 73% of the total royalties PRS distributed abroad. Royalties for the European and international (i.e. third countries') repertoires respectively represented 17,6% and 9,4% of the total value of the royalties directed to foreign collecting societies.

Table 5: PRS distributions for foreign repertoire

PRS distributions for foreign repertoire (£)	2003	2004	2005	2006	2007	2008
EU	6.648.391	8.952.601	9.315.318	10.322.177	10.953.371	12.687.549
%	15,5	15,8	15,8	16,5	17,3	17,6
US	32.673.492	43.142.392	45.218.957	47.333.436	47.313.916	52.723.439
%	76,4	76	76,6	75,9	74,5	73,0
Rest of the world	3.464.172	4.629.879	4.455.985	4.723.869	5.226.068	6.794.384
%	8,1	8,2	7,6	7,6	8,2	9,4
Total	42.786.055	56.724.872	58.990.260	62.379.482	63.493.355	72.205.372

The important size of the domestic repertoire, coupled with its undisputed commercial success, and the fact that the US repertoire generates a very significant part of the turnover of the PRS for Music Group, while showing considerable growth during the last few years might explain the eagerness and promptness of PRS for Music to implement the 2005 Commission Recommendation. As already explained at Chapter 2, CELAS, mandated by EMI to manage its mechanical rights in Anglo-American repertoire for digital exploitation, is jointly owned by GEMA (i.e. the German collecting society representing authors/composers and music publishers) and PRS for Music.

3.5.2.3. Trade flows in music

Table 6 below provides information regarding the presence of UK repertoire in foreign markets for the period 2003-2008.¹⁸³

Figures reveal that the value of the UK repertoire abroad increased by 51,8%. Revenues transferred from EU countries for the UK repertoire increased by almost 61%. Whereas corresponding revenues from the US remained rather stable, the value of the royalties collected in third countries for UK repertoire increased by 96%.

EU audiences largely account for the success of UK music abroad. In 2008, revenues from the EU Member States represented 60,9% of the total value of the royalties PRS received from abroad. Revenues from the US and third countries amounted to 15,6% and 23,5% respectively.

¹⁸³ Data pertains to PRS international revenue for the exploitation of domestic repertoire abroad.

Table 6: PRS international revenue for domestic repertoire

PRS international revenue for domestic repertoire (£)	2003	2004	2005	2006	2007	2008
EU	53.064.026	53.762.792	58.884.970	65.454.467	71.896.226	85.239.236
%	57,6	57,9	57,9	59,6	59,3	60,9
US	22.342.208	20.386.300	20.814.229	21.099.295	22.044.376	21.846.635
%	24,2	21,9	20,5	19,2	18,2	15,6
Rest of the world	16.783.676	18.783.354	21.979.632	23.327.163	27.284.093	32.901.008
%	18,2	20,2	21,6	21,2	22,5	23,5
Total	92.189.810	92.932.447	101.678.832	109.880.925	121.224.696	139.986.879

Table E provided in Annex E exemplifies the huge surplus of UK music in most foreign markets. In 2008, the amounts received for the UK repertoire from abroad were twice the amounts paid abroad for foreign repertoire. Revenues coming from the EU Member States for the UK repertoire were 6,71 times the revenues collected in the UK and distributed abroad for the European repertoire. Revenues originating in third countries for UK music were 4,84 times the revenues distributed for international repertoire. Conversely, royalties received from the US for the UK repertoire represented only 41% of the revenues transferred for the US repertoire. Ratios did not change significantly over the years.

With regard to European repertoire, however, dynamic trends can be discerned. Taking into account that the size of the European repertoire in the UK increased by 90% for the period 2003-2008 (Table 5), it could be argued that access to European repertoire in the UK increases more than the UK repertoire does in EU countries (61%). Still, figures are greatly imbalanced. Whereas in 2008, PRS received £85.239.236 from EU collecting societies for the UK repertoire, it only transferred £12.687.549 for European repertoire.

The success of the UK repertoire abroad (and especially in the EU) is arguably one of the principal reasons which induced PRS for Music to experience new EU-wide licensing models for the clearance of rights in the digital environment. The high appreciation of the UK repertoire in foreign markets creates an incentive for PRS for Music to implement the 2005 Commission Recommendation either through the creation of new entities, entrusted with pan-European rights management, or the launch of other initiatives to that purpose.

3.5.2.4. The pursuit of cultural and social objectives

In the UK there is no legal obligation on collecting societies to pursue social and cultural policy-related objectives. Nonetheless, PRS for Music contributes to a donation to PRS Foundation for New Music, a funding body for new music across all genres.¹⁸⁴ The donation is funded by the UK members of PRS. The funding by PRS Foundation for New Music supports projects by creators of music living and working in the UK, and covers all genres of music from urban, jazz and folk to pop and classical. It offers £3000 on average per award and is not restricted by membership.

PRS for Music donated £1,25 million to PRS Foundation in 2008.¹⁸⁵ No data has been disclosed regarding the value of donations to PRS Foundation for other years. On this basis, whether the 2005 Recommendation had any sort of impact on the cultural activity of the PRS for Music Group is unknown.

3.5.2.5. Digital licensing activity

PRS for Music issues a range of licences depending on the type of digital use and the size of the service offered. The geographical coverage of these licences is for the UK only, with the exception of the PRS Online scheme which can be extended globally at the request of the music user. PRS for Music began issuing trial licences in 1999, but has been actively licensing online and mobile music usage since 2001. The number of provided licences has seen a considerable increase in the last few years: 269 licences were granted in 2004, 391 in 2005, 580 in 2006, 735 in 2007, and 1293 in 2008.

¹⁸⁴ See www.prsfoundation.co.uk.

¹⁸⁵ PRS For Music response to study questionnaire.

Five different types of licences have so far been developed: the limited online exploitation licence (LOEL), the joint online licence (JOL), the general entertainment on-demand licence (GEOD), the joint ringtones licence (JRL) and the PRS online licence.

LOEL is aimed at companies and individuals providing smaller scale online music services to the UK public where the gross revenue from the music service is less than £6,250 per year. This is a fixed term licence expiring at the end of the calendar year (end of 2009). LOEL covers the performing and mechanical rights in musical works for most types of online and mobile music exploitation, including services which offer on a per annum basis permanent download services, limited download and on-demand streaming, webcasting, podcasting and clips services. Royalty rates are dependent upon the type of service to be licensed and the levels of music usage. They range from £120 to £600.

JOL similarly covers performing and mechanical rights in musical works for most types of online and mobile music services. It includes permanent downloads, on-demand streaming and limited downloads, webcasting and specific audiovisual usage as in LOEL. The licence is annual (until 30 June 2009). Royalty rates depend on the type of service and are calculated as a percentage of the gross revenue generated by the service subject to discounts and minimum fees per use.¹⁸⁶ Indicatively, rates range from 5,75% for webcasting to 8% for permanent and limited download and on-demand streaming.

GEOD is annual and allows the reproduction of 'repertoire works' incorporated into 'content' (i.e. audiovisual material) on servers for the purpose of a) communicating these works to the public, b) reproducing (temporarily or permanently) of content on users' data storage devices, c) communicating to the public and authorising the communication to the public of productions of music sound recordings; and d) extending an existing synchronisation licence. The licence is designed for audio and audiovisual services offering 'general entertainment' content where music is not the primary focus. Each licence is calculated on an individual basis and the fee is based on a number of factors, including music hours consumed, the viewer/subscriber figures and general music use. Licensees are required to pay a non-refundable minimum advance fee of £200 per calendar year.

JRL is a joint MCPS and PRS licence which expires at the end of 2009. It covers performing and mechanical rights in musical works used as ringtones in the UK and telecommunication agency territories. The licence gives a ringtone service permission to create and store musical works as ringtones, provide on-demand streamed previews to users of up to 30 seconds, offer interactive voice response (IVR) services for users to purchase or preview ringtones, and deliver the ringtone to users' handsets in the UK. Royalty rates are dependent on the type of ringtone offered and are calculated as a percentage of the gross revenue generated by the service,¹⁸⁷ or as a minimum fee per use.¹⁸⁸

The PRS Online Licence also has a duration of 1 year and covers the act of communicating music to the public. Royalty rates are fixed at 'blocks'. Each 'block' (priced at £53+VAT) allows a specific volume of music to be communicated, with a distinction drawn between core music services and general entertainment services. The licence covers on-demand streams, the use of music as a background to a website (similar to webcasting) and permanent downloads.

¹⁸⁶ Applicable if greater than royalty rate.

¹⁸⁷ Rates are set at 12% for realtones and 15% for ringtones other than realtones, including mono and polytones.

¹⁸⁸ Applicable if greater than royalty rate.

In 2009 Google UK took down all premium music videos from its company website YouTube as a protest against what they see to be an expensive licensing model for digital consumption of music. PRS for Music had granted YouTube JOL for the use of music videos at rates agreed at the UK Copyright Tribunal in 2007. YouTube/Google and Last.fm claim the fees required are too high to allow a business model take off in the streaming of music videos. PRS for Music reduced the charges of licensing for three years starting from July 1, 2009. For this reason PRS is introducing a new Online Music Licence to replace JOL whereby companies are charged 10.5% of their revenue or a per track fee, whatever is higher. This means that successful, big enterprises such as YouTube would end up paying per track fee and therefore more than 10,5%. Although the industry seems to welcome the news, music creators have raised concerns about the ways in which deals such as this are made without any involvement of the artists.¹⁸⁹

With this said, the 2005 Recommendation appears to have greatly influenced the ways in which PRS for Music licenses music. First, the Society, as already observed in this section and explained in more detail in Chapter 2, has entered into an agreement with GEMA to establish CELAS as the 'digital' representative of EMI, with respect to the mechanical rights of the latter's Anglo-American repertoire. That PRS for Music is in a position to establish effectively a new entity to deal with the rights of a major music publisher is due to the scale and dominance of its music repertoire in the world and European market. Second, the role of the music publishers both on the board of the collecting society and outside as negotiating actors cannot be understated.

Online licences are different to conventional ones as in general they tend to not apply a blanket fee according to medium but rather focus on per-track charge. Here, the negotiating power of major licensees (as the case of Google has shown) is significant - without the same position being granted to artists.

What is certain is that the system for rights clearance in the digital environment will endure various conflicts before it becomes stable as to the model and modes of licensing. The (theoretical) opening up of competition among rights managers does not automatically serve or guarantee the interests of music creators but rather allows music publishers more freedom to experiment with new models of management (such as CELAS).

¹⁸⁹ See for example <http://www.guardian.co.uk/media/pda/2009/may/26/digital-music-and-audio-youtube>.

Key findings

- The UK music sector is a world leader in profit generating and a business model innovator. In 2007 it was ranked 1st in performance rights and 3rd in physical and digital sales worldwide. The sector has taken advantage of and monetised the use of new technologies for the consumption of music. Digital technologies have been swiftly incorporated into the routines of collecting societies as new sources of revenue.
- In 2007, the trade value of the recorded industry was £1,020.80 million (86% in physical sales, 8% in digital sales and 6% in performance rights). Physical sales dropped 13,7% in 2007 (and 6,7% in 2006) but digital sales increased by 28% in 2007 (and 73,5% in 2006), representing 8,3% of total recorded music sales. Since 2004 the total digital market value has increased eightfold indicating a rather mature market, which however is still developing.
- In the same period (2004-2008), the total value of the domestic repertoire increased by 17,6% for PRS members and remained stable for MCPS income. Audio products income declined by approximately 15% since 2001, however royalties distributed for broadcasting and online exploitation increased by 92%. It is significant to note that 'other' types of exploitation raised income by 127,5% in the same period.
- EU audiences largely account for the success of UK music abroad. In 2008, revenues from the EU Member States represented 60,9% of the total value of the royalties PRS received from foreign collecting societies under reciprocal representation agreements for the domestic repertoire. The income received in royalties from the US market has declined slightly from 24% to 15% but income from third countries has increased from 18% to 23% of the total revenue. In 2008 revenues from the US represented 41% of that transferred to the US. Overall, the amounts received from foreign collecting societies for the UK repertoire are twice those paid for foreign repertoire.
- Nevertheless, with regard to European repertoire, dynamic trends can be discerned. Taking into account that the size of the European repertoire in the UK increased by 90% in the period 2003-2008, it could be argued that access to European repertoire in the UK increases more than the UK repertoire does in EU countries (61% in the same period). It remains nonetheless significantly imbalanced: in 2008 PRS revenues coming from the EU Member States were 6,71 times higher than what PRS distributed to EU collecting societies for European repertoire. The figure was 4,84 for third countries (excluding the US).
- In the UK there is no legal obligation on collecting societies to pursue social and cultural policy-related objectives. PRS for Music donates a sizeable amount to PRS Foundation for New Music that funds new music projects in the country. Whether the 2005 Commission has affected in any way such cultural activity is unclear.
- As a market force the UK is home to some of the world's most important managers of digital rights in music, as well as rights in general and probably Europe's leader in terms of revenue generation, and sophistication of digital licences developed. The success of the UK domestic repertoire worldwide enables PRS for Music to experiment with new licensing models. Most importantly, the UK collecting society has seized the opportunity to develop new, albeit seen as problematic, market models for the management of digital rights through the controversial deal it reached with German GEMA and EMI Music Publishing (CELAS; see Chapter 2 on this entity).

4. COLLECTIVE RIGHTS MANAGEMENT IN EUROPE: THE WAY FORWARD

The purpose of this chapter is to identify how actors have positioned themselves vis-à-vis the new pan-European licensing approach, encouraged by the European Commission (section 4.1), and analyse the repercussions that the new licensing models detected on the market and/or their future development could have on cultural diversity (section 4.2). With regard to the latter, an examination of the present diversification of the European music market is also made in terms of value and circulation of repertoires (sections 4.3 and 4.4). The final section formulates possible policy options for the European institutions in relation to cross-border music rights management (section 4.4).

4.1. New approaches for music rights clearance

With the exception of ARMONIA and SOLEM, yet still not operational, and to a lesser extent the PEL initiative (see chapter 2), most of the business models which have emerged in the digital music rights licensing market have stemmed from major publishers' initiative as a response to the 2005 Commission Recommendation. These have designated newly established entities or specific European collecting societies as their agents for the management of their mechanical rights in specific music segments, namely the Anglo-American repertoire (i.e. CELAS, PAECOL, PEDL, see chapter 2).

The exit of major music publishers from the system of reciprocal representation in relation to the EU-wide digital licensing of mechanical rights has not equalled total abandonment of the reciprocal representation network. European collecting societies remain entrusted with both the management of major music publishers' rights in the offline world and the management of their performing rights for digital use. In other words, major music publishers rely on all currently available systems for rights management: the traditional reciprocal representation network of collecting societies and new business platforms for pan-European licensing, induced by the 2005 Commission Recommendation.

Up to date, major music publishers' interests have not been ignored by European collecting societies.

As observed in chapter 3, by means of the Cannes Agreements, originally negotiated in 1997 with all collecting societies in Europe, then re-negotiated in 2002 and due to expire by the end of June 2009, major music publishers succeeded in setting maximum commission fees for the management services provided by the collecting societies in relation to their mechanical rights. As a result, differentiated percentages have been applied for the administration of their mechanical rights and the administration of the mechanical rights of authors and composers not represented by major music publishers, and local music publishers. These denoted a certain level of preferential treatment for the repertoire of major publishers, the extent of which has varied from Member State to Member State.¹⁹⁰

¹⁹⁰ To gauge the real impact of the Cannes agreements on the various types of right holders, one needs to gain a better understanding of the mechanical rights clearance process. A record producer wishing to incorporate songs to a CD needs to obtain a licence from the owners of mechanical rights, which, according to the circumstances, are the authors/composers and/or their publishers. Collecting societies generally represent the right holders of these rights, and therefore are the entities able to deliver such a licence. Requesting a licence may appear schizophrenic when the record producer is also, directly or indirectly, the owner of the publishing

The ability of major publishers to influence music rights management decision-making has also been manifested *within* the organs of collecting societies, as music publishers are represented in the Board of Directors of most collecting societies in Europe. As explained in chapter 3, the Common Declaration on Governance in Collective Management Societies and on Management of Online Rights in Music Works, issued by ICMP (International Confederation of Music Publishers) and GESAC (European Grouping of Societies of Authors and Composers) in 2006, guarantees the reservation of at least 1/3 of the collecting societies' Board seats for music works to music publishers.

Fostered by the 2005 Commission Recommendation, the appointment of collecting societies as major publishers' licensing agents marks a further step in the evolution of their relationship. Major music publishers are now in a position to negotiate *all* the conditions governing the mandate they provide collecting societies with as regards the licensing of their digital rights on a one-to-one basis (i.e. the level of management fee, reporting obligations, etc.).

The market developments that have followed the 2005 Commission Recommendation have in fact enhanced major publishers' bargaining power. As noted in chapters 1 and 3, the withdrawal of some of their rights in particular music segments from the system of reciprocal representation has been met with much concern by many (small and medium-sized) European collecting societies, which foresaw significant reductions in their turnover. Major publishers' threat to withdraw rights and repertoires from the collecting societies they appoint for the management of their digital rights, or all or part of their offline rights from the system of reciprocal representation, could constitute a strong negotiation argument vis-à-vis the collecting societies, convincing them to adopt conditions and licensing methods that favour their repertoire, be it in the online or the offline world.

This raises the question of balance of right holders' interests: one may wonder how composers, authors or local music publishers could safeguard their interests, as collecting societies are weakened in their relation to major publishers, and discussions about management fees or other licensing conditions take place outside the collecting societies' governing organs without proper representation of all the right holders involved.

