



Brussels, 8 October 2018

European Composers and Songwriters Alliance (ECSA)

Submission to the European Commission on Sony's acquisition of sole control over EMI Music Publishing

The European Composer and Songwriter Alliance (ECSA) represents over 50,000 professional composers and songwriters in 25 European countries. With 54 member organisations across Europe, the main objective of the Alliance is to defend and promote the rights of authors of music at the national, European and international levels by any legal means. It advocates for equitable commercial conditions for composers and songwriters and strives to improve social and economic development of music creation in Europe.

ECSA would like to express its concerns and object to Sony's bid to take sole control of EMI Music Publishing, as notified to the European Commission on 21 September 2018. If approved, we believe that such an acquisition will threaten competition in the licensing market, endanger ultimately music author's revenues across the EU and ultimately jeopardize cultural diversity in the European music landscape.

1) The Sony/EMI acquisition raises serious competition concerns.

If approved, such a merger would not only create a major music player with very significant power across recording, and publishing interests but also a dominant entity across music licensing and administration. As digital streaming grows to become the dominant income source, this would result in considerable harm as Sony would be able to dictate terms to online services at the expense of competitors, authors, and consumers. In 2012, the European Commission rightly raised concerns over the increasing size and dominance of Sony at the time of the sale of EMI and required divestments to authorize the purchase. We believe that the same concerns remain entirely valid today and that the EC should continue to require the separation of EMI MP from direct control of Sony to avoid negative effects.

2) By dismantling the collective management of rights, the Sony/EMI acquisition will endanger music author's rights and revenues.

Music authors' revenues are dependent to a large extent to the efficient collective management of their rights by national Collective Management Organisations (CMOs) across the EU. They generally benefit from the control, transparency and involvement in decision making that collective rights management provides. ECSA supports high standards on governance and transparency for CMOs and has been supportive of the Collective Rights Management Directive adopted in February 2014.

With such high transparency and management standards, CMOs provide transparency to music authors and certainty of repertoire for the licensing of new services, through comprehensive licences, including online. Those advantages are underpinned by the fact that, in Europe, writers assign their relevant rights (performing right and in many instances their mechanical right) exclusively to the CMO's of their choice. This exclusive assignment is therefore crucial to music writers and is also beneficial to users and consumers.

However, the rapid growth of digital services and online licensing has seen rights removed from national collecting societies to be licensed via direct licensing vehicles on a multi-territorial basis. By withdrawing their rights from CMOs, major publishers are increasingly attacking the principle of exclusivity of assignment and putting in danger the collective management of rights. Sony itself has stated that performing rights would be better licensed and administered by publishers than via the existing CMOs. In our view, by putting at risk collective management, such a trend has a detrimental impact on transparency, control/choice for music authors since a) no such standards exist in the management and distribution of royalties to creators from publishers b) unlike publishers, CMOs in most cases licence at published rates and do not discriminate between users in the licensing process.

In addition, the very few major music groups (with both recording and publishing rights) increasingly maximize the allocation of revenues to recording rights over publishing rights, as they will retain a greater proportion of these revenues as profit - to the detriment of music authors that usually get a major share of the publishing rights. Such a bias is made possible because of the inherent conflict of interest in those major music groups such as Sony. This is unfair and ultimately results in a loss of revenues for music writers. ECSA considers that both rights should be treated in a similar manner and deserve an equal share. This problem will only exacerbate if the European Commission allows the acquisition of sole control by Sony over EMI Music Publishing.

We are also concerned by the size of mandates exercised by major publishers within CMOs. The assignment of relevant music author's rights to collecting societies is made by writers directly but major publishers have exercised pressure over the CMOs to allow these rights to automatically flow out of the CMOs. If approved, the creation of a de facto dominant publisher will further exacerbate this trend and contribute to dismantle the collective management of rights which benefits not only hundreds of thousands music authors but also independent music publishers.

3) The Sony/EMI acquisition will jeopardize cultural diversity in the European music landscape.

ECSA Members have usually experienced a deterioration of services when their rights have been transferred from one publisher to a major corporate group with a very vast repertoire. In this case, music authors should expect that their works are known to the publishers and duly exploited. Experience suggests the opposite. Indeed, major groups often focus on the most valuable rights (with a domination of the Anglo-American repertoire) and tend to neglect the exploitation of other rights.

The most financially valuable Anglo-American repertoire is often only available through separate licensing entities but not available as other repertoire rights, which remain largely within collecting societies. This is explained by the fact that major publishers can achieve

more aggressive terms, by licensing directly rather than through CMOs and are using their market power to exploit and promote only certain authors without providing access to the market to a majority of them. We therefore have serious concerns that the formation of a major super power will only exacerbate this trend and result in a net loss for cultural diversity and consumer choice.

In conclusion, ECSA considers that the concerns expressed by the European Commission in 2012 for the sale of EMI remain entirely valid today. We therefore urge the European Commission to block the acquisition of sole control by Sony over EMI Music Publishing to resist 1) serious competition issues with a reduction of the number of large publisher catalogues, 2) a threat on music authors' revenues and on the integrity of collective management 3) a net loss for Europe's culturally diverse landscape.