

POSITION PAPER  
ON  
COLLECTIVE RIGHTS MANAGEMENT

**1. Introduction:**

The European Composer & Songwriter Alliance (ECSA) is the voice of composers and songwriters of all music genres across European level. ECSA represents 36 organisations of Composers and Songwriters in 28 European countries and speaks for over 100 000 European composer and songwriter. It is formed by the three main genre specific federations of composers in Europe:

- APCOE - the Alliance of Popular Music Composers of Europe,
- ECF - the European Composers Forum (The Association of Art & Classical Music Composers in Europe);
- FFACE - the Federation of Film and Audiovisual Composers of Europe.

ECSA's aim is to ensure effective protection of music authors at the highest level before the European Institutions (Commission, Council, Parliament and Economic and Social Committee) and before international institutions such as WIPO, Council of Europe, WTO and UNESCO;

ECSA believes in cooperation with the European and international institutions in charge of the drafting and implementation of European and international legislation concerning music authors rights, in order to defend and promote music authors' rights at national, European and international levels.

*In detail this means:*

1. joining the efforts of European music authors organizations and/or federations in order to ensure that the voice of music creators is duly taken into account both at the European and international level;
2. protecting and defending music creators' rights both at the European and international level;
3. reinforcing the perception of the cultural and economic value of music in Europe and the world;
4. creating and inspiring European and international politicians and regulators to encourage the creation of new music of all kind;
5. actively supporting the principle and development of authors' rights ("droit d'auteur") and defending the collective management of authors' rights; substantially contributing to the work of the European Union and UNESCO on the "Statut de l'Artiste" and the "Déclaration sur la diversité culturelle"; and
6. creating fair commercial conditions for all the music authors and composers and encouraging the adoption of "codes of conduct" in order to ensure the social and economic development of music creation in Europe.

## **2. Only writers can speak for writers**

It is important to stress that without creators there is no creative content to fill the digital pipes provided by ISPs, MSPs or broadcasters. All rights flow from creators and although they may license or assign those rights to publishers or the collecting societies, only writers can speak for writers. Therefore representatives of Authors' Societies and publishers can only speak for themselves and their views should not necessarily be taken as those of the creators who underpin the music industry.

Authors' have by far the biggest investment in how their rights are used. It is the music writer who is the main financial (and moral) beneficiary from Authors' Societies.

## **2. Dangers of Legislation – A blunt tool:**

For the author it is therefore crucial that Authors' Societies provide an efficient, cost effective and transparent service for the members, users and society as a whole. This model worked offline very well as is demonstrated by the granting of blanket licences to broadcasters.

However the system is not working in the online world – licensing for online use is becoming increasingly complicated, expensive and time consuming. Licensing control of the repertoire is fragmenting and there is a danger that minority repertoire will be ignored if it is not licensed with the Anglo-American repertoire.

Unfortunately the recent history of EU interfering with Authors' Societies is problematic – the implementation of the 2005 Commission Recommendation led to the unforeseen consequences of fragmenting the repertoire and makes online licensing more complicated. Regrettably, the concerns of music writers were not heeded.

Legislation can be a blunt tool and any proposed legislative solution must be subject to the most rigorous consultation and assess diligently all possible impacts. All the more when it impact might constrain the creation of music and thus having profound effects upon Europe's cultural diversity.

Option 3 has allowed the major publishers, who control much of the vital Anglo-American repertoire to withdraw mechanical rights from the system of Authors' Societies. This has been done without consulting writers.

The only way to resolve this without damaging the interests of writers and cultural diversity in the EU is to re-aggregate rights to Authors' Societies – in the UK this could be done by making the mechanical right follow the Performing right and allowing the authors rather than anyone else to choose which society should control the rights to their works.

Evidentially, users have a legitimate expectation that licensing music will be made as simple and as possible and it is in the interests of right holders to ensure this. However there is a balance to be struck and it may be that, for the present a one stop shop (which is efficient for users) is not a realistic aim. Perhaps it would be more realistic to have a four or five stop licensing with regional licensing "hubs".

### 3. Importance of Authors' Societies to Creators

For writers of music Authors' Societies are vital. Authors are the main interested parties in this debate and any system must accommodate their requirements as they are the originators of the works which are the heart of the digital revolution.

Authors' Societies provide:

- Transparency – when they are run on not for profit, non conflicted basis so all income, less necessary costs, can be distributed according to rules which are open to all, equal and non-discriminatory.
- Certainty of repertoire – can encourage licensing of new services through comprehensive licences
- Protection of Copyright/Authors' Rights – hard for the individual to do.
- Encourage Investment in copyright databases – leads to efficiency of licensing and distribution.

All of the above advantages are underpinned by the fact that that in Europe writers assign their performing right (and in many countries their mechanical right as well) exclusively to the Authors' Society of their choice.

**Exclusive assignment** is thus crucial to music writers. Recently major publishers, who speak for themselves on this issue and not for writers (or for that matter independent music publishers), have attacked the exclusivity of this assignment. If the exclusive assignment is lost writers and independent publishers will face:

- Lack of Transparency
- Lack of control and choice
- Rights grab
- Reduction of cultural diversity – increased domination of Anglo-US repertoire – Art 151 (4) of treaty “the community shall take cultural aspects into account in its action under other provisions of the treaty, in particular to respect and promote the diversity of its cultures”
- Decline of collective management of rights

### 4. What writers of music want from EU Legislation:

Whilst Europe's writers support the idea of collective management of rights as the best way forward, we are aware that not all Authors Societies, even within the EU, are paragons of transparency, fairness and efficiency.

The EU can play a useful role in:

- Setting minimum standards for constitution and governance of Authors' Societies – including writer/publisher representation and conflicts of interest so that all societies are brought the standards of the best.
- Establish minimum standards to qualify as an Authors' Society
- Harmonize and simplify rules relating to the oversight of Authors' Societies – including rate setting tribunals
- Encourage major right holders to engage in re-aggregation of rights