In short, major music publishers are in a position to 'experiment' with new licensing methods for pan-European licensing in the digital field, at the same time having the means to direct the licensing performance of many European collecting societies for the rights they eventually leave to them for management. Such a context makes it doubtful that a mere recommendation contained in the 2005 Commission Recommendation for collecting societies to provide equal treatment to all right holders will prove sufficient to ensure that composers', authors' and smaller publishers' interests are genuinely protected. These could be easily disregarded or 'forgotten'.

rights. This is notably the case for large, vertically integrated, music groups, such as the 4 majors (EMI, Sony BMG, Universal Music and Warner Music), which have both a publishing (the owner of the mechanical rights) and a recording (requesting the mechanical rights licence) branch. This is also the case for individual artists, which auto-finance the production of their CD (like Radiohead and Placebo, for instance): they own the mechanical rights in their works, but since they transferred their management to a collecting society, they need to obtain a licence from the collecting society before producing the CD. The licence fee paid by the record producer or the individual artist will then be allocated by the collecting society to the right holder (i.e. the publishing branch of the major and/or the composer/author) after deduction of the management fee. In the light of the Cannes agreements, management fees were lower in the case of a major record producer (or a record producer benefiting from central licensing agreements). Artists bearing the cost of auto-production but also local music publishers were faced with higher management fees.

Whether European collecting societies could stand up major publishers' negotiating pressure in order to preserve the interests of their membership is questionable. The most powerful collecting societies in Europe seem to have aligned themselves with major music publishers' licensing plans. This is, for example, the case for PRS for Music and GEMA, the UK and German collecting societies, which, interviewed in the frame of this study, confirmed that important deals were struck with major music publishers (see chapter 2, sections 2.1.1, 2.1.2 and 2.2.2, and chapter 3, sections 3.2.2.5 and 3.5.2.5). SGAE, in turn, the Spanish collecting society for authors, composers and music publishers, affirmed that it is in the course of negotiating with major publishers for the management of their repertoire for digital exploitation (see chapter 3, section 3.4.2.3).

SABAM and SIAE, on the other hand, the Belgian and Italian collecting societies, have already expressed concern about their ability to defend the interests of their membership at the same level of efficiency and cost as before (see chapter 3, sections 3.1.2.5 and 3.3.2.5). Despite operating in music markets with different characteristics, they both confessed that the 2005 Commission Recommendation has had a serious impact on their licensing activity. This is mainly due to the repertoire fragmentation the Recommendation has caused. Whereas under the system of reciprocal representation commercial users could previously obtain a blanket licence covering the repertoires of all the collecting societies participating in the system, now recourse to different collective rights managers is needed in order to clear rights for a variety of repertoires. This creates less of an incentive for large users to obtain a licence agreement for the repertoires these collecting societies continue to represent. Agreements with larger collecting societies and/or publishers' agents that accumulate a larger number of works, covering the commercially successful Anglo-American repertoire, are preferred to said costly and time-consuming negotiations for the conclusion of deals pertaining to smaller or specialised repertoires.

4.2. Music rights clearance: The quest for cultural diversity

The data collected within the present study is not sufficient to quantify in a precise manner the impact of the withdrawal of major publishers' repertoires (i.e. the Anglo-American repertoire and the Latin American repertoire) from the reciprocal representation network of collecting societies for digital rights clearance. The non-disclosure of information about the revenues generated from the provision of pan-European licences in relation to these repertoires impedes a succinct economic analysis and assessment of the effects of such withdrawal on the operation of European collecting societies and their ability to defend the interests of their members in an efficient way. Nonetheless, on the basis of the findings of chapter 3, it seems reasonable to conclude that at least the Anglo-American repertoire represents a very important revenue source for the European collecting societies, whether these are of a large, medium or small size. Deprived of such repertoires, the profitability of medium-sized and small collecting societies, in particular, could be endangered, undermining their ability to cater for the interests of their members.

For the time being, in most instances, major music publishers have withdrawn the mechanical rights they enjoy in the most commercially successful repertoires for rights licensing in the digital environment.¹⁹¹ The digital market still represents a relative immature market in Europe. It is expected however to grow significantly and dynamic trends can already be observed (see chapter 3, sections 3.1.1-3.5.1). From this perspective, it could be argued that collecting societies in Europe – those not mandated by

¹⁹¹ Note that the PEL initiative, in which Sony/ATV Music Publishing participates, covers public communication rights (including making available rights) as well (see chapter 2, section 2.2.1).

major music publishers for the digital licensing of their repertoires – will progressively start facing reduced turnovers. One could also not exclude the possibility of further repertoire withdrawals, even of categories of rights. Performing rights could be next, as commercial users favour the bundling of mechanical and performing rights (see chapter 1, section 1.5), but also music rights for offline exploitations.¹⁹²

Direct (or centralised) licensing could continue but the ultimate question is who will be the market actors that will accommodate the needs of individual authors, composers and smaller music publishers. Small and medium-sized collecting societies in Europe have already harshly criticised the withdrawal of major publishers' repertoires from the system of reciprocal representation. Not only have they pointed to lost economies of scale, increased transaction costs, revenue reductions for local authors and publishers and less cultural and social funding; they have also complained about users taking advantage of the present situation and refraining from paying licence fees. Additionally, they have argued that large users now have less incentive to obtain licences for smaller or specialised repertoires. Rights clearance for the most commercially successful repertoire, that is the Anglo-American repertoire, is key to a market entrant wishing to operate on a pan-European basis. Since the latter is split amongst various rights holders and rights managers, users face a multiplication of negotiations for rights clearance. The resulting costs could easily lead them to stick to the licences granted for the repertoire of major music publishers and disregard local repertoires.

Should revenues for local artists and publishers decrease, this will have a detrimental effect on cultural creation, and thus on cultural diversity. Cultural diversity will also be impaired, if smaller, specialised or less popular repertoires become less available on the market.

This is all the more troubling, when one considers that the European music market is not as diverse as one would consider it to be. Despite the rich variety of cultures and music repertoires that has developed on European territory, the repertoires of the EU Member States do not develop at the same rate and do not circulate within the EU with the same success.

Sections 4.3 and 4.4 attest to the limited diversification of the European music market both in terms of repertoires' development and intra-Community circulation. They also reveal the limited number of foreign music markets the repertoires of the EU Member States actually succeed in penetrating.

4.3. The value of the domestic and foreign repertoires in a selected set of European countries

In chapter 3, a detailed analysis of the value of the Belgian, German, Italian and UK repertoires has been carried out. Additionally, the value of the foreign repertoire exploited in these countries as well as intra-Community and international trade flows with respect to the different repertoires investigated were examined. This section provides a comparative overview of the data gathered for the four European countries and the repertoires enjoyed therein. Analysis covers different time periods, on the basis of the availability of data for all four EU Member States, and rests on the information gathered regarding payments by

¹⁹² It should not be forgotten that central licensing deals designating one collecting society to manage mechanical rights for the production of CDs throughout Europe have been frequently concluded in the past.

collecting societies to their members and foreign collecting societies on the basis of reciprocal representation agreements.¹⁹³

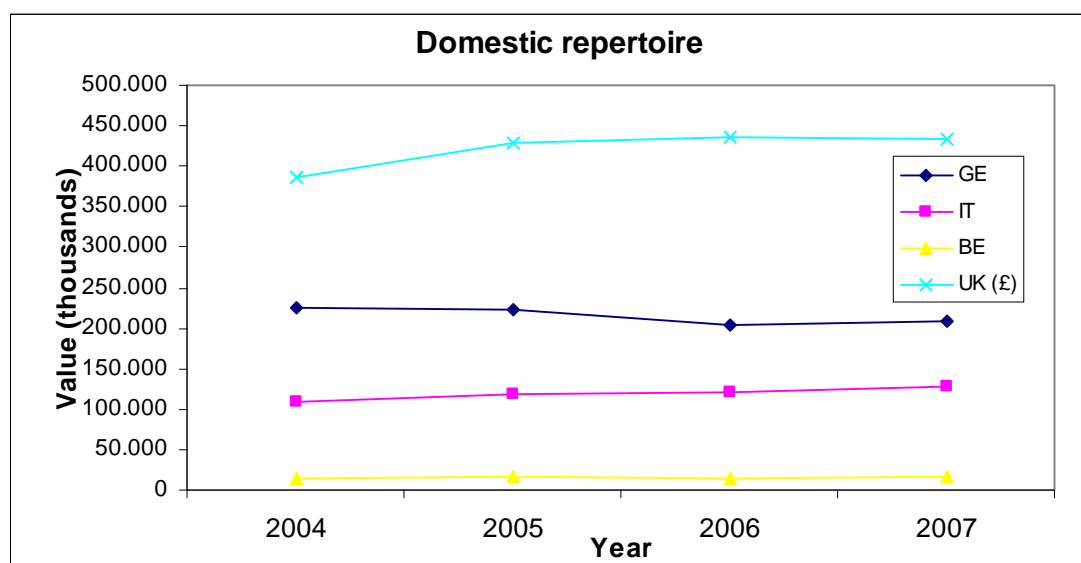
The table below presents the value of the German, Italian, Belgian and UK repertoires for the period 2004-2007.¹⁹⁴ Figures pertain to the exploitation of these repertoires within the countries selected.

Table 1: Domestic repertoire: domestic exploitation

Domestic repertoire: domestic exploitation	2004	2005	2006	2007
German repertoire (€)	223.972.000	222.163.000	204.167.000	209.635.000
Italian repertoire (€)	108.251.724	118.182.352	120.882.634	127.933.686
Belgian repertoire (€)	14.415.945	16.902.193	15.294.621	15.628.821
UK repertoire (£)	386.042.000	428.233.000	435.066.000	434.268.000

During the reporting period, the value of the German repertoire decreased by 6,4%. The value of the Italian, Belgian and UK repertoires increased by 18,2%, 8,4% and 12,5% respectively. Evidently, there is quite an imbalance between the royalties the UK repertoire generates and the royalties generated by the German, Italian and Belgian repertoires (see also graph a).

Graph a: Domestic repertoire



Turning to the exploitation of relevant repertoires abroad, according to table 2, in the period 2003-2007, the value of the German repertoire experienced a mere increase of

¹⁹³ Taking note of the fact that various factors can condition the size of such payments (i.e. the time required for the collection and processing of data, disputes with users hindering royalty distribution, etc) and given the limited number of years for which data is disclosed for all the countries investigated, the following paragraphs should be read in conjunction with the country case-studies under chapter 3 (sections 3.1.2.2-3, 3.2.2.2-3, 3.3.2.2-3 and 3.5.2.2-3).

¹⁹⁴ Figures for the Italian repertoire concern payments to authors and composers only because the figures provided by SIAE for payments to music publishers included sub-publishing revenues. Figures for the UK repertoire incorporate sub-publishing revenues.

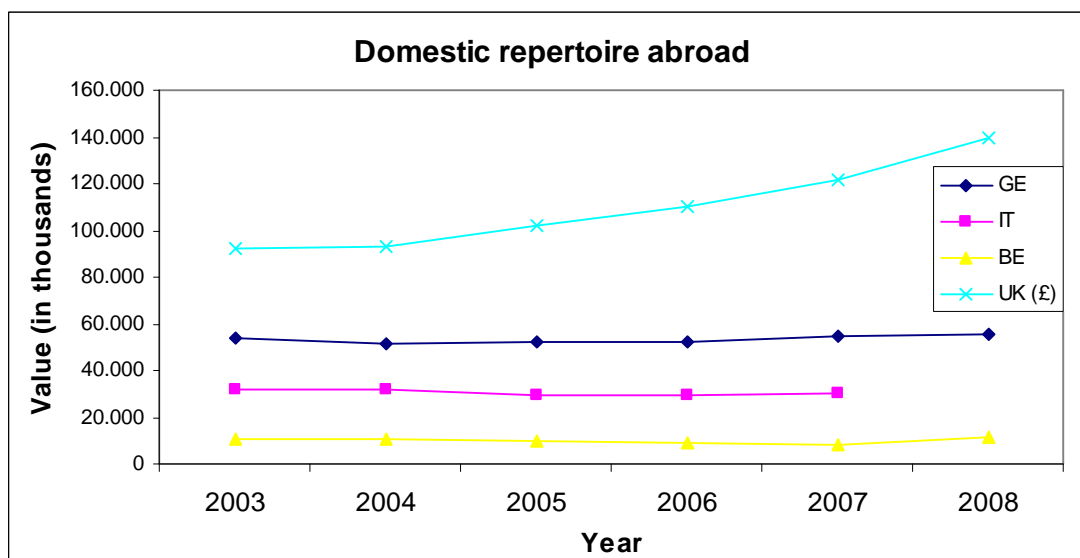
2,7%. The value of the Italian and Belgian repertoires decreased by 4,2% and 18,3% respectively. Conversely, the value of the UK repertoire increased by 31,5%.

Table 2: Domestic repertoire: exploitation abroad

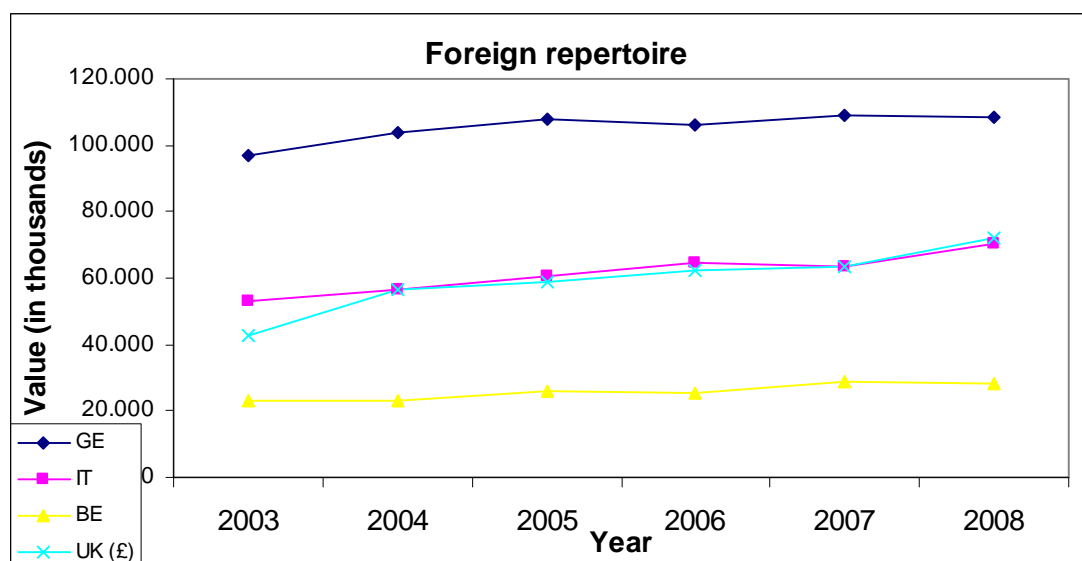
Domestic repertoire: exploitation abroad	2003	2004	2005	2006	2007
German repertoire (€)	53.545.000	51.420.000	51.857.000	52.114.000	55.007.000
Italian repertoire (€)	31.520.696	31.548.484	29.094.553	29.409.843	30.200.708
Belgian repertoire (€)	10.293.157	10.523.240	10.093.012	9.107.470	8.404.867
UK repertoire (£)	92.189.810	92.932.447	101.678.832	109.880.925	121.224.696

As reflected in graph b, the UK repertoire is the only repertoire whose exploitation abroad is in constant increase.

Graph b: Domestic repertoire abroad



Graph c reflects the value of foreign repertoire exploited in Germany, Italy, Belgium and the UK for the period 2003-2008. The exploitation of foreign repertoire in Italy and the UK demonstrate similar patterns. In Germany, the value of foreign repertoire increased by 11,8% and in Belgium by 23,3%.

Graph c: Foreign repertoire

In more detail, from 2003 to 2008, the value of the European repertoire (including the UK repertoire) increased by 6,2% in Germany, 3,6% in Belgium and 34,9% in Italy. The UK repertoire excluded, the value of the European repertoire decreased in Germany and Belgium by 4,3% and 3,4% respectively. In Italy and the UK, it increased by 23,2% and 90,8%.

Table 3: European repertoire (including the UK repertoire)

European repertoire incl. the UK repertoire (€)	2003	2004	2005	2006	2007	2008
Germany	54.398.516	57.378.182	60.311.720	58.000.053	59.051.633	57.754.632
Italy	20.740.865	21.443.587	23.658.877	25.609.161	25.670.862	27.979.150
Belgium	15.693.552	15.020.972	15.175.487	14.672.304	16.706.689	16.263.156

Table 4: European repertoire (excluding the UK repertoire)

European repertoire excl. the UK repertoire	2003	2004	2005	2006	2007	2008
Germany (€)	38.115.793	39.442.169	40.959.407	37.902.195	36.977.961	36.472.790
Italy (€)	13.361.573	13.526.135	15.009.773	15.253.111	15.257.463	16.461.219
Belgium (€)	11.907.327	10.876.127	10.667.712	10.536.595	11.746.344	11.505.010
UK (£)	6.648.391	8.952.601	9.315.318	10.322.177	10.953.371	12.687.549

By contrast, over the reporting period, the value of the Anglo-American repertoire (the combined UK and US repertoires) increased in all the countries examined (+25,9% in Germany, +38,8% in Italy and +25,9% in Belgium). In fact, the royalties generated by the exploitation of the Anglo-American repertoire exceeded the royalties generated by the exploitation of the repertoires of the EU Member States, the UK excluded, in all reported years.

Table 5: Anglo-American repertoire

Anglo-American repertoire (€)	2003	2004	2005	2006	2007	2008
Germany	50.367.978	56.771.888	57.961.868	59.351.345	63.772.836	63.420.553
Italy	34.109.105	37.735.905	40.166.442	43.627.966	43.254.555	47.348.341
Belgium	9.652.969	10.094.341	11.537.797	11.510.413	12.620.563	12.154.820

The value of the Anglo-American repertoire increased more than the German and Belgian repertoires did. As already noted, for the period 2004-2007, the value of the German repertoire decreased by 6,4%, whilst the value of the Belgian repertoire increased by 8,4% (see table 1). Over the same period, the value of the Anglo-American repertoire increased by 12,3% in Germany and 25% in Belgium. By contrast, the value of the Italian and the Anglo-American repertoire exploited in Italy experienced a similar increase (14,2% and 14,6% respectively).

As to international repertoire, its value remained stable in Germany. In Italy, it increased by 25,1% (due to an increase in value in 2008), in Belgium by 222,7% and in the UK by 96,1%. Still however, the royalties it generated lagged far behind the royalties generated by the Anglo-American repertoire and the European repertoire (with or without the UK repertoire).

