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## Meeting of the Production Music Committee 29 September 2017, Warsaw

**Attendees:** Dan Muraru, Laurentiu Olariu, Alessandro Pinnelli, Andrei Filip, Horea Pascu, Juliette Metz, Alexeev Anton, Dmitry Mayko, Anna Laskowska, Włodzimierz Szadzinski, Anna Markowska, Katarzyna Kieliszek, Damian Słonina, Magdalena Niestryjewska, Janusz Olechowski, Martin Nedved, Yassine Watson-Bedaisi, Ewa Zając, Maciej Stadnik, Piotr Zawadzki, Stanislava Armoutlieva, Boris Nikolov, Paul Carter, Jonnie Macson, Csaba Faltay, Marton Pracski, Patrik Appelgren, Alex Batterbee, Mimmi Bashiri, Tomasz Włodarski, Ali Cosar, Agnieszka Szczerbiak, Justyna Masalska, Alex Black, Petr Bělohlávek, Rotheide Narholz, Gerhard Narholz, Krzysztof Barcik, Rafał Salamon, Irina Loukatou, Stefanos Ganos

### 1. Welcome and Introduction

Juliette and Martin set out the remit of this Committee, which is to share information, learn from one another and find ways to work together. The Committee aims at centralising information and best practices shared by members in order to be able to learn from developments in different territories and to share solutions that have worked in the past. Active participation and communication are key. In this regard, Juliette reminded participants of the PMC website as well as its LinkedIn and Facebook pages. Minutes of PMC meetings will be posted on the website.

Alex noted legal actions against Audio Jungle, mentioning that some publishers have joined forces to combat the buyout culture. It was agreed that it is important for publishers to inform their clients about this development so that they are aware of the illegality of these type of platforms.

### 2. EU copyright reform, focus on production music

DG explained ongoing developments on the EU's copyright reform, focusing on two legislative files: the proposal for a copyright Directive, and the proposal for a Regulation on copyright applicable to certain online transmissions of broadcasting organisations and retransmissions.

Regarding the former, and of interest to production music publishers, are the provisions on the value gap and the best seller clause.

On the value gap, ICMP's aim is to ensure a clarification of what constitutes an act of communication to the public and wording stating that when platforms engage in such acts, they should be obliged to enter into licensing agreements with rightsholders.

On the best seller clause, it was noted that there is a provision, according to which authors would be able to request additional remuneration from publishers when the remuneration originally agreed is disproportionately low in comparison with the subsequent revenues. It was agreed that



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this clause could play to our advantage, preventing the buyout culture; with this clause in place, buying out rights would not stop authors from re-negotiating contracts.

The legislative process could take longer than expected as there are delays in the discussions both in the European Parliament and the Council.

Regarding the broadcasting regulation, the proposal aims to expand the country of origin principle to online services. This would lead to forum shopping and to a negative impact on the cost of the services as the tariffs would be set in the territory of the uplink being difficult to assess their real value in the country of destination/exploitation. In terms of lobbying, the music sector is aligned with audio visual and private broadcasters.

### **3. Update on national developments**

Spain - DG informed about developments in Spain. In July, WIPO issued a binding decision on the arbitration procedure initiated by Spanish music publisher associations (Organización Profesional de Editor's de Música – OPEM, and Asociación Española de editors' de Música – AEDEM) on the issue of CMO SGAE's distribution rules for income received from television.

The ruling brings an end to the practice known as 'la rueda' (the wheel), which involved a manipulation of television revenue, permitting music played during the night and inaudible music played during the day, to receive royalties that were disproportionately higher than the content's market value.

Music publishers in Spain are generally satisfied with the outcome of WIPO's decision. SGAE's Board recently ratified WIPO's decision and the first distribution with this new rule is expected to come into force in December. This does not however mean that the change in the rules will happen seamlessly or swiftly.

A trend that has developed is public television broadcasters establishing their own music publishing companies and using only in-house published music for their television productions. ICMP will investigate in which territories this is most common and the PMC can decide whether it is worthwhile to continue having a dialogue with the European Broadcasting Union and EU composers. (This dialogue was initiated by ICMP and French CSDM, and could possibly recommence as a group effort).

Greece – DG informed all about AEPI's (Greek CMO) difficult situation. With huge debts, the CMO is no longer seen as viable. In addition, following the implementation of the Collective Rights Management Directive, the CMO, which is considered an IME (independent management entity), has not agreed to include publishers on its supervisory board. Music publishers there agree that an alternative solution is necessary. CMO Autodia (a recent full CISAC member) could be one option but lacks the IT infrastructure and network to be efficient.

France – Juliette informed participants about a code of conduct between authors and publishers which has been finally adopted in France after difficult negotiations. The outcome is good for



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publishers. Juliette warned participants to monitor if something similar is being discussed in their respective countries and to actively participate in the process if this is the case. It is important that all sectors of music publishing (including production music) are taken into consideration and reflected in such codes, to avoid difficulties when signing contracts with authors in the future.

#### **4. Neighboring & production music, state of play and way forward**

Martin spoke about the problem of production music often being seen as non-commercial and informed all about a survey to be circulated to all participants after the meeting, seeking information about practices in different countries. There was a roundtable discussion about how neighbouring rights are considered