Table 6: International repertoire

International repertoire	2003	2004	2005	2006	2007	2008
Germany (€)	8.408.732	7.604.380	8.825.464	9.102.702	8.457.971	8.436.815
Italy (€)	5.372.365	5.269.785	5.428.746	5.720.559	5.208.307	6.721.765
Belgium (€)	1.466.740	2.340.282	3.950.618	3.508.628	4.435.418	4.732.580
UK (£)	3.464.172	4.629.879	4.455.985	4.723.869	5.226.068	6.794.384

Figures disclose that contrary to the repertoires of other Member States, the UK repertoire enjoys significant success both at the national and the international levels. Whereas the size of payments for the exploitation of the Belgian and Italian repertoires in Belgium and Italy increased over the reporting period, their value abroad decreased. The value of the German repertoire experienced a decrease domestically and a negligible increase abroad.

The aggregated repertoire of the EU Member States (the UK excluded) increased significantly in Italy and the UK, slightly decreased in Germany and Belgium but generated royalties that were much lower than those generated by the Anglo-American repertoire. The value of the latter has, in fact, progressively increased in all the EU countries investigated.

In the light of such data, it is plain that the intra-Community and international circulation of the repertoires of the EU Member States (the UK repertoire excluded) is limited. The same could be arguably said with respect to international repertoire. Its size remained stable in Germany, increased in Italy, and substantially increased in Belgium and the UK. Still however it generated much lower royalties in EU countries than the Anglo-American repertoire and the European repertoire did.

When contemplating action in the field of music rights management that is respectful of cultural diversity, measures which could create additional hurdles for the intra-Community circulation of the EU Member States' and third countries' repertoires (such as measures reducing the ability of collective rights managers to cater for a variety of repertoires or creating less of an incentive for commercial users to clear rights for a wide range of repertoires) should be avoided.

4.4. Main foreign audiences of European repertoires and main foreign repertoires in European music markets

The data gathered from the collecting societies representing authors, composers and music publishers in Belgium, Germany, Italy and the UK has rendered possible the identification of the countries in which the repertoires of the above mentioned EU Member States are most successful and the foreign repertoires that generate the greatest amount of royalties from exploitations on their territory. The identification of relevant countries and repertoires offers interesting insight into the repertoires that actually succeed in circulating widely within and outside the European Union, as well as the conditions under which they do so.

Table 7 shows that the repertoires of the EU Member States generally succeed in generating a significant amount of royalties in the bigger European music markets. Linguistic and cultural proximity also has a role to play in their success abroad. It is indeed by no chance that the German and the UK repertoires did relatively well in the Austrian and Irish music markets. The Belgian repertoire was also particularly successful in France and the Netherlands.

Table 7: Top 5 European audiences of the German, Italian, Belgian and the UK repertoires

Repertoires	Countries				
German repertoire (2001-2008)	Austria (€94.612.544)	France (€52.416.049)	UK (€41.827.000)	The Netherlands (€27.014.217)	Italy (€26.038.877)
Italian repertoire (2001-2008)	France (€53.875.045)	Germany (€46.326.334)	UK (€15.874.691)	Spain (€15.190.512)	The Netherlands (€13.197.443)
Belgian repertoire (2001-2008) ¹⁹⁵	France (€27.001.352)	The Netherlands (€16.541.667)	Germany (€11.440.709)	UK (€4.417.020)	Poland (€3.060.081)
UK repertoire (2003-2008)	Germany (£78.569.689)	France (£55.433.649)	The Netherlands (£46.343.291)	Ireland (£37.004.011)	Italy (£33.466.194)

¹⁹⁵ Ibid.

On the international scene, similarly, it seems that the repertoires of the EU Member States manage to generate a significant amount of royalties in the bigger music markets or in third countries with which some sort of cultural or linguistic bond exists (table 8).

Table 8: Top 5 foreign audiences of the German, Italian, Belgian and the UK repertoires

Repertoires	Countries				
German repertoire (2001-2008)	US (€25.382.000)	Switzerland (€41.068.201)	Japan (€22.033.813)	Australia (€5.194.469)	Norway (€4.133.093)
Italian repertoire (2001-2008)	US (€21.983.889)	Switzerland (€15.138.347)	Japan (€15.027.793)	Canada (€3.687.154)	Brazil (€3.361.160)
Belgian repertoire (2001-2008) ¹⁹⁶	Japan (€2.214.109)	Switzerland (€1.864.177)	Canada (€1.411.259)	USA (€1.385.653)	Australia (€449.094)
UK repertoire (2003-2008)	US (£128.337.414)	Japan (£36.236.757)	Australia (£23.140.375)	Canada (£19.987.777)	Switzerland (£12.101.575)

Data on the European repertoires which succeed in generating substantial royalties in the EU Member States also allow for interesting remarks. Table 9 below demonstrates the inability of the repertoires of the smaller EU countries and the new Member States to penetrate in a substantive way the music markets of big and small EU countries alike. Only the repertoires of the big EU Member States have chances of generating a considerable amount of royalties in other EU countries. Linguistic ties further condition the success of Member States' repertoires within the EU.

Table 9: Top 5 European repertoires in Germany, Italy, Belgium and the UK

Countries	Countries				
Germany (2001-2008)	UK repertoire (€149.027.346)	French repertoire (€93.934.238)	Austrian repertoire (€60.241.482)	Italian repertoire (€45.580.842)	Dutch repertoire (€25.943.220)
Italy (2001-2008)	UK repertoire (€68.763.009)	French repertoire (€50.019.763)	German repertoire (€27.236.518,17)	Spanish repertoire (€15.203.027,54)	Austrian repertoire (€5.705.291,08)
Belgium (2002-2008) ¹⁹⁷	French repertoire (€38.794.525)	UK repertoire (€26.542.036)	Dutch repertoire (€11.373.856)	German repertoire (€9.352.901)	Italian repertoire (€4.268.905)
UK (2003-2008)	French repertoire (£14.478.152)	German repertoire (£11.736.452)	Irish repertoire (£6.830.044)	Swedish repertoire (£6.700.927)	Italian repertoire (£4.906.484)

Finally, with respect to the foreign repertoires that make their way into the EU, generating a significant amount of royalties, table 10 indicates that these usually originate in very specific and largely successful foreign music markets. Common linguistic features (but also migratory flows) might further condition the success of foreign repertoires in Europe.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

Table 10: Top 5 foreign repertoires in Germany, Italy, Belgium and the UK

Countries	Repertoires				
Germany (2001-2008)	US repertoire (€301.317.147)	Swiss repertoire (€23.689.340)	Canadian repertoire (€16.335.518)	Australian repertoire (€8.109.512)	Japanese repertoire (€3.169.146)
Italy (2001-2008)	US repertoire (€236.340.141)	Canadian repertoire (€9.535.295)	Japanese repertoire (€8.530.308)	Swiss repertoire (€5.475.990)	Australian repertoire (€5.114.635)
Belgium (2002-2008) ¹⁹⁸	US repertoire (€40.567.908)	Canadian repertoire (€4.461.961)	Australian repertoire (€1.531.529)	Swiss repertoire (€1.225.727)	Japanese repertoire (€807.015)
UK (2003-2008)	US repertoire (£268.405.632)	Canadian repertoire (£11.161.326)	Australian repertoire (£8.313.245)	Indian repertoire (£2.553.391)	Japanese repertoire (£1.098.389,78)

¹⁹⁸ Ibid.

Overall, analysis in the frame of this study has revealed a) the weak position of the repertoires of the EU Member States in smaller European and third country markets; b) the limited intra-Community circulation of the repertoires of small and new EU Member States; and c) the limited diversification of third country repertoires in the EU. With regard to European repertoire in particular, measures reducing the ability of collective rights managers to represent the repertoires of smaller and new EU Member States or dissuading users from smaller EU and third countries to clear rights for the repertoires of the EU Member States should be closely scrutinised, as they could render the intra-Community and international circulation of relevant repertoires more difficult.

4.5. In search of the proper licensing model

Both the 2008 CISAC decision and the 2005 Commission Recommendation did not command a particular model for music rights licensing. The CISAC decision did not challenge the existence of bilateral representation agreements between collecting societies, neither prohibited the conclusion of territorial agreements in general. The Recommendation, on the other hand, stressed the need for multi-territorial licensing in the digital environment and made clear that right holders should be free to entrust the management of online rights, on a territorial scope of their choice, to a collective rights manager of their choice, regardless of nationality and residence considerations.

In a study preceding the adoption of the Recommendation, hints about collecting societies' discriminatory treatment of foreign repertoire vis-à-vis the domestic repertoire and arguments about collecting societies' relative inefficiency to distribute revenues to their affiliated societies on the basis of reciprocal representation agreements were made.¹⁹⁹

According to the table below, which was prepared on the basis of the data gathered by the collecting societies established in Belgium, Germany, Italy and the UK, this might not actually be the case. First of all, the net income of the collecting societies examined (which includes, amongst others, the revenues to be transferred to foreign collecting societies for the repertoires they represent) appears to grow at a higher rate than their gross income. This could be seen as an indication of increased efficiency in general. Moreover, with the exception of Belgium, which experienced an impressive increase in both its growth and net incomes for the period 2003-2007 (see in detail Annex B, Table A), payments to foreign collecting societies grew faster than the gross and net incomes of the collecting societies established in Germany, Italy and the UK. This applies also with regard to the payments made to affiliated European collecting societies, in particular.

Furthermore, in all the countries studied, royalty transfers to affiliated collecting societies grew at a higher rate than royalty payments to members for the domestic repertoire.²⁰⁰ With the exception of Belgium, this also applied for revenue transfers to European collecting societies. Nevertheless, in all the countries investigated, revenues from foreign collecting societies grew at a lower rate than the revenues transferred to foreign collecting societies.

¹⁹⁹ Commission staff working paper, Study on a Community initiative on the cross-border collective management of copyright, 7 July 2007, p. 25.

²⁰⁰ Note that with respect to Italy, calculations were based on the revenues transferred to authors and composers only, since the figures provided by SIAE regarding the royalties paid to publishers included sub-licensing revenues as well.

Table 11: Growth rates

%	Belgium	Germany	Italy	UK
Growth rate of gross income (2003-2007)	82,3	4,4	10,1	10,2
Growth rate of net income (2003-2007)	103,1	5,1	11,1	11,1
Growth rate of payments to members (2004-2007)	8,4	-6,4	14,2	12,5
Growth rate of payments to foreign societies (2003-2008)	23,3	11,8	33,5	68,8
Growth rate of payments to European societies (2003-2008)	3,6	6,2	34,9	90,8
Growth rate of revenues from affiliated societies (2003-2008)	12,3	3,3	-5,5	51,8
Growth rate of revenues from European affiliated societies (2003-2008)	15,3	4,1	-9,6	60,6

The preceding analysis does not seek to praise the system of reciprocal representation agreements in comparison to other music rights business models that have lately emerged. Clearly, there are various aspects within the reciprocal representation network that could be (and may currently be) subject to improvement. The intention is rather to highlight that the system of reciprocal representation is extremely complex and therefore due attention is needed when drawing conclusions about its operation.

This said, European institutions are currently faced with a difficult task: create efficient pan-European structures for cross-border music rights management. Crucially, such an exercise does not only concern the rights of authors, composers and music publishers but also the related rights of performers and record producers. A holistic approach is thus needed, founded on a shared commitment of all the institutional actors involved.

Bearing in mind that music rights management is currently in a state of flux, various policy options could be considered, ranging from 'no regulation' to 'regulation'. Whilst 'no regulation' essentially means leaving the market to find its own rhythm, 'regulation' could take various forms. There is indeed a wide variety of regulatory models that the European institutions could reflect upon: soft law instruments, co-regulation schemes or legislative intervention by means of a harmonising legal act.

Leaving the market to take its course could be appealing to many, since it allows time and flexibility to right holders and all other actors involved in music rights licensing to make use of various business models and assess their relative advantages and disadvantages in terms of revenue generation and repertoire representation. However, the current limited diversification of the European music market, with only a limited number of national repertoires (from the EU Member States and third countries) actually succeeding in penetrating the markets of the EU Member States, should be given serious consideration.

According to the findings of this study, the market has not of its own ensured broad access of European citizens to a variety of repertoires thus far. Should it be left to evolve on its own, the situation could worsen. Business models favouring repertoire fragmentation or discouraging users from clearing rights for a wide range of repertoires could further circumscribe access to a diversified music offering. Fears that this is actually the direction the market is taking have been voiced by many of our interviewees.

At the end of the day, music rights management is not simply a legal matter. It is an issue of high political relevance, given the implications it entails for the preservation and promotion of cultural diversity in Europe. Perhaps a system enabling all collecting societies and licensing bodies established in the EU to provide pan-European and multi-repertoire

licences whilst fostering competition for the efficiency of services provided and transaction costs would be to the benefit of all the parties involved: rights holders, users but also the final consumer of music.

What is indeed important in Europe is a mechanism whereby through increased collaboration among collecting societies and other licensing operators, music rights management aims at:

- broad availability and access to a variety of repertoires, including small and specialised repertoires;
- a balanced accommodation of the interests of all right holders, with renewed emphasis on the interests of creators of local or specialised cultural content;
- user-friendly, uncomplicated and comprehensive rights clearance services;
- increased rights managers' transparency and accountability.

Key findings

- Most of the business models which have emerged in the digital music rights licensing market as a response to the 2005 Commission Recommendation have derived from major music publishers. These have appointed newly established entities or specific European collecting societies as their agents for the management of part of their rights in specific music segments (i.e. mainly the mechanical rights enjoyed in the Anglo-American repertoire).
- The exit of major music publishers from the system of reciprocal representation in relation to the EU-wide digital licensing of such rights has not equalled total abandonment of the reciprocal representation network. Major publishers continue to rely on the services of national collecting societies for other rights they enjoy in the same or other repertoires and have an enhanced power to influence collecting societies' licensing activity, notably by threatening to withdraw more repertoires and rights. This raises the question of balance of rights holders' interests. Composers, authors and local music publishers do not enjoy sufficient means to pursue and defend their interests. This poses a fundamental challenge for cultural diversity.
- The non-disclosure of information regarding the revenues generated by the provision of pan-European digital licences in relation to the repertoires major music publishers have withdrawn from the system of reciprocal representation does not enable a succinct economic analysis of the impact of such withdrawals on the operation of European collecting societies and their ability to defend the interests of their membership. However, bearing in mind that the Anglo-American repertoire represents a very important revenue source for the European collecting societies and that the digital market has the potential to become a very important market of music consumption, it can reasonably be expected that the collecting societies which are excluded from the management of major publishers' repertoires will progressively start facing reduced turnovers.
- Direct licensing could continue and even expand to other repertoires and music rights but the ultimate question is who will be the market actors that will accommodate the needs of individual authors, composers and

local music publishers. Should direct licensing affect the ability of European collecting societies – at least those of small or medium size – to cater for the interests of their members, this will have detrimental effects on cultural creation and the diffusion of a variety of music repertoires in Europe.

- This is all the more troubling, when one considers that the European music market is not as diverse as one would consider it to be. The repertoires of the EU Member States do not develop at the same rate and do not circulate within the EU with the same success. The repertoires of the smaller EU countries and the new Member States, in particular, do not easily penetrate European markets. The presence of a wide range of foreign repertoires is also limited on European territory.
- In this context, European institutions, confronted with the challenge of cross-border music rights licensing, have various policy options: leave the market to find its rhythm or opt for some sort of regulatory intervention. The latter option offers a variety of alternatives: soft law measures, co-regulation schemes or legislative intervention by means of harmonisation. Whilst the choice is incumbent upon the European institutions, it is feared that if the market is left to evolve of its own, business models that further hamper the diversification of the European music scene could emerge (or might be emerging).
- Clearly, music rights management has important implications for cultural diversity. What is indeed important in Europe is a mechanism whereby through increased collaboration among collecting societies and other licensing operators, music rights management aims at:
 - a) broad availability and access to a variety of repertoires, including small and specialised repertoires;
 - b) a balanced accommodation of the interests of all right holders, with renewed emphasis on the interests of creators of local or specialised cultural content;
 - c) user-friendly, uncomplicated and comprehensive rights clearance services;
 - d) increased rights managers' transparency and accountability.

REFERENCES

AEPI (Greece), AKKA-LAA (Latvia), AKM (Austria), Artisjus (Hungary), Austro Mechana (Austria), BUMA/STEMRA (Netherlands), EAU (Estonia), HDS (Croatia), IMRO (Ireland), KODA (Denmark), LATGA-A (Lithuania), Musicautor (Bulgaria), OSA (Czech Republic), SABAM (Belgium), SAZAS (Slovenia), SOZA (Slovakia), SPA (Portugal), STEF (Iceland), TONO (Norway), UCMR-ADA (Romania), ZAIKS (Poland), Joint Position on the Recommendation on the collective cross-border management of copyright and related rights for legitimate online music services of the 18 October 2005 by the collecting societies, June 2007

K.J. O'Brien, 'EU to hear proposals on cross-border net copyright', available at: http://www.nytimes.com/2009/05/05/business/global/copyright.html?_r=3

Capgemini, Music in Europe: sound or silence?, Study of domestic music repertoire and the impact of cultural policies of collecting societies in the EU25, available at: http://www.soundorsilence.nl/CapGemini_SoS_2005.pdf

CELAS, Reply to the European Commission's 'call for comments', launched on 17 January 2007 with a view to assessing Europe's online music sector in the light of Recommendation 2005/737/EC, available at: http://ec.europa.eu/internal_market/copyright/management/management_en.htm#call

Conseil Belge de la propriété intellectuelle (Section 'Droit d'auteur et Droits voisins'), Avis concernant la Recommandation de la Commission européenne relative à la gestion collective transfrontière du droit d'auteur et des droits voisins dans le domaine des services licites de musique en ligne', 15 February 2008, available at: http://mineco.fgov.be/intellectual_property/patents/news/advice_author_rights_fr.htm

Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 346, 27/11/1992, p. 61 (repealed by Directive 2006/115/EC, OJ L 376, 27/12/2006, p. 28)

Council Directive 93/83/EC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, OJ L 248, 6/10/1993, p. 15

Council Directive 93/98/EEC harmonising the term of protection of copyright and certain related rights, OJ L 290, 24/11/1993, p. 9 (repealed by Directive 2006/116/EC, OJ L 372, 27/12/2006, p. 12)

Court of First Instance, Action brought on 3 October 2008 - *CISAC v Commission*, Case T-442/08, OJ C 82, 4/4/2009, p. 25

Court of First Instance, Action brought on 29 September 2008, *SOZA v Commission*, Case T-413/08, OJ C 301, 22/11/2008, p. 56

Court of First Instance, Action brought on 29 September 2008, *SAZAS v Commission*, Case T-420/08, OJ C 313, 6/12/2008, p. 42

Court of Justice, Case 127/73, *BRT v SABAM*, [1974] ECR 51

Court of Justice, Case 7/82, *GVL v Commission*, [1983] ECR 48

Court of Justice, Case 395/87, *Criminal proceedings against Tournier*, [1989] ECR 2521

Court of Justice, Case 110/88, *Lucazeau and others v SACEM and others*, [1989], ECR 2811

European Commission, Decision 81/1030/EEC of 29 October 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.839-GVL), OJ L 370, 28/12/1981

European Commission, Decision 82/204/EEC of 4 December 1981 relating to a proceeding under Article 86 of the EEC Treaty (IV/29.971 – GEMA statutes), OJ L 94, 8/4/1982, p. 12

European Commission, Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services, OJ L 276, 21/10/2005, p. 54

European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalising world, COM(2007) 242

European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on creative content online in the single market, COM(2007) 836, 3/1/2008

European Commission, Monitoring of the 2005 Music Online Recommendation, 7/2/2008, available at: http://ec.europa.eu/internal_market/copyright/docs/management/monitoring-report_en.pdf

European Commission, Decision C(2008) 3435 of 16/7/2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 – CISAC), available at: <http://ec.europa.eu/competition/antitrust/cases/decisions/38698/en.pdf>

European Commission, Proposal for a European Parliament and Council Directive amending Directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and related rights, COM(2008) 464

European Parliament and Council Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22/6/2001, p. 10

European Parliament and Council Directive 2001/84/EC of 27 September 2001 on the resale right for the benefit of the author of an original work of art, OJ L 272, 13/10/2001, p. 32

European Parliament and Council Directive 2004/48/EC of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 20/4/2004, p. 45

European Parliament, Report on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC, 2006/2008(INI)), Committee on Legal Affairs, Rapporteur: Katalin Levai, A6-0053/2007, 5/3/2007

European Parliament, Resolution of 13 March 2007 on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC, 2006/2008(INI)), OJ C 301E, 13/12/2007, p. 64

European Parliament, Resolution of 25 September 2008 on collective cross-border management of copyright and related rights for legitimate online music services, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-20080462+0+DOC+XML+V0//EN>

GESAC paper on 'Collective management as regards cross-border music services', presented to a conference organised by Association Belge pour le Droit d'Auteur in Brussels on 9 March 2009

ICMP/GESAC Common Declaration on governance in collective management societies and on management of on-line rights in music works, 7 July 2006

IFPI Digital Music Report 2009

IFPI, 'The hidden dangers of illegal downloading', available at: www.ifpi.org/content/section_news/20080307.html

IFPI Report, Illegal music file-sharers targeted by fresh wave of legal action, available at: http://www.ifpi.org/content/section_news/20060404.html

IFPI Recording industry in numbers, 2008

KEA, Study on collective management of rights in Europe: The quest for efficiency, available at: <http://www.keanet.eu/report/collectivemanpdfinal.pdf>

New York Times, 'YouTube in Music Video Deal with Universal', 9 April 2009

Online Commerce Roundtable, 'Report on opportunities and barriers to online retailing', 26 May 2009, available at <http://europa.eu/rapid/pressReleasesAction.do?Reference=IP/09/832&format=HTML&aged=0&language=EN&guiLanguage=en>

Page, W., 'Competition with reciprocity in a Two-Sided Market – a Primer, Economic Insight', MCPS-PRS, Issue 7, available at [http://www.prsformusic.com/monline/research/Documents/Will%20Page%20\(2008\)%20Economic%20Insight%207.pdf](http://www.prsformusic.com/monline/research/Documents/Will%20Page%20(2008)%20Economic%20Insight%207.pdf)

PROMUSICAE, Mercado físico y digital 2008 (2009), available at: <http://www.promusicae.org/espanol.html>

PROMUSICAE, Participación de compañías en el Mercado digital 2008 (2009), available at: <http://www.promusicae.org/espanol.html>

PriceWaterhouse&Coopers, Libro Blanco de la Música en España, 2006, Report prepared by PW&Coopers for PROMUSICAE, (2006), available at: [http://www.promusicae.org/EditorRamon/imagenes/file/libro_blanco\(1\).pdf](http://www.promusicae.org/EditorRamon/imagenes/file/libro_blanco(1).pdf)

PRS for Music, 'Making online commerce a reality in the EU, input by MCPS-PRS Alliance further to the Online Commerce Roundtable initiated by the DG Competition', available at: http://ec.europa.eu/competition/consultations/2008_online_commerce/mcps_prs_alliance_contribution.pdf

RED.es, Libro blanco de los contenidos digitales en España, (2009), available at: http://www.red.es/articles/detail.action;jsessionid=C81E32CBE9D73C06D5C602C39CBEE0D2.vertebra_dni02?sec=228&id=2660

SABAM, Rapport annuel 2007

SGAE, Informe de gestión y responsabilidad social corporativa 2007

The Guardian, 'PRS slashes streaming music rates; will YouTube restore tunes', available at: <http://www.guardian.co.uk/media/pda/2009/may/26/digital-music-and-audio-you-tube>

UNESCO Convention on the protection and promotion of the diversity of cultural expressions, available at: http://portal.unesco.org/culture/en/ev.php-URL_ID=33232&URL_DO=DO_TOPIC&URL_SECTION=201.html

WIPO Copyright Treaty, 20 December 1996, available at: http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html

WIPO Performances and Phonograms Treaty, 20 December 1991, available at: http://www.wipo.int/treaties/en/ip/wppt/trtdocs_wo034.html

INTERVIEWEES

Note: Only the actors which were contacted in the frame of the study and replied to our request for information are listed below.

AER (Association of European Radios)

AFI (Associazione dei Fonografici Italiani)

AGEDI (Asociación de Gestión de Derechos Intelectuales)

AIE (Artistas Intèrpretes o Ejecutantes Sociedad de Gestión)

BEA (Belgian Entertainment Association)

BIMA (Belgium Independent Music Association)

BRITISH ACADEMY OF COMPOSERS AND SONGWRITERS

BUMA-STEMRA (Dutch Collecting Society for Authors, Composers and Music Publishers)

CELAS (Centralised European Licensing and Administrative Service)

CONSTANT vzw (Belgian Non-profit Multi-disciplinary Artist Association)

DADA.net S.p.A. - RCS Mediagroup (Provider of Online Music Services)

DIRECTORS GUILD OF GREAT BRITAIN

DMV e.V. (Deutscher Musikverleger-Verband e.V.)

DRMV (Deutscher Rock und Pop Musikerverband e.V.)

EBU (European Broadcasting Union)

EQUITY (UK Trade Union Representing Performers and Artists)

FIMI (Federazione Industria Musicale Italianna)

GALM (Genootschap Auteurs Lichte Muziek)

GEMA (Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte)

GOOGLE

GVL (Gesellschaft zur Verwertung von Leistungsschutzrechten)

ICMP (International Confederation of Music Publishers)

IFPI (International Federation of the Phonographic Industry)

IMAIE (Istituto Mutualistico Artisti Interpreti Esecutori)

IMPALA (Independent Music Companies Association)

MUSICIANS UNION (UK)

MUSIC PRODUCERS GUILD (UK)

NOKIA (Manufacturer of Mobile Devices and Supplier of Mobile and Fixed Telecom Networks)

PAECOL (Pan-European Central Online Licensing GmbH)

PEARLE (Performing Arts Employers Associations League Europe)

PPL (UK Collecting Society for Performers and Record Producers)

PRS FOR MUSIC (UK Collecting Society for Authors, Composers and Music Publishers)

RTBF (Radio-Television Belge Francophone)

SABAM (Société Belge des Auteurs, Compositeurs et Editeurs)

SCF (Società Consortile Fonografici)

SIAE (Società Italiana degli Autori ed Editori)

SGAE (Sociedad General de Autores y Editores)

SIMIM (Belgian Collecting Society for Record Producers)

VODAFONE ITALIA (Mobile Telecommunication Operator)

WDR (Westdeutscher Rundfunk)

YES.FM (Online Music Streaming Provider)

ZDF (Zweites Deutsches Fernsehen)

Annex A

Data and figures on the collective management of neighbouring rights

Although recent EU action in the field of music rights management has not directly affected the management of the rights enjoyed by performers (singers and musicians) and record producers (i.e. 'neighbouring' or 'related' rights), with a view to inquiring into the structures currently in place for the management of relevant rights and support informed policy-making at the EU level, a great amount of information has been gathered by the collecting societies administering neighbouring rights in Belgium, Germany, Italy, Spain and the UK.

The following collecting societies were contacted for information collection purposes: URADEX and SIMIM (Belgium), GVL (Germany), IMAIE, SCF and AFI (Italy), AIE and AGEDI (Spain) and PPL (UK). With the exception of URADEX, all collecting societies have contributed actively to the study.

The sections below examine the operation of these collecting societies, focusing on the basic governance features of relevant institutions, the rights they administer, the management models used, and the level of the revenues generated for right holders. Analysis also explores the contribution of these collecting societies to creative endeavour via the financing of cultural and social policy-related activities and their licensing performance in the digital scene.

1. Belgium

SIMIM is a registered co-operative society with limited responsibilities. It is the Belgian collecting society for record producers and operates on Belgian territory with an authorisation of the Belgian state.²⁰¹ Individuals or companies holding rights for one or several phonograms may mandate SIMIM to manage their rights in Belgium.

The evolution of SIMIM members is reflected in table 1 below, which indicates also the number (approximately 15%) and country of establishment of the foreign record producers which are direct members of SIMIM.

²⁰¹ Article 67 of the Belgian Copyright Law.

Table 1: SIMIM members

SIMIM members	Total	Belgium	Netherlands	France	Germany	Luxembourg	UK	Sweden	Italy	% non BE
2001	70	65	4	1						7%
2002	84	74	8	1	1	1				13%
2003	115	93	14	2	2	2	2			19%
2004	176	152	19	2	3	2	3	1		17%
2005	213	185	21	2	5	2	4	1		16%
2006	281	249	26	4	5	2	4	1		15%
2007	380	333	31	5	6	3	4	1		13%
2008	511	450	33	14	7	4	4	1	1	13%

SIMIM has no reciprocal agreement with any other collecting society. Direct membership is the principal way for foreign record producers to receive royalties collected on the Belgian territory, unless their local collecting society is itself a SIMIM member. This is the case for the collecting society SENA in the Netherlands and PPL in the UK.²⁰² Sub-licences granted by foreign labels to Belgium-based labels create an additional, though indirect channel, for royalty distribution abroad.

The rights administered by SIMIM are the record producers' rights, which may be exclusive rights and the rights which, according to the Belgian Copyright Law may only be administered by a collecting society.²⁰³

SIMIM is governed by its Board of Directors, which is elected by SIMIM partners.²⁰⁴ It is composed of 4 partners representing companies that collect 5% or more of the distributed royalties, and 4 partners that collect less than 5% of the distributed royalties.

Table 2 reflects SIMIM's gross and net distributable income.²⁰⁵ Value fluctuations can be observed for both types of income. Highest values were attained in 2004. From 2003 onwards, the ratio of the net distributable income to the gross income increased. More analytically, the ratio was 0,83 in 2001, 0,82 in 2002, 0,74 in 2003, 0,86 in 2004, 2005 and 2006, and 0,88 in 2007.

²⁰² SIMIM collects royalties in Belgium for the members of SENA and PPL, which entrusted them with the management of their rights on Belgian territory. SENA and PPL are then in charge of royalty allocation among their members.

²⁰³ I.e. rights referring to the equitable remuneration for broadcasting and communication in public places, the private copying and the public lending, as well as those connected to cable rights (see *supra*, chapter 3, section 3.1.2).

²⁰⁴ A SIMIM member can become a partner on the condition that a) it is a professional producer; b) it pays a 1.250€ share; and c) it is accepted by the Board of Directors. All 4 majors (Universal, EMI, Sony BMG, Warner) have been partners of SIMIM since its creation.

²⁰⁵ Note that the annual net distributed income does not always reflect the annual gross income minus the deduction of SIMIM administrative fees. Litigation with users, for instance, may lead SIMIM to set aside collected amounts until the resolution of the dispute. Thereafter, blocked amounts are distributed. This may occur a couple of years after collection.

Table 2: SIMIM income

SIMIM income (€)	2001	2002	2003	2004	2005	2006	2007	2008
Gross income (*)	8.163.269	8.054.526	9.039.311	15.477.687	11.283.336	11.376.476	11.623.022	12.023.812
Net distributable income	6.759.279	6.622.551	6.731.915	13.328.218	9.674.400	9.811.796	10.233.714	n/a

(*) Before deduction of commission. (**).

Whilst there are no costs associated with the mandate entrusted by record producers to SIMIM, SIMIM charges an administrative fee to its members to cover actual operational costs. The administrative fee takes the form of a percentage applied on the amount of royalties distributed to any right holder.²⁰⁶ There are only two types of percentages, which depend on whether income falls within the category of 'outsourced' or 'central' collections. In the case of 'outsourced' collections, income collection is sub-contracted to a third party as the costs related to such operation would be excessive if SIMIM had to perform it itself. This is typically the case for the collection of the equitable remuneration which is a burdensome exercise (i.e. collecting income from shops). In the case of 'central collections', the collection is carried out by SIMIM directly. This is notably the case for the collection of cable rights, where SIMIM manages exclusive rights.

The following table provides an overview of the rates applied equally to all right holders (including SENA and PPL) for the period 2001-2007. Cost rates for central collections decreased over this period. From 4,5% in 2001, they fell to 2,1% in 2006 (and appeared negative in 2007). Cost rates for outsourced collections fluctuated. The highest rate was attained in 2002 and the lowest in 2005.

Table 3: SIMIM costs rates

SIMIM cost rates	2001	2002	2003	2004	2005	2006	2007
Outsourced collections	27,8%	28%	25,2%	24,5%	22,4%	24,6%	24,9%
Central collections	4,5%	4,6%	4,4%	3,8%	2,5%	2,1%	-1,2% ²⁰⁷

Table 4 provides information on the number of SIMIM members to which royalties were distributed from 2001 to 2008 (Sena and PPL are not included in the figures provided as they represent several record producers). On average, 64% of SIMIM members received royalties.

²⁰⁶ The level of the administrative fee is calculated on a yearly basis, taking into account SIMIM's actual costs, its gross income, and the financial revenues arising from not yet distributed royalties. According to Article 69 of the Belgian Copyright Law, the General Assembly, with a 2/3 majority, may decide of the outcome of royalties which cannot be distributed. Accordingly, royalties may be set aside and generate interests, which will be used to offset SIMIM's costs.

²⁰⁷ Financial revenues stemming from royalties to be distributed are used to compensate operating costs. Therefore, negative commission rates for central collections occur when the financial revenues of the non-distributed monies for one year exceed the operating costs of SIMIM of the same year. This was the case in 2007.

Table 4: Number of SIMIM members who received royalties

Number of SIMIM members who received royalties	2001	2002	2003	2004	2005	2006	2007	2008
Belgium –multinational	5	5	5	5	4	4	4	4
Belgium – independents	38	50	72	85	122	147	188	251
Germany	0	0	0	0	3	3	3	6
France	0	0	1	2	2	2	3	4
Netherlands / Others	3	6	12	16	19	21	27	27
United Kingdom / Others	0	0	1	2	3	3	3	3
Sweden	0	0	0	0	1	1	1	1
Italy	0	0	0	0	0	0	0	1
Total members receiving payments	46	61	91	110	154	181	229	298

The table below presents royalty distribution to SIMIM members, some of which are located in foreign countries. Over the period 2001-2007, total distributions increased 9,49 times (an 849% increase) and distributions to members in Belgium 9,03 times (an 803% increase). The amounts SIMIM distributed to members established outside Belgium represented about 5% of the total distributions performed the year in which distributions outside Belgium took place. The market share of UK distributions in relation to the amounts distributed to members established in countries other than Belgium was 35,8% in 2004, 30,4% in 2005, 53,6% in 2006 and 34% in 2007.

Table 5: SIMIM distributions to members

SIMIM distributions to members (€)	2001	2002	2003	2004	2005	2006	2007	2008 (*)
Belgium	1.690.595	3.380.917	5.275.489	5.295.527	10.493.609	9.773.446	15.268.531	
Germany	-	-	-	5.792	3.201	2.577	2.432	
France	-	-	-	6.681	36.222	28.987	45.642	
Luxemburg	-	-	-	442	16.686	5.325	5.899	
Netherlands (SENA)	-	-	-	60.172	59.508	120.715	66.228	
Netherlands / Others	-	-	-	133.322	246.916	194.909	461.688	
United Kingdom (PPL)	-	-	-	58.260	92.781	176.090	141.343	
United Kingdom / Others	-	-	-	15.664	17.367	12.649	56.519	
Sweden	-	-	-	0	148	160	762	
Total	1.690.595	3.380.917	5.275.489	5.575.859	10.966.439	10.314.857	16.049.045	12.845.118

(*) Accounting year 2008 not yet closed.

Whereas SIMIM is not active in social and cultural policy-related activities, its digital licensing activities started very recently and cover simulcasting, webcasting, streaming, and podcasting. In the future, SIMIM expects to extend licences to uses of background music on company websites. As most of the licences have been granted not long ago (and to a large extent are still under negotiation), there has been no standardisation of the practice followed in relation to licence duration, geographic scope, and tariffs yet.

2. Germany

Gesellschaft zur Verwertung von Leistungsschutzrechten (GVL) is the German collecting society representing performing artists and producers of sound recording media. It operates as a limited liability company (*GmbH*) and exercises secondary exploitation rights according to the German Copyright Law (*Urheberrechtsgesetz*, *UrhG*). These include the broadcasting right of performing artists and producers of sound recording media with respect to published sound carriers, as well as the right of communication to the public and the private reproduction connected to published sound carriers and artists' performances in terms of §73 of the German Copyright Law. Assignment of rights takes place by means of a collecting agent contract with no costs imposed on the right holders.

The number of GVL members is presented in the table below. Data regarding performing artists should be read with caution, since GVL did not provide figures regarding singers and musicians only.

Table 6: GVL members

GVL members	2001	2002	2003	2004	2005	2006	2007
Performers	101.255	102.635	108.263	110.265	112.697	116.657	119.402
<i>Outside the EU</i>	3.682	3.738	4.102	4.179	4.330	4.541	4.427
Record producers	4.370	4.761	5.081	5.531	6.031	6.476	6.911
<i>Outside the EU</i>	249	274	291	326	363	386	417

GVL has two associates: the Federal Union of the Music Industry (Bundesverband Musikindustrie e.V.) and the German Association of Orchestras (Deutsche Orchestervereinigung e.V.).²⁰⁸ It is represented jointly by two Directors. An Advisory Board, consisting of 24 members from all different groups of beneficiaries, convenes every three years.²⁰⁹ It decides on distribution plans and advises the Directors on tariffs and the conclusion and implementation of collective reciprocal agreements with foreign collecting societies.

The following table shows the gross and net distributable income of GVL for the period 2001-2008. From 2001 to 2007, both types of income fluctuated, the largest amounts being reached in 2006. The ratio of the net to the gross income was constantly above 90% and fluctuated over the years. In more detail, it was 0,95 in 2001, 0,92 in 2002 and 2003, 0,93 in 2004, 0,91 in 2005, 0,93 in 2006 and 0,91 in 2007.

²⁰⁸ The Federal Union of the Music Industry represents the interests of the music industry in Germany and was established in 2007 through a pooling of the German national committee of IFPI and the Federal Union of the Phonographic Economy (Bundesverband der Phonographischen Wirtschaft). The German Association of Orchestras is an industrial and labour union for musicians. It has approximately 13.200 members. These belong to German orchestras and broadcasting chorals.

²⁰⁹ Half of its members are appointed by the two associates, the other half by the General Assembly.

Table 7: GVL income

GVL income (€ million)	2001	2002	2003	2004	2005	2006	2007	2008
Gross income	130,000	120,000	147,000	145,200	151,200	158,200	153,900	147,900 (estimated)
Net distributable income	124,090	110,994	135,956	135,015	137,967	146,375	140,700	n/a

GVL charges no administrative fee on its members. After deduction of expenses, it distributes the revenues collected. Cost deductions are identical for distributions to members and the transfer of revenues to foreign collecting societies with which reciprocal representation agreements have been concluded. In 2007, deductions rates were set at: 2,89% for administrative costs, 5,55% for the commissions paid to other collecting societies, such as GEMA, for revenue collection on GVL's behalf, and 0,42% for the battle against piracy.

Tables 8 and 9 below present the number of GVL members to which royalties were distributed from 2001 to 2007 and the amounts provided. Data regarding performers should again be read cautiously, as GVL did not provide data for payments made to singers and musicians only.

Table 8: Number of GVL members who received royalties

Number of GVL members who received royalties	2001	2002	2003	2004	2005	2006	2007
Performers	46.130	35.262	32.564	36.530	35.958	37.246	38.192
Record producers	2.612	3.023	2.798	3.047	3.169	3.239	3.468

Distributions to performers and record producers fluctuated. For the period 2001-2004, the average value of the distributions to performing artists was €79.455.917. The average value of the revenues channelled to record producers for the period 2001-2007 was in turn €56.567.955.

Table 9: GVL distributions to members

GVL distributions to members (€)	2001	2002	2003	2004	2005	2006	2007
Performers	no data disclosed	no data disclosed	no data disclosed	81.771.986,81	75.250.759,14	81.887.681,82	78.913.240,41
Record producers	53.292.022,63	48195.305,02	59.225.109,34	56.325.656,99	59.254.777,21	61.019.351,73	58.663.462,29

GVL has concluded reciprocal representation agreements with collecting societies representing performers in Belgium, Denmark, Estonia, Finland, France, the UK, Ireland, Iceland, Japan, Croatia, Lithuania, the Netherlands, Norway, Austria, Poland, Romania, Sweden, Switzerland, Slovakia, Spain, and the Czech Republic. Reciprocal representation agreements were also concluded with the collecting societies for sound carrier producers in Estonia, France, Greece, the UK, Italy, Jamaica, the Netherlands, the Russian Federation, and Sweden. In the case of performers, only some of the reciprocal representation agreements concluded provide for the exchange of collected revenues. In

most cases, the agreements contain a waiver for revenue transfers, as it is assumed that reciprocal flows of remuneration would cancel each other.

Table 10 presents the value of GVL distributions to foreign collecting societies representing performers. Figures cover the period 2004-2007 and again should be handled with care because GVL did not provide succinct information with respect to the royalties distributed for performers active in the field of music only. Distributions generally increased in 2005 but then decreased. In 2007, their value was 28,4% higher than in 2004. Revenue distribution to the UK increased over the years from 42,4% of total GVL distributions in 2004 to 52,5% in 2007. Revenues channelled to the Netherlands increased from 2004 to 2005 and fell thereafter. They ranged from 13,5% in 2006 to 27,7% in 2005. Sweden increased its share: from 8,7% in 2004, it reached 20,1% in 2007. The share of other countries was quite limited.

Table 10: GVL distributions to foreign collecting societies representing performers

GVL distributions to foreign collecting societies representing performers (€)	2004	2005	2006	2007
Denmark (GRAMEX)	103.196,70	44.948,58	21.213,59	40.633,87
Finland (GRAMEX)	34.324,59	105.409,48	85.466,86	72.629,42
Ireland (RAAP)	192.097,91	120.070,45	187.875,20	21.906,90
UK (PPL)	473.467,98	740.778,92	787.122,80	752.441,53
The Netherlands (SENA)	177.370,44	451.545,01	214.586,51	230.062,97
Sweden (SAMI)	97.048,97	160.820,04	263.441,87	287.955,07
Switzerland (SWISSPERFORM)	2.442,75	1.830,37	3.301,78	4.208,86
Spain (AIE)	37.301,92	3.907,38	28.332,38	24.601,17
Total	1.117.251,26	1.629.310,23	1.591.340,99	1.434.439,79

According to GVL, distributions to foreign collecting societies necessitate active reporting by performing artists and associated collecting societies. Only a limited number of performers and their collecting societies provide the information required. This undermines distribution activity.

The table below indicates the revenues distributed to foreign collecting societies representing record producers. Although GVL did not provide information on the identity of the foreign collecting societies involved, it indicated that relevant revenue transfers mainly concern independent producers. Multinational record companies usually receive royalties for the exploitation of their sound recordings in Germany through sub-licensing. Whilst the 2001 distribution is negligible, distributions increased by 380% over the period 2002-2007. Revenues generally increased from 2002 to 2006 and fell in 2007.

Table 11: GVL distributions to foreign collecting societies representing record producers

GVL distributions to foreign collecting societies representing record producers (€)	2001	2002	2003	2004	2005	2006	2007
Amounts	135	103.808	314.913	524.644	532.014	591.126	498.683

Table 12 reveals that GVL has so far received royalties on the basis of reciprocal agreements from the collecting societies of the UK, the Netherlands and Spain. AIE represents performers, and PPL and SENA performers and record producers. Revenues originating in the UK and the Netherlands fluctuated. Total GVL international revenue increased by 83,4% over the examined period.

Table 12: GVL international revenue from foreign collecting societies

GVL international revenue from foreign collecting societies (€)	2005	2006	2007
UK (PPL)	221.820,57	743.556,22	390.869,33
The Netherlands (SENA)	307.712,07	84.294,29	414.153,97
Spain (AIE)	n/a	n/a	166.294,10
Total	529.532,64	827.850,51	971.317,40

According to paragraph 2(6) of the Articles of Association, up to 5% of GVL's distributable revenue may be directed to the pursuit of cultural and social objectives. Although GVL provided no information as to the nature of the cultural and social activities financed, Table 13 reflects the amounts spent in this respect for the period 2001-2007.

Over the examined period, spending on cultural activities increased by 36,7% and funds for social activities decreased by 49,5%. Total GVL amounts channelled for cultural and social purposes increased by 24,2%. The ratio of cultural spending to total spending for the pursuit of cultural and social policy objectives increased from 85,5% in 2001 to 94,1% in 2007. No VAT has been incurred in relation to the activities funded.

Table 13: GVL spending for cultural and social purposes

GVL cultural and social spending (€)	2001	2002	2003	2004	2005	2006	2007
Cultural activities	2.548.000	2.757.000	2.938.000	3.020.000	3.219.000	3.465.000	3.482.000
Social activities	432.000	380.000	359.000	296.000	245.000	283.000	218.000
Total	2.980.000	3.137.000	3.297.000	3.316.000	3.464.000	3.748.000	3.700.000

With respect to GVL's licensing experience in the digital environment, its activities pertain to simulcasting, webcasting and on-demand services of previously broadcasted programmes. With regard to the later, no licences have been granted so far and tariffs still need to be developed. Licences for webcasting have been granted since 2002 and they show steady growth. Currently, there are about 1.500 contracts in effect. Multi-territorial licensing takes place within the framework of existing agreements of reciprocal representation for webcasting and simulcasting.

3. Italy

3.1. IMAIE

Erected by law in 1994 as 'Ente Morale' (i.e. non-profit entity), IMAIE is the institute in charge of the collective administration of certain rights of performing artists of music, cinematographic and audiovisual works. IMAIE acts in the interest of *all* performers, regardless of their status of membership. Its members were 3.131 in 2005, 3.752 in 2006 and 4.821 in 2007, covering all fields of performing artists' activity.

The rights that IMAIE collectively manages *ex lege* are two rights to equitable remuneration provided a) for uses for profit - with the exclusion of sound recordings by means of cinematography - of broadcasting, communication to the public, public performance, and any other public use of phonograms (see Articles 73 and 73-*bis* of the Italian Copyright Act) and b) for the private copying of sound recordings (see Articles 71-

septies and 71-*octies*).²¹⁰ Performers' *exclusive* rights which are subject to direct negotiation between the artist and the recording producer (i.e. exclusive rights of authorising the fixation, reproduction, communication to the public and distribution of phonograms) are excluded from IMAIE's collective management.

The charter of IMAIE provides that its collegial bodies are the Assembly of Members' Delegates, the Board of Directors, the President, the Presidential Committee, the Board of Auditors and the Board of Arbitrators. All bodies remain in office for three years from their appointment time. The Board of Directors appoints a General Director, who is responsible for the implementation of the Board's resolutions. The Board of Directors is composed of 14 members, 6 of which are designated by trade unions representing the category of performers (i.e. CGIL, CISL and UIL). The remaining 8 (4 coming from the music sector and 4 from the audiovisual one) are elected by the Assembly of Members' Delegates.

The table below shows IMAIE's gross revenue and net distributable income in relation to the two equitable remuneration rights mentioned above. The net distributable income reflects the value of the actual distributions made to members for the same period. The ratio of the net to the gross income over the period 1993-2002, set at 4,7%, was lower than the ratio in the years after 2002 (10,3% in 2003, 10% in 2004, 23,5% in 2006 and 33,5% in 2007) with the exception of 2005, where the ratio was 3,1%. Gross revenues increased from 2003 to 2007 by 116,4%. IMAIE's net income also increased by 602%.

²¹⁰ Under Italian Law, the collection of revenues for private copying is entrusted to SIAE, the collecting society representing authors, composers and music publishers, which acts on behalf of all right holders. In respect of audio private copying, SIAE shall distribute revenues as follows: 50% to the authors and their successors and 50% to producers of phonograms. Producers must then pay out to performers, or IMAIE, the 50% of the remuneration received for audio private copying.

Table 14: IMAIE gross and net distributable revenue

IMAIE distributions to members (€)	1993-2002	2003	2004	2005	2006	2007
Gross revenue	35.445.266,93	4.329.883,26	7.762.992,30	8.559.832,43	7.959.391,67	9.369.407,11
Net distributable income	1.678.348,96	446.961,20	775.270,14	265.818,47	1.870.325,62	3.137.486,75

Figures cover the music field only.

IMAIE funds itself through a deduction of 10% that is applied on fees collected from producers and users. No deduction is applied by IMAIE to royalties granted to its members/right holders when such royalties are received from equivalent foreign collecting societies as a result of mutual representation agreements.

IMAIE has concluded a series of reciprocal representation agreements with foreign collecting societies representing performers: URADEX (Belgium 2000); ADAMI (France, 1997); GEIDANKYO-CPRA (Japan, 2003); RAAP (Ireland, 2000); SENA (the Netherlands, 2000); STOART (Polonia, 1999); GDA (Portugal, 2000); PAMRA/PPL (UK, 2000; 2007); ROUPI (Russia, 2004); AIE (Spain, 1994); SAMI (Sweden, 2000) and SWISSPERFORM (Switzerland, 2002). The tables below indicate the value of the revenues transferred by IMAIE to some of these collecting societies²¹¹ and the revenues received from them for its members.

²¹¹ IMAIE noted that revenues distributed in a given year generally do not match the year taken into consideration. This is due to both the time required for the exchange and processing of data between the various subjects having to pay remuneration rights in favour of artists/performers and a situation of objective trouble that IMAIE currently faces in Italy because of disputes with phonogram producers.

Table 15: IMAIE distributions to foreign collecting societies

IMAIE distributions to foreign collecting societies (€)	2001	2002	2003	2004	2005	2006	2007	2008
Spain (AIE)	80.636,45 (FR and PC)	-	47.663,76 (FR and PC)	-	-	-	26.618,44 (FR)	35.059,10 (FR)
Netherlands (SENA)	-	20.011,60 (FR)	394.556,36 (FR)	-	310.747,08 (FR)	700.397,94 (FR)	451.701,51 (FR)	554.782,62 (PC)
UK (PAMRA)	-	-	-	-	87.709,62 (FR)	-	-	-
UK (PPL)	-	-	-	-	-	-	530.244,45 (FR)	-
Ireland (RAAP)	-	-	-	-	25.998,65 (FR)	55.280,43 (FR)	-	44.800,43 (FR)
France (ADAMI)	-	-	-	-	-	-	327.729,51 (FR)	-
Sweden (SAMI)	-	-	-	-	-	-	42.574,17 (FR)	-
Switzerland (SWISSPERFORM)	-	-	-	-	-	-	-	19.240,30 (FR)
Total	80.636,45	20.011,60	442.220,12	n/a	424.455,35	755.687,37	1.376,868,08	653.882,36

FR: fair remuneration; PC: private copy revenues

Table 16: IMAIE international revenue from foreign collecting societies

IMAIE international revenue from foreign collecting societies (€)	2001	2002	2003	2004	2005	2006	2007	2008
Spain (AIE)	121.075,76 (FR and PC)	-	-	189.780,90 (FR and PC)	-	66.279,83 (FR and PC)	-	300.061,28 (FR and PC)
Netherlands (SENA)	-	-	107.302,70 (FR)	12.525,66 (FR)	71.197,28 (FR and PC)	120.885,63 (FR and PC)	135.261,26 (FR and PC)	144.938,18 (FR and PC)
UK (PAMRA)	-	-	-	29.083,25 (FR)	-	32.846,65 (FR)	2.594,03 (FR)	-
UK (PPL)	-	-	-	-	-	-	13.373,05 (FR)	15.236,08 (FR)
Ireland (RAAP)	-	-	-	-	-	1.482,10 (FR)	-	-
France (ADAMI)	-	131.046,51 (FR and PC)	-	-	-	445.617,81 (FR and PC)	-	303.218,25 (FR)
Switzerland (SWISSPERFORM)	-	-	-	-	-	349.851,83 (FR and PC)	356.595,75 (FR and PC)	620.033,95 (FR and PC)
Russia (ROUPI)	-	-	-	-	-	-	-	5.073,06 (FR)
Japan (CPRA-GEIDANKYO)	-	-	-	-	-	311.075,48 (FR)	182.542,79 (FR)	-
Total	121.075,76	131.046,51	107.302,70	231.389,81	71.197,28	1.328.039,33	690.366,88	1.388.561

FR: fair remuneration; PC: private copy revenues

IMAIE is under a legal obligation to pursue social and cultural policy-related objectives. Law 93/1992 provides that certain fees shall be devolved to IMAIE for the purposes of studying, research, and promotion, training and support of professional artists or performers. According to Article 7 of Law 93/1992, revenues coming from the enforcement of equitable remuneration rights under Article 73 (radio and TV broadcasting) of the Italian Copyright Act for which right holders are not identifiable shall be paid out to IMAIE. According to the same law provision, IMAIE is entitled to share with original producers of audiovisual works and video producers 70% of the compensation coming from the levy system administered by SIAE (i.e. the collecting society representing authors, composers and record producers) on behalf of all right holders and established under Articles 71-*septies* and 71-*octies* of the Italian Copyright Act on apparatus and video recording formats. 50% of performers' share is also devoted to the above mentioned activities.

IMAIE supports various cultural initiatives each year (i.e. exhibitions and music festivals, the production of music recordings, scholarships for young deserving artists, concerts, music prizes, etc). The management of funds provided under Article 7 of Law 93/1992 also includes a share to be channelled to the social security fund for indigent artists and retirement homes for older artists. Relevant activities do not benefit solely IMAIE members but all right holders.

The table below represents the money spent on cultural and social activities for the period 2005-2008.

Table 17: IMAIE cultural and social spending

IMAIE cultural and social spending (€)	2005	2006	2007	2008
Cultural activities	2.625.350	5.190.500	11.822.270,62	0
Inter-sectoral cultural activities (music and the audiovisual sector)	119.500	5.000	n/a	n/a
Social activities	n/a	n/a	32.000	12.500

As regards licensing for digital uses of music performances, IMAIE has not entered into any agreement since it is not entitled to manage collectively the right of 'making available' music performances to the public for on-demand uses of digital content. As shown in several position papers addressed by IMAIE to Italian and EU institutions, in most countries, the right of making available has not been considered as an exclusive right to be managed collectively, with the consequence that this right is generally transferred to recording producers. As a result, since the bargaining position of artists is weaker than that of producers and their rights to fair remuneration are freely assignable, most artists do not get any compensation for the exploitation of their performances through digital services. IMAIE pointed out that, to overcome this situation, other countries have considered the right at issue as a right of communication to the public or as an exclusive right to be included into the system of performers' collective management. For instance, this is the case of Spain, where the law establishes a presumption of transfer of the right of making available to the producer, yet introduces a right to equitable remuneration which cannot be waived and must be managed by collecting societies.

3.2. SCF

SCF is a consortium of sole phonogram producers representing about 95% of record companies on the market for neighbouring rights management in Italy. For the administration of certain rights (i.e. public performance and minor broadcasters), SCF operates also on behalf of two smaller organisations, namely, AFI and Audiocoop. The mandate conferred by recording producers to SCF has a non-exclusive character and each consortium member has the right to vote in the collecting society's assembly. Only Italian producers and producers established in the EU or in the EEA can join SCF. SCF represents from its establishment (2000) all the 4 multinational record producers; the other record producers are independent companies. The table below presents the number of SCF members for the period 2001-2008.

Table 18: SCF members

Year	2001	2002	2003	2004	2005	2006	2007	2008
SCF members	59	66	81	106	154	184	225	259

The consortium bodies are the Assembly (to which all consortium members are parties), the Board of Directors (7 members), the President, the Vice President, the Advisory Committee, the Board of Auditors and the Scientific Committee. Members of SCF's Board of Directors are appointed by the Assembly.

SCF administers both exclusive and equitable remuneration rights. Exclusive rights are dubbing rights as well as simulcasting and webcasting rights. Rights to equitable remuneration include broadcasting rights, public performance rights and blank tape levies. It is worth noting that the management of all these rights is not subject to a statutory regime of mandatory collective management. SCF performs in a free market where other collecting societies administer neighbouring rights as well.

SCF collects income for the following uses of sound recordings: dubbing; communication to the public (i.e., broadcasting, public performance); and making available to the public. Moreover, SCF receives royalties from other collecting societies established in different jurisdictions that manage uses of sound recordings of SCF's members under mutual representation agreements. Table 19 shows SCF's gross income for the period 2001-2008. An increase of 213% can be observed.

Table 19: SCF gross income

Year	2001	2002	2003	2004	2005	2006	2007	2008
SCF gross income (€)	13.613.287	15.397.900	17.272.945	24.072.056	32.564.398	32.828.220	34.634.600	42.660.914

While looking at the table above, it must be considered that SCF does not retain the whole of the amounts deriving from the enforcement of the two rights to equitable remuneration (i.e. respectively, the broadcasting usage rights under Articles 73 and 73-*bis* and the private copying compensation regime established under Articles 71-*septies* and 71-*octies* of the Italian Copyright Act), since it is compelled by Italian law to pay out 50% of these amounts to IMAIE.

The only deduction applied by SCF on income distribution is the administrative fee paid by the record producers. Currently this fee ranges between 20% and 23% of the overall income distributed to each record producer. The fee depends on the total amount of the

costs actually borne by SCF, year by year, for rights management.²¹² It does not differ per type of right administered and has increased from 12% (2001) to 21% (2008).

Table 20 below presents the value of SCF distributions to its members. Figures concern the period 2001-2008 and distinguish between multinational and independent record producers.²¹³ Distributions to multinational record producers increased by 224,6% over the examined period, and distributions to independent record producers by 64,9%. Total revenues increased by 182% but the ratio of the revenues for independent record producers to the revenues for multinational firms decreased from 36,2% in 2001 to 18,4% in 2008.

²¹² The fee charged to other collecting societies for the services carried out on a contractual basis is the same applied to record producers.

²¹³ Regarding distributions to independent record producers, in 2006 SCF distributed €3.447.290 to 124 independent producers established in Italy and €1.654 to 2 independent producers established in the EU. In 2007, €3.964.925 were channelled to 157 independent producers established on Italian territory and €48.017 to 2 independent producers established in the EU. As to 2008, 182 independent producers in Italy received €4.336.798 and 3 independent producers established in the EU €40.740.

Table 20: SCF distributions to members

SCF distributions to members	2001	2002	2003	2004	2005	2006	2007	2008
<i>Number (multinational)</i>	8	8	7	7	7	6	6	5
<i>Value (€)</i>	7.336.084	8.630.228	9.248.227	17.963.305	19.003.712	22.961.588	24.206.688	23.814.500
<i>Number (independent)</i>	83	86	63	84	88	126	159	185
<i>Value (€)</i>	2.654.915	1.747.704	2.922.977	2.801.511	3.324.850	3.448.944	4.012.942	4.377.538
<i>Total number</i>	91	94	70	91	95	132	165	190
<i>Total value (€)</i>	9.990.999	10.377.932	12.171.204	20.764.816	22.328.562	26.410.532	28.219.630	28.192.038

SCF has signed reciprocal representation agreements with the following collecting societies: PPL (UK, 2003), SCPP (France, 2007), GVL (Germany, 2005), SENA (the Netherlands, 2008), EFU (Estonia, 2005), GRAMMO (Greece, 2007), PROPHON (Bulgaria, 2005), RPA (Russia, 2006), ZVASP (Slovenia, 2005) and ZAVOD IPF (Slovenia, 2005). Figures below indicate the value of SCF distributions to them and its corresponding receipts for the period 2001-2008.

Table 21: SCF distributions to foreign collecting societies

SCF distributions to foreign collecting societies (€)	2003	2004	2005	2006	2007	2008	2009
UK (PPL)	n/a	428,53	29.975,86	36.101,31	3.316,11	16.705,95	3.766,37
Estonia (MTU)	n/a	n/a	n/a	n/a	n/a	2,18	7.979,74
Total	n/a	428,53	29.975,86	36.101,31	3.316,11	16.708,13	11.746,11

Table 22: SCF international revenue from foreign collecting societies

SCF international revenue from foreign collecting societies (€)	2003	2004	2005	2006	2007	2008	2009
UK (PPL/VPL)	5.464,59	7.411,87	n/a	1.183,01	n/a	76.850,09	n/a

No legal obligation exists for SCF to pursue social and cultural policies or objectives. The main culture-related activity performed by SCF is that of supporting general anti-piracy operations. Such operations are supported by funding the independent anti-piracy association (FPM), whose activity is beneficial to *all* record producers and artists (i.e. not only SCF members). The anti-piracy annual fixed contribution amounts to €250.000 and it is funded directly by the administrative fee applied to all SCF members. There is no tax deduction applicable.

With respect to SCF's digital licensing activity, the number of licences provided for digital uses for the period 2001-2008 is 177. The vast majority of these (i.e. 166 licences between 2004 and 2008) were granted to web-radios, whereas 6 licence agreements were concluded with web TV stations (2006-2008), 4 licences with mobile TV stations (2006-2008) and 1 licence with mobile radio stations (2008). The licences' validity is annual, with automatic renewal, and it applies to the Italian territory, as well as San Marino's Republic and Vatican City. Web-radio and Web-TV licences include the licence for dubbing and non-interactive streaming, whereas licences for mobile TV and radio stations refer to broadcasting rights. SCF applies different fees to grant online licences (basically in the simulcasting and webcasting sectors). For simulcasting the fee charged to broadcasters is an additional percentage to be calculated on the same basis of broadcasting rates. For webcasting, instead, there are basically three schemes: commercial web-radios; non-profit web radios; and private web-radios.

3.3. AFI

AFI, the Italian Association of Independent Phonographic Producers, is a non-profit association whose aim is the promotion of the collective interests of the music independent industry in Italy and abroad. The right holders represented by AFI are independent record producers. According to AFI's Charter, natural or legal persons who professionally undertake activities related to the production of sound recordings can become members.²¹⁴ The organisation chart of the association consists of: a) the Partners' Meeting; b) the Managing Committee; c) the President; d) the Board of Auditors; and e) the Board of Arbitrators. The Managing Committee is formed by 11 members, including the President, and runs for 4 years. It is appointed by the ordinary General Assembly.

AFI plays the role of collecting society on behalf of its members with regard to the right of public performance and TV and radio broadcasting, including by new multimedia means. For this purpose, AFI draws up agreements with commercial users and then collects and distributes related income.

The table below presents AFI's gross revenue for the period 2005-2008. Amounts fluctuated. The gross revenue increased in 2006 but decreased in 2007.

AFI explained that the collecting year does not correspond to the distribution year (i.e. income is always collected the year following the one for which it is due). It also explained that it does not retain the whole of these amounts, since it is compelled by Italian law to pay out 50% of the two equitable remuneration rights to IMAIE. As already indicated, these rights to equitable remuneration are, respectively, broadcasting rights

²¹⁴ Membership is also open to individual producers of cinematographic and audiovisual works and sequences of animated images as well as to individual producers of editorial works.

under Articles 73 and 73-*bis* and the private copying compensation regime established under Articles 71-*septies* and 71-*octies* of the Italian Copyright Act.

Table 23: AFI gross income

AFI gross income (€)	2005	2006	2007
Value	1.360.635,43	2.949.132,60	1.825.140,94

AFI funds itself by charging a fixed membership fee corresponding to the annual amount of €1.100. In addition to that, AFI retains an administrative fee corresponding to 10% of each amount that is distributed to its members. The table below shows the amounts retained by AFI between 2005 and 2007.

Table 24: AFI revenues from administrative fees

AFI revenues from administrative fees (€)	2005	2006	2007
Value	100.041,34	172.798,22	92.296,17

Table 25 presents the value of AFI's distributions to its members for the period 2005-2008. From 2005 to 2007, 75% of its associates were entitled to royalty distribution (i.e. 190 undertakings).

Table 25: AFI distributions to members

AFI distributions (€)	2005	2006	2007
Value	1.000.413,36	1.727.982,16	922.961,73

AFI has not concluded any reciprocal representation agreement with foreign collecting societies and does not pursue cultural and social policy-related objectives. As regards licensing for digital uses of sound recordings, it has only recently entered the field.

4. Spain

4.1. AIE

AIE is the collecting society managing the rights of performers. Any performer whose performance has been incorporated to a phonogram published with commercial purposes is entitled to join AIE as an associated member or as an adhered member. Associated members are granted economic and political rights; adhered members are granted economic rights only (i.e. they do not enjoy voting rights).

AIE administers the performers' remuneration rights that, according to the Spanish Copyright Law, must be managed by collecting societies. In particular, as far as the offline context is concerned, AIE manages the right of communication to the public of phonograms and audiovisual recordings,²¹⁵ the private copying of phonograms and video-grams²¹⁶ and the rental of video-grams and phonograms.²¹⁷ In the online environment, AIE manages the making available right of phonograms and audiovisual recordings.²¹⁸ AIE also administers exclusive rights (i.e. the rights of reproduction, public communication of non recorded performances and distribution), if they are assigned by performers.

²¹⁵ See Articles 108.4 and 108.5 in relation to Article 20 of the Spanish Copyright Law.

²¹⁶ Article 25 of the Spanish Copyright Law

²¹⁷ Article 109.3.2^o of the Spanish Copyright Law. According to the information provided by AIE, at present it only manages video-grams rental, because the phonograms rental is not a standard practice in Spain.

²¹⁸ Articles 108.3 and 108.6 of the Spanish Copyright Law.

The following table indicates the number of AIE members over the years. Approximately 15% of AIE members are non-Spanish nationals.

Table 26: AIE members

Year	2001	2002	2003	2004	2005	2006	2007	2008
AIE members	9.170	9.778	10.380	11.324	11.961	12.691	13.457	14.293

AIE's management bodies are the General Assembly, the Board of Directors, the Permanent Commission, the President, the Director General and the General Secretary. All associated members have the right to vote in the General Assembly. The Statutes distinguishes between 'associated members' and 'active associated members'. Active associated members are those associated members that comply with certain criteria (i.e. 2 years of associated membership and a minimum level of income generated by the managed rights).²¹⁹ Only active associated members may stand for the elections of the Board of Directors. The latter is formed by 25 members, 15 being *intérpretes* and 10 *ejecutantes*.

The table below refers to the gross and net distributable income of AIE for the period 2001-2008. The value of the income distributed by AIE to its members in the same period corresponds to the net distributable income.

The ratio of the net to the gross income fluctuated. From a low of 39,6% in 2001, it reached 97,4% in 2006. From 2001 to 2008, AIE's gross income increased by 164%, and its net income by 1335%. In fact, in 2003 and 2008, the net distributable income exceeded the gross income. This was mainly due to the fact that in 2003 and 2008, agreements reached respectively with AGEDI, the Spanish collecting society representing phonogram and music video producers, and TV broadcasters allowed a large amount of royalties set aside because of disputes to be eventually distributed.

Table 27: AIE income

AIE income (€ million)	2001	2002	2003 (*)	2004	2005	2006	2007	2008
Gross income	10,1	9,8	8,9	17,6	17,5	19	22,4	26,7
Net distributable income	4	4,1	10,9	11,9	14,5	18,5	17,8	57,4

With regard to its financing, AIE's main method consists of a deduction on the gross revenues it collects on behalf of the right holders.²²⁰ The same unique rate applies whether the royalties are distributed to AIE members or to foreign collecting societies with which AIE has concluded reciprocal representation agreements. The rate is calculated to reflect the actual collection, administration and management costs faced by AIE, and does not differ per type of right administered. It has significantly decreased over the years: from more than 20% in 2001 to less than 15% in 2008. There are no other fees charged to members or foreign collecting societies.

AIE has entered into reciprocal representation agreement with 48 foreign collecting societies, including 22 located in the EU, the other being mainly located in South America. The value of the income received from/transferred to foreign collecting societies in the frame of such agreements was not revealed by AIE.

²¹⁹ See Article 10 of the AIE Statutes.

²²⁰ Additionally, as a not for profit association, AIE can be financed by a) revenues produced by financial investments and goods of the society; b) donations, estates and legacies made to the society; c) indemnifications to which the society is entitled; and d) revenues from the rights whose prescription period has expired (subject to decision by the governmental bodies).

As regards social and cultural activities, the Statutes of AIE foresees, in addition to the 20% of private copy revenues that AIE is bound by law to dedicate to social and cultural purposes (see chapter 3, section 3.4.2.2), an additional allocation of 10% of the public communication and rental rights collection to a Cultural and Social Fund.²²¹ The three main lines of action of the Fund are: a) the provision of social benefits to members;²²² b) the design and implementation of educational and training schemes;²²³ and c) the formulation, participation in, and financing of promotional activities for the advancement of music.²²⁴ The percentage allocation of 10% has remained stable for the period 2001-2008. The value of the revenues directed to cultural and social activities was not revealed by AIE.

With respect to digital licensing, AIE manages the making available right for performers and is accordingly entitled to collect royalties arising from online/mobile uses. For the time being, AIE is still negotiating such licences with users. AIE also indicated that different projects for online collective management in cooperation with other collecting societies are under study.

4.2. AGEDI

AGEDI is the collecting society of the phonogram producers and the music video producers. In 2003, it constituted a body together with AIE for the joint collection of the communication to the public rights belonging to producers and performers. Any phonogram producer holder of the rights of at least one phonogram or one music video can become a member of AGEDI.

Although not being direct members of AGEDI, foreign record producers may receive royalties by AGEDI through the system of sub-licences. According to that system, foreign record producers can mandate Spanish record producers to represent them at AGEDI. In such cases, the royalties collected by AGEDI and corresponding to the foreign record producer's repertoire will be distributed to the sub-licensed Spanish record producer which in turn, will transfer revenues to the foreign record producer. This is a frequent practice among companies of the same group (e.g. EMI UK is represented at AGEDI by EMI Spain), but also occurs for independent companies (e.g. *Blanco y Negro*, a Spanish independent, is exploiting for Spain the repertoire of large Dutch and German record companies).

The following table indicates the number of AGEDI members over the years, as well as the number of members established abroad. All foreign members are established in the EU.

²²¹ Additionally, the activities of the Social and Cultural Fund can be voluntarily financed by sponsors.

²²² These cover: a free collective accident insurance, a free travel assistance card, a private health care insurance and a welfare aid scheme.

²²³ AIE offers notably scholarships for musical training or further studies, from which non members can also benefit.

²²⁴ AIE provides financial support for concerts, festivals, music prizes, etc. For more information on the social and cultural activities carried out in 2007, see AIE, Memoria 2007, p. 62 et seq.

Table 28: AGEDI members

AGEDI members	2001	2002	2003	2004	2005	2006	2007	2008
Total members	141	145	158	173	160	184	222	290
Members established outside Spain	0	2	2	2	2	4	6	11
% of members established outside Spain	0%	1%	1%	1%	1%	2%	3%	4%

AGEDI administers the remuneration rights that according to the Spanish Copyright Law must be managed by collecting societies. In relation to the offline environment, these are mainly the remuneration right for the public communication²²⁵ and the remuneration due to private copying.²²⁶ In the online/mobile environment, AGEDI administers the public communication right and the reproduction for public communication right of phonograms and music videos for simulcasting, webcasting and podcasting. AGEDI may also manage exclusive rights if an individual mandate is concluded between AGEDI and a member.

The three main bodies of the association are the General Assembly, the Board of Directors and the President. The members of the Board of Directors are appointed by the General Assembly every year by simple majority. AGEDI members enjoy voting rights in the General Assembly.

According to Table 29, the value of AGEDI's gross and net distributable income increased over the period 2001-2008. Its gross income increased by 199% and its net income by 233%. The ratio of the net distributable income to the gross income was: 0,83 in 2001, 0,78 in 2002, 0,82 in 2003, 0,88 in 2004, 0,87 in 2005, 0,66 in 2006, 1 in 2007 and 0,92 in 2008.

All AGEDI members were distributed royalties in the period 2001-2008. The amount of distributed royalties equals exactly the net distributable income indicated.

Table 29: AGEDI gross and net distributable income

AGEDI income (€ million)	2001	2002	2003	2004	2005	2006	2007	2008
Gross income ²²⁷	13,8	16,6	14,9	18,9	20,6	25,4	24	41,3
Net distributable income	11,4	12,9	12,2	16,7	17,9	16,7	24,2	38

Revenues comprise rights for music videos as well.

With regard to its financing, AGEDI retains a percentage of the royalties to be distributed as an administrative fee. The level of such percentage is calculated in the light of AGEDI's actual costs and is approved by the General Assembly. It does not differ on the basis of the right administered and remained stable for the period 2001-2008. In addition to the deduction of such percentage to recoup its costs, AGEDI Statutes provides for a member entrance fee. However, this provision has not been applied to date.

AGEDI has not entered into multilateral reciprocal agreements with any foreign collecting society, except regarding simulcasting and webcasting.²²⁸ Such agreements are not fully

²²⁵ Article 116(2) of the Spanish Copyright Law. AGEDI also deals with music videos. In this case, the audiovisual producers enjoy an exclusive right of public communication (Article 122(1) of the Spanish Copyright Law) which does not have to be collectively managed, except for two cases, where there is also a remuneration right on top of the exclusive right: the retransmission of the works previously broadcasted and the communication in a public place of the works previously broadcasted (Article 122.2 of the Spanish Copyright Law).

²²⁶ Article 25 of the Spanish Copyright Law.

²²⁷ The gross income figures reflect, for each year, the amount invoiced by AGEDI to users. This does not mean that the amounts due were actually paid the year of invoice. In 2007 for instance, the net distributable income is higher than the gross income because AGEDI distributed royalties collected in 2007 but invoiced in previous years.

in force yet: so far AGEDI has received less than €15.000 from PPL, the UK collecting society for record producers and performers. Moreover, AGEDI has not started collecting any royalties on behalf of foreign collecting societies, as Spanish broadcasters have refused to sign any licence agreement providing that royalties would be collected for exploitations outside Spain. Accordingly, although Spanish broadcasts can be accessible worldwide through the internet, royalties are collected by AGEDI for exploitation on the Spanish territory only.

AGEDI has not entered into bilateral representation agreements either. It is however in the process of negotiating with UK, German, Dutch and Argentinean record producers' collecting societies for reciprocal representation in the offline environment.

Subject to the legal obligation imposed by the Spanish Copyright law for the pursuit of cultural and social activities (see chapter 3, section 3.4.2.2), AGEDI carries out several social and cultural activities by itself or through other entities, especially Promusicae.²²⁹ Main activities concern the making of charts for the most commercially successful CDs and tracks on the internet and mobile phones, market research, training seminars for public authorities and the public in general, music promotion activities, the fight against piracy and awareness activities.

The table below indicates the value of the revenues directed to cultural and social activities for the period 2001-2008.²³⁰ Amounts are identical for both categories. They fluctuated during the examined period, ranging from a low of €121.750 in 2003 to a high of €735.500 in 2005. Activities were funded with 20% (10% social + 10% cultural) from the private copying levies collected as required by the Spanish Copyright Law, and were subject to VAT (16%). No tax deductions are foreseen.

Table 30: AGEDI cultural and social spending

AGEDI cultural and social spending (€)	2001	2002	2003	2004	2005	2006	2007	2008
Cultural activities	203.968	181.750	121.750	524.200	735.500	517.800	474.600	375.722
Social activities	203.968	181.750	121.750	524.200	735.500	517.800	474.600	375.722

With regard to digital licensing, the members of AGEDI have excluded the rights connected to interactive uses of musical works (i.e. on-demand downloading and streaming) from its mandate. Accordingly, right holders manage their rights individually and negotiate directly with interested parties.²³¹ AGEDI is only in charge of the management of rights related to non-interactive uses of musical works, that is the simultaneous, unaltered signal for existing broadcasted programs (simulcasting) and the streaming of sound recordings (webcasting).

As regards simulcasting, AGEDI has entered into licences with 243 companies active in commercial broadcasting. The geographic coverage of such licences is the Spanish territory, because, as indicated above, broadcasters refused to pay a licence fee covering simulcasting outside Spain, despite the fact that worldwide access to their broadcasts is possible. A renegotiation of such licences will take place in 2009 for application in 2010. With respect to webcasting, AGEDI entered into 3 licences for non interactive webcasting

²²⁸ In 2004, AGEDI entered into a multilateral reciprocal agreement for webcasting and simulcasting to which 41 collecting societies from all over the world are party. In 2008, it joined the extended agreement for licensing simulcasting, as well as the agreement for podcasting. Such agreements were drafted by IFPI.

²²⁹ Promusicae is the trade association for record producers in Spain and the Spanish branch of IFPI.

²³⁰ AGEDI explained that, as a non-profit association, the income collected for cultural/social activities is spent on the year it is collected. No amounts are set aside.

²³¹ In practice, only the largest record producers (i.e. all the majors and the most important independents) have entered into individual licence agreements with mobile operators for on-demand music services.

services in 2008. These agreements end on 31 December 2009. The current geographical scope of the licences is again limited to the Spanish territory, but AGEDI intends to extend it to the world. Tariffs are based on a minimum fee per streaming and per listener, or a fee per minute and per listener, or a percentage applied on the global turnover of the service provider.

For AGEDI, the main difficulty in extending the geographical scope of simulcasting or webcasting licences is linked to the calculation of the licence fee. Since the latter is based on the tariffs of the country of destination, the webcaster needs to submit detailed information to AGEDI about the access made to its services from abroad. According to AGEDI, this requires a significant degree of cooperation on behalf of the licensees, which the latter have not been willing to offer to date.

5. The United Kingdom

PPL is the UK collecting society for performers and record producers. It is a company limited by guarantee. Its Board of Directors comprises 4 major record companies, 4 independent record companies, 4 performer representatives, 4 executive directors (including the Chairman) and 1 external director. The Directors are elected by the membership at the Annual General Meeting.

In the offline environment PPL administers the public performance of sound recordings and the broadcast of sound recordings. These include rights to equitable remuneration. PPL also administers the copying (i.e. dubbing) of sound recordings for the above activities, including the copying of sound recordings into programmes, both audio and audiovisual (synchronisation), and the copying of sound recordings into programmes (both audio and audiovisual) for the purpose of their sale, rental or other distribution via DVDs, VHS cassettes, CDs, audio cassettes etc. These are exclusive rights.

In the online and mobile environment PPL administers the following rights:

- a) the transmission of sound recordings as part of the online/mobile equivalent of radio and television programming (i.e. linear transmissions) including simulcasts of offline broadcasts. Rights can be administered in respect of territories other than the UK where the equivalent collecting society has such rights and such collecting society is a signatory to the applicable IFPI reciprocal agreement;
- b) the transmission of sound recordings as part of the online/mobile equivalent of radio, but where the consumer can pause the transmissions, skip to the next track in the transmission and generally 'customise' the service, but not to the point of determining the specific sound recordings to be transmitted. The same territorial reach with (a) is applied;
- c) the transmission of sound recordings as part of radio and television programmes streamed 'on-demand' (the consumer may choose the programme and time of delivery, but not the specific sound recordings included in such programmes, and is unable to keep a copy of such programmes);
- d) the transmission of sound recordings as part of radio and television programmes delivered as files for download (i.e. as in (c) above but where the consumer is able to keep a copy of such programme either temporarily or permanently);

e) the transmission of 'clips' of sound recordings up to 60 seconds in duration streamed on demand (i.e. as in (c) above but where the sound recordings are not part of programmes and are specifically chosen by the consumer); and

f) the copying of sound recordings for the purposes of all the above, as exclusive rights. Whereas rights under a) and b) include rights to equitable remuneration, rights under c), d), e) and f) are exclusive rights.

The actual cost of licensing and distribution is deducted from each revenue source and the net amount is distributed to the right holders. The cost deducted for direct members and right holders represented through bilateral agreements is exactly the same. It varies from year to year according to the budget set by the Board and the actual costs incurred.

Tables 31 and 32 present the number of PPL members who received royalties for the period 2005-2008 and relevant amounts. Total net payments increased by 44% over the examined period. Payments to performers increased by 57,5% and payments to record labels by 37,5%. The share of performer payments over total net payments increased from 29,7% in 2005 to 32,6% in 2008. As to record label payments, the share decreased from 70,3% in 2005 to 67,4% in 2008.

Table 31: Number of PPL members who received royalties

Number of PPL members who received royalties	2005	2006	2007	2008
Performers	29.066	48.658	47.451	50.434
Record labels	1.925	2.293	2.192	3.396

Table 32: PPL payments to members

PPL payments to members (€)	2005	2006	2007	2008
Performer payments	25.127.007	30.290.886	32.658.895	39.564.016
Record label payments	59.615.363	65.604.057	67.493.722	81.950.832
Total net payments	84.742.370	95.894.943	100.152.616	121.514.848

PPL has signed reciprocal representation agreements with the following collecting societies representing performers: LSG (Austria), URADEX (Belgium), GRAMEX (Denmark), GRAMEX (Finland), ADAMI (France), GVL (Germany), RAAP (Ireland), IMAIE (Italy), SENA (the Netherlands), GRAMO (Norway), RPA (Russia), AIE (Spain), SAMI (Sweden), SWISSPERFORM (Switzerland), SOUNDEXCHANGE and AARC (US), ACTRA (Canada), ABRAMUS (Brazil) and CPRA (Japan). With respect to record producers, reciprocal representation agreements were concluded with: LSG (Austria), SIMIM (Belgium), PROPHON (Bulgaria), GRAMEX (Denmark), ESTONIA (Estonia), GRAMEX (Finland), SCPP and SPPF (France), GVL (Germany), SENA (the Netherlands), PPI (Ireland), SCF (Italy), GRAMO (Norway), AGEDI (Spain), IFPI (Sweden), SOUNDEXCHANGE (US), AVLA (Canada), ABRAMUS (Brazil), RIAJ (Japan), PPCA (Australia), PPL-Hong Kong (for South East Asia), RIANZ (New Zealand) and PPM (Malaysia).

Tables 33 and 34 provide information about PPL payments to foreign collecting societies for the period 2003-2008.

Table 33: PPL payments to foreign collecting societies (for performers)

PPL payments to foreign collecting societies (for performers) (£)	2003	2004	2005	2006	2007	2008
EU	292.848	193.662	251.459	1.594.427	2.580.673	2.180.510
US	n/a	n/a	237.973	37.766	708.937	153.735
Third countries	n/a	n/a	n/a	n/a	67.504	14.773
Total	292.848	193.662	489.432	1.632.193	3.357.114	2.349.019

Table 34: PPL payments to foreign collecting societies (for record producers)

PPL payments to foreign collecting societies (for record producers) (£)	2003	2004	2005	2006	2007	2008
EU	n/a	90.332	158.660	n/a	199.799	116.428
US	n/a	n/a	87.519	n/a	182.066	56.252
Third countries	n/a	1.275	3.431	11.740	33.773	32.081
Total	n/a	91.606	249.610	11.740	411.474	189.029

Tables 35 and 36, in turn, indicate the amounts PPL received from foreign collecting societies for the period 2003-2008.

Table 35: PPL international revenue (for performers)

PPL international revenue (for performers)	2003	2004	2005	2006	2007	2008
EU	1.592.126	989.636	1.427.818	4.871.669	6.271.944	12.594.931
US	n/a	80.929	n/a	135.769	153.354	197.093
Third countries	1.230.165	472.641	660.255	12.437	1.546.384	869.899
Total	2.822.291	1.543.206	2.088.073	5.019.875	7.971.682	13.661.923

Table 36: PPL international revenue (for record producers)

PPL international revenue (for record producers)	2003	2004	2005	2006	2007	2008
EU	103.394	521.941	817.220	805.381	968.982	1.402.094
US	n/a	n/a	n/a	141.469	165.063	286.508
Third countries	n/a	19.061	66.062	83.766	70.626	96.539
Total	103.394	533.012	855.701	991.701	1.175.668	1.743.521

In 2008, the amounts received from abroad for performers was 5,82 times the amount paid for performers abroad. The same year, international revenue for record companies was 9,22 times the amount paid for record companies abroad.

PPL is not required by law to pursue cultural or social policy-related activities, and thus does not engage in such activities.

With respect to licensing for digital use, PPL is a signatory to the IFPI Simulcasting, Webcasting and On-Demand Agreements.

Prior to 2006, PPL's online licensing was largely restricted to the simulcast via the internet of radio and television channels broadcast by the BBC (3 to 4 years in duration); radio broadcasts by circa 300 commercial radio stations (rolling annual licences); and television broadcasts by ITV, Channel 4, Five and BSkyB (3 to 4 years in duration). Geographical coverage was restricted to the UK. Licences could potentially cover other territories where the equivalent collecting society was a signatory to the IFPI reciprocal agreement, yet only the BBC chose to exercise such a multi-territory option. In addition to the above licences which have continued and/or been renewed for the period from 2006 to 2008, the following additional licences have been issued: a) online, non-interactive radio (other than simulcasts): 2006 – circa 60 licences, 2007 – circa 140 licences, 2008 – circa 200 licences; b) online, interactive (customised) radio: 2007 – 1 licence, 2008 - 7 licences; c) on-demand clip streaming: 2007 – 1 licence, 2008 - 3 licences; d) additional television channel simulcasts: 2006 – 1 licence, 2007 – 2 licences, 2008 – 4 licences; e) on-demand streaming of television and radio programmes: 2006 – 4 licences, 2007 – 6 licences, 2008 – 7 licences; and f) download of television and radio programmes: 2007 – 1 licence, 2008 – 2 licences. Geographical coverage in respect of these licences was restricted to the UK. Most of these licences were renewed on an annual basis.

The fee structure for online radio (other than the simulcast of traditional ILR services) is based on a rate-per-track-per-stream consumption model. The simulcast of traditional ILR radio is covered by the share of revenue formula applied to offline broadcasts. Online television services are licensed on the basis of negotiated flat-fees, determined by reference to anticipated levels of consumption.

Key findings

- The scope of the rights administered by performing artists' and phonogram producers' collecting societies displays variance. Some collecting societies in Europe are entitled to manage both rights to equitable remuneration and exclusive rights. Others only manage rights to equitable remuneration, which pursuant to domestic legislation may fall under a mandatory collective management regime.
- Income collection for specific rights and exploitation usages is occasionally sub-contracted to third actors – usually the collecting societies administering authors', composers' and publishers' rights - because of the excessive costs that would have to be incurred if performed by the collecting society itself. Notwithstanding, some collecting societies undertake royalty collection on behalf of smaller local organisations too (see for instance, SCF [section 3.2], which also operates on behalf of two smaller collecting societies, AFI and AUDIOCOOP).

- Membership to performing artists' and phonogram producers' collecting societies is commonly open to non-nationals and companies established in a country other than the collecting society's country of establishment. Whereas some collecting societies only have members from the EU and the EEA, others have members originating in third countries as well.
- With respect to the collecting societies of record producers, direct membership is not the only way through which foreign record producers can receive royalties. Sub-licensing is commonly used as a means to allow for royalty collection and distribution abroad. Foreign record producers mandate a local record label to represent them within the local collecting society. The collecting society collects royalties corresponding to the foreign record producer's repertoire and distributes them to the sub-licensed local producer which in turn transfers revenues to the foreign record producer. Sub-licensing is commonly used by multinational companies but also by some large independent phonogram producers. Additionally, in some countries, foreign collecting societies may become members of the local collecting society and receive royalties for the exploitation of their repertoires in the country concerned, provided that their members have given their accord to that purpose. For example, PPL (UK) and SENA (the Netherlands) are members of SIMIM (Belgium).
- In order to finance themselves, collecting societies usually charge an administrative fee to their members or apply specific cost deduction rates on the royalties to be distributed to right holders. Some of them also collect membership fees either at the moment of member registration or on an annual basis. According to the information received, some collecting societies (i.e. GVL, AIE and PPL) charge identical cost rates for distributions to members and the transfer or revenues to foreign collecting societies with which reciprocal representation agreements have been concluded.
- The data gathered discloses that not all European collecting societies representing performers and record producers have entered into reciprocal representation agreements with foreign collecting societies. In fact, the system of reciprocal representation is not as advanced, as is the case with collecting societies representing authors, composers and music publishers. Usage reporting difficulties and 'waivers' for revenue transfers generally obstruct royalty distribution to foreign collecting societies that administer performers' rights. As to the reciprocal representation agreements concluded by the collecting societies representing phonogram producers, these primarily concern independent producers. Multi-national firms usually resort to sub-licensing for the collection of revenues abroad. This notably indicates that multinational firms have found ways to benefit from multi-territorial distribution of royalties even without collecting societies entering into a reciprocal representation system.
- Domestic legislation often imposes the financing of cultural and social activities. Activities range from music promotion actions and educational and training schemes to contributions to social security funds for artists. Even when not directly obliged to pursue cultural and social policy-related objectives, some record producers' collecting societies provide financial assistance for the fight against piracy.

- Data shows that most of the collecting societies representing performers and phonogram producers have recently entered the field of digital rights management.
- Digital licensing for performers' rights through collecting societies is essentially underdeveloped. This is mainly due to the fact that in most European countries the right of making available has not been considered as an exclusive right to be managed collectively. As a result, performers typically transfer it to record producers when signing an agreement for the production of a phonogram (or an audiovisual recording).
- As regards the licensing of digital uses of sound recordings, collecting societies' activity is conditioned by the scope of the administration mandate given to them by right holders. Most of the collecting societies under study have been able to grant licences only for non-interactive uses of musical works (i.e. simulcasting and webcasting), since record producers have not entrusted them with the administration of the rights connected to the interactive (on-demand) uses of sound recordings. Direct management is generally preferred in this respect. It should be noted however that in practice only multi-national firms and large independent producers have so far concluded individual agreements with commercial users for the digital exploitation of their repertoires.
- The territorial coverage of the agreements entered into by the record producers' collecting societies with commercial users has generally been restricted to the country of establishment of the collecting society concerned. In certain countries (like Spain), resistance of licensees to pay royalties for exploitations outside their territory of establishment has been observed, despite the fact that multi-territorial licensing has become possible via the conclusion of simulcasting, webcasting and on-demand reciprocal representation agreements, authored by IFPI.

Annex B

Table A: SABAM gross and net revenue

SABAM revenue (€)	2001	2002	2003	2004	2005	2006	2007
Gross revenue	110.664.332	121.042.956	126.764.248	161.954.484	219.706.598	215.966.993	231.036.075
Net revenue	85.728.000	93.736.764	99.241.167	132.540.760	190.907.128	186.482.896	201.572.729

Table B: Trade flows

Trade flows	2003	2004	2005	2006	2007	2008
SABAM international revenue for domestic repertoire (€)	10.293.157	10.523.240	10.093.012	9.107.470	8.404.867	11.560.839
SABAM distributions for foreign repertoire (€)	23.027.035	23.310.750	26.156.127	25.555.637	28.802.324	28.392.410
Ratio: SABAM international revenue for domestic repertoire coming from the EU Member States/SABAM distributions for aggregate European repertoire	0,59	0,62	0,59	0,55	0,46	0,66
Ratio: SABAM international revenue for domestic repertoire coming from the EU Member States excluding the UK/SABAM distributions for European repertoire excluding the UK repertoire	0,72	0,79	0,78	0,72	0,63	0,89
Ratio: SABAM international revenue for domestic repertoire coming from the US and the UK/SABAM distributions for UK and US repertoires	0,10	0,10	0,07	0,06	0,04	0,05
Ratio: SABAM international revenue for domestic repertoire coming from third countries/SABAM distributions for third countries' repertoires	0,55	0,41	0,23	0,24	0,13	0,16

Annex C

§ 1 – Rights owners agreement

The Right Owner hereby assigns to GEMA as trustee for all countries any and all copyrights currently vested in him and those accruing to him, devolving or redevolving upon him or otherwise acquired by him during the term hereof to the following scope for administration under the following terms and conditions:

a) The performing rights in and to musical works with or without words, however to the exclusion of the stage performance of dramatico-musical works, whether completely, as cross section or in major parts.

Stage music, provided it is not an integrating part of the stage work, stage shows, film accompanying music, interludes in revues, interludes in operettas, burlesques and comedies, melodramatic and cabaret performances are covered by this Deed of Assignment unless the performance of parts of dramatico-musical works in other stage works is involved.

b) The radio broadcast rights with the exception of the broadcast of dramatico-musical works, whether completely, as cross section or in major parts²).

c) The rights of public communication by loudspeaker including the public communication of dramatico-musical works by loudspeaker.

d) The television broadcast rights with the exception of dramatico-musical works, whether completely, as cross section or in major parts.²³²

e) The rights of public communication by television sets including the communication of dramatico-musical works.

f) The film exhibition rights including the rights in and to dramatico-musical works.

g) The rights of performance and the right to make accessible by means of the devices produced in accordance with subpara. h) with the exception of

aa) the stage performance of dramatico-musical works, whether completely, as cross section or in major parts,

bb) the rights of making perceptible dramatico-musical works in theatres as defined by § 19 subpara. 3 of the German Copyright Act (UrhG).

h) The rights of recording on audio, audiovisual, multimedia and other data carriers, including for example Speichercard [Memory Card], DataPlay Disc, DVD (Digital Versatile Disc), Twin Disc, audio and video carriers with ROM part and such carriers with data link, as well as the reproduction and distribution rights in and to such carriers.

The right to incorporate works of music (with or without words) in databases, documentation systems or similar types of storage media.

²³² The rights to simultaneous, unadapted and complete retransmission of dramatico-musical works in television and radio programmes within the meaning and the scope of the EC Directive 93/83 of September 27, 1993 shall be assigned by separate mandate to GEMA by the Right Owners in question.

The right of transmission by electronic or similar means of works of music (with or without words), which are incorporated in databases, documentation systems or similar types of storage media, including for example for mobile Internet use and for music exchange systems.

The rights are assigned for the use of musical works (with or without words) including their use as ringtone melodies and dial-tone melodies.

The rights shall be assigned respectively subject to the provisions under subpara. i).

The above rights shall not cover graphic rights, in particular the right in and to sheet music or lyrics.

In respect of the reproduction of dramatico-musical works - whether completely, as cross section or in major parts – for personal or other private use by means of phonograms or videograms, the right of reproduction shall be reserved to the Right Owner where the administration thereof towards theatres is concerned.

i) (1) The rights for the utilization of a work (with or without words) for the making of cinematographic works or for any other kind of fixation on supports of sounds and images as well as any other combination of works of music (with or without words) with other kinds of works on multimedia and other data carriers or in databases, documentation systems or similar types of storage media, with among other things the possibility of interactive use, it being understood that GEMA and the Right Owner will inform each other of all cases that may become known. Such rights are assigned to GEMA under a resolatory condition.

The condition occurs when the Right Owner notifies GEMA in writing that he wants to exercise the rights in his own name. Such notification must be given within a period of four weeks; in case of subpublished works within a period of three months. The period shall be counted from the time when the Right Owner first becomes aware of the case in question. The notification of the Right Owner to GEMA concerning a specific case of which he himself became aware must indicate whether he wants to exercise the rights in his own name. The reversion shall only take place insofar as it concerns the utilization for the making of a specific cinematographic work or any other support of sounds and images or multimedia or other data carrier or the combination with other kinds of works in a specific database, a specific documentation system or a specific similar type of storage media. In the case of cinematographic works the reversion includes the right of making and distributing copies where works are concerned which are destined for public exhibition in motion picture theatres or for broadcasts. In respect of other fixations on supports of sounds and images, the reversion is limited to the right to authorize the recording of the work in connection with the images and the making of 50 copies to be specially marked for purposes of introduction. The rights in respect of television productions as provided under (3) shall remain unaffected.

(2) With respect to producers of newsreels, GEMA shall be authorized to grant the film synchronization rights itself provided that no commissioned compositions and lyrics are involved which have been given by a Right Owner to a specific newsreel enterprise for exclusive use for newsreels and have been notified to GEMA accordingly.

The Right Owner shall have the right, however, to grant newsreel synchronization rights to foreign newsreel producers on his own without consent by GEMA.

(3) In the case of television productions, GEMA shall license the synchronization rights to television stations and their own advertising companies where their own or commissioned productions for their own broadcasting purposes and rebroadcasts are concerned. The Right Owner's approval shall be required, however, if third parties are involved in the production or if the television productions are to be used by third parties. This shall apply in particular to co-productions.

(4) In any event, the rights for television productions and other supports of sounds and images, except for the rights reserved to GEMA, shall be reserved to the Right Owner himself whenever any of the following is involved:

aa) pre-existing dramatico-musical works, whether complete, as cross section or in major parts;

bb) the use of a work (with or without words) for the production of a dramatico-musical work;

cc) the use of concert songs, popular songs or interludes from dramatico-musical works in other dramatico-musical works or dramatic works or in television productions or for other supports of sounds and images, which represent a combination of several music titles under one basic idea and with one thread of action. For television productions, the right of approval shall in all such cases be reserved to the Right Owner. The approval cannot, however, be made dependent by the Right Owner on the payment of a compensation where own or commissioned productions are involved for own broadcast purposes and rebroadcasts of the television stations and their own advertising companies. If approval is granted, accounting will be made in accordance with the distribution plan.

k) The Right Owner's right to authorize the utilization of a work (with or without words) for the production of commercials by advertisers, e.g. in (radio and television) broadcasts, shall remain unaffected.

The Right Owner does not assign to GEMA the rights to adapt, arrange and/or abridge a musical work (with or without words) for use as a ringtone melody and/or dial-tone melody. The Right Owner's right to authorise the use of such versions of works in individual cases shall remain unaffected. The exploitation rights listed under § 1 h) remain assigned to GEMA.

l) The rights in and to uses, which arise from technical or legal development of the categories of use covered by subparas. a) to i) and correspond to the rights therein, as well any rights in and to independent categories of use, which do not become known until after conclusion of the Deed of Assignment. The Right Owner is entitled to revoke in writing the assignment of rights for independent categories of use as a whole or for individual newly emerging categories of use as provided in Art. 31 a UrhG. The right of revocation shall expire at the end of three months after dispatch of the written notification on the intended commencement of licensing of the new type of use by GEMA. The written notification will be reproduced in the respective "GEMA-Brief" [GEMA Newsletter] and sent to all members.

m) The claims arising from Articles 20 b (2), 27 (1) and (2), 52 a (4), 54 (1), 54 b (1), 54 e and 54 f UrhG (German Copyright Act) as well as 137 I (5) UrhG; including the royalty claims arising from Art. 27 (2) UrhG for sheet music.

Table A: GEMA gross and settled revenues

GEMA revenue (€ million)	2001	2002	2003	2004	2005	2006	2007	2008
Gross revenue	810,537	812,511	813,617	806,208	852,223	874,377	849,599	823,007
Settled revenue	692,621	693,789	694,163	690,178	731,885	752,704	729,308	700,650

Figures for the gross revenue incorporate central licensing amounts and revenues stemming from the so-called GEMA 'incashment mandates'. The latter are mandates assigned to GEMA by other German collecting societies for the collection of royalties on their behalf.

Table B: Trade flows

Trade flows	2001	2002	2003	2004	2005	2006	2007	2008
GEMA international revenue for domestic repertoire (€)	56.374.000	57.934.000	53.545.000	51.420.000	51.857.000	52.114.000	55.007.000	55.304.000
GEMA distributions for foreign repertoire (€)	94.169.634,85	97.617.619,93	96.892.504,22	103.818.438,29	107.746.741,44	106.356.242,09	109.208.768,92	108.330.159,02
Ratio: GEMA international revenue for domestic repertoire coming from the EU Member States/GEMA distributions for aggregate European repertoire	0,71	0,77	0,73	0,66	0,65	0,67	0,74	0,72
Ratio: GEMA international revenue for domestic repertoire coming from the EU Member States excluding the UK/GEMA distributions for European repertoire excluding the UK repertoire	0,85	0,97	0,92	0,84	0,82	0,88	1,01	1,02
Ratio: GEMA	0,21	0,18	0,15	0,13	0,15	0,14	0,14	0,12

international revenue for domestic repertoire coming from the US and the UK/GEMA distributions for UK and US repertoires								
Ratio: GEMA international revenue for domestic repertoire coming from third countries/GEMA distributions for third countries' repertoires	1,80	1,48	1,31	1,44	1,11	1,16	1,05	1,24

Annex D

Table A: SIAE gross and net revenue

SIAE revenue (€)	Gross revenue	Net revenue
2001	409.398.131,86	336.983.050,33
2002	405.131.977,90	339.809.432,43
2003	429.819.198,03	359.681.826,69
2004	435.243.372,06	363.679.487,40
2005	489.703.758,31	411.160.493,84
2006	485.816.663,24	410.177.956,35
2007	473.218.571,51	399.714.827,05
2008	486.485.022,64	407.419.006,95

Annual proceeds are generally distributed via two six-month allocations taking place the year following the year of effective collection. Several factors (e.g. payments of arrears, deferred allocations, unsettled works, etc.) make a perfect reconciliation between the proceeds of a certain year and the ones distributed in the subsequent year impossible. Regarding 2008, the amounts of the pre- and after tax proceeds of SIAE's Music Section have not been consolidated yet. Provided figures should be considered as provisional.

Table B: Commission fees applied by SIAE's Music Section per classes of use

Commission fees applied by SIAE's Music Section per classes of use								
Classes	2001	2002	2003	2004	2005	2006	2007	2008
1 st - 2 nd - Non classifiable uses	22%	22%	22%	22%	22%	21%	20,5%	22%
3 rd APP-PP-EE (background music)	22%	22%	22%	22%	22%	21%	21%	21%
3 rd 4 th (live music performances)	14%	14%	14%	14%	14%	13%	13%	13%
4 th (live music performances)	22%	22%	22%	22%	22%	21%	20,5%	21%
Uses abroad (i.e. out of the Italian territory)	3%	3%	3%	3%	3%	3%	3%	3%
5 th (mechanical reproduction on audio formats)	6-10%	7,325-10%	7,325-10%	7,25-10%	7,325-10%	7,325-10%	7,325-9%	7,325-10%
5 th (broadcast reproductions by radio and TV stations)	14%	14%	14%	14%	14%	13%	13%	13%
5 th (video)	18%	18%	18%	18%	18%	18%	16-18%	16-18%
Private copy	3%	3%	3%	3%	3%	3%	3%	3%
Multimedia	18%	18%	18%	18%	18%	14%	14%	14%

Class 1st: live and recorded music for ballrooms – small performances (i.e., piano bar);

Class 2nd: cinemas (income from movie soundtracks);

Class 3rd: music broadcasted by radio and TV stations; Class 3rd/APP.PP.EE: background music played within business premises through radio, TV and cable stations;

Class 4th: Live music performances – various live music entertainment;

Class 5th:rights of mechanical reproduction on audio formats; broadcast reproductions (reproduction rights paid out by radio and TV stations); and video (rights of mechanical reproduction on audiovisual and multimedia formats); Private copying compensation; Multimedia: online rights (internet and mobile phone telephony).

Table C: Trade flows

Trade flows	2001	2002	2003	2004	2005	2006	2007	2008
SIAE international revenue for domestic repertoire (€)	35.611.180,09	36.533.168,65	31.520.696,53	31.548.484,51	29.094.553,54	29.409.843,36	30.200.708,48	29.801.276,08
SIAE distributions for foreign repertoire (€)	45.007.288	45.530.720	52.843.042	56.531.825	60.604.962	64.601.636	63.720.325	70.531.325
Ratio: SIAE international revenue for domestic repertoire coming from the EU Member States/SIAE distributions for aggregate European repertoire	1,378	1,404	1,168	1,063	0,902	0,837	0,883	0,782
Ratio: SIAE international revenue for domestic repertoire coming from the EU Member States excluding the UK/SIAE distributions for European repertoire excluding the UK repertoire	1,893	2,004	1,688	1,528	1,285	1,278	1,331	1,235
Ratio: SIAE	0,355	0,311	0,225	0,269	0,237	0,189	0,226	0,135

international revenue for domestic repertoire coming from the US and the UK/SIAE distributions for UK and US repertoires								
Ratio: SIAE international revenue for domestic repertoire coming from third countries/SIAE distributions for third countries' repertoires	0,151	0,215	0,070	0,080	0,069	0,072	0,062	0,073

Annex E

Table A: PRS for Music gross revenue

Group gross revenue (£)	2003	2004	2005	2006	2007	2008
Broadcast and online	113.380.000	122.216.000	137.886.000	143.361.000	155.540.000	180.213.000
Public performance	101.401.000	109.600.000	114.298.000	121.812.000	133.607.000	146.647.000
Revenue from foreign collecting societies	92.190.000	92.933.000	101.679.000	109.874.000	121.223.000	139.759.000
Mechanicals	152.829.000	152.612.000	163.722.000	158.851.000	143.135.000	135.018.000
Mechanicals ECL	46.011.000	33.865.000	3.731.000	3.239.000	238.000	0
Ireland	4.262.000	5.758.000	6.214.000	8.450.000	8.411.000	6.579.000
Total	510.073.000	516.984.000	527.530.000	545.587.000	562.154.000	608.216.000

'Mechanicals ECL' represents the figures associated with a European central licensing deal of MCPS. The deal ended in 2004. As to 'Ireland', in accordance with the information provided by PRS for Music, MCPS is appointed by its members to license and collect mechanical rights for the UK and Ireland.

Table B: PRS for Music net revenue

PRS for Music net revenue (£)	2003	2004	2005	2006	2007	2008
Gross revenue (incl. ECL)	510.073.000	516.984.000	527.530.000	545.587.000	562.154.000	608.216.000
Gross revenue (excl. ECL)	464.062.000	483.119.000	523.799.000	542.348.000	561.916.000	608.216.000
Non-licence revenue	6.485.000	7.636.000	9.153.000	8.519.000	10.076.000	10.824.000
Costs: Mechanicals	17.338.000	17.668.000	19.024.000	19.184.000	19.048.000	19.486.000
Costs: Performing	41.738.000	43.591.000	44.619.000	43.084.000	43.958.000	47.194.000
Other PRS deductions	2.406.000	2.320.000	4.979.000	6.707.000	3.731.000	3.181.000
Net distributable income (incl. ECL)	455.076.000	461.041.000	468.061.000	485.131.000	505.493.000	549.179.000
Net distributable income (excl. ECL)	409.065.000	427.176.000	464.330.000	481.892.000	505.255.000	549.179.000

Table C: MCPS distributions, commissions and costs

MCPS distributions, commissions and costs (£)	2001	2002	2003	2004	2005	2006	2007	2008
Distributions (incl. ECL)	226.802.000	221.407.000	226.881.000	219.316.000	212.441.000	209.590.000	190.518.000	184.472.000
Commissions	12.094.000	12.485.000	13.832.000	14.203.000	16.251.000	16.030.000	15.210.000	15.492.000
<i>Ratio: commissions to distributions</i>	5,3%	5,6%	6,1%	6,5%	7,6%	7,6%	7,9%	8,4%
Costs	17.012.000	16.931.000	17.338.000	17.668.000	19.024.000	19.184.000	19.048.000	19.486.000
<i>Ratio: costs to distributions</i>	7,5%	7,6%	7,6%	8%	8,9%	9,1%	10%	10,5%

Table D: PRS distributions and costs

PRS distributions and costs (£)	2001	2002	2003	2004	2005	2006	2007	2008
Distributions	221.093.000	231.383.000	242.507.000	256.233.000	271.257.000	291.328.000	325.854.000	367.163.000
Costs	37.454.000	39.242.000	41.738.000	43.591.000	44.619.000	43.084.000	43.958.000	47.194.000
<i>Ratio: costs to distributions</i>	16,9%	16,9%	17,2%	17%	16,4%	14,8%	13,5%	12,8%
Other deductions	1.906.000	1.810.000	2.406.000	2.320.000	4.979.000	6.707.000	3.731.000	3.181.000

Table E: Trade flows

Trade flows	2003	2004	2005	2006	2007	2008
PRS international revenue for domestic repertoire (£)	92.189.810	92.932.447	101.678.832	109.880.925	121.224.696	139.986.879
PRS distributions for foreign repertoire (£)	42.786.056	56.724.873	58.990.261	62.379.483	63.493.356	72.205.373
Ratio: PRS international revenue for domestic repertoire coming from the EU Member States/PRS distributions for European repertoire	7,98	6,00	6,32	6,34	6,56	6,71
Ratio: PRS international revenue for domestic repertoire coming from the US/PRS distributions for US repertoire	0,68	0,47	0,46	0,44	0,46	0,41
Ratio: PRS international revenue for domestic repertoire coming from third countries/PRS distributions for third countries' repertoires	4,84	4,06	4,93	4,94	5,22	4,84

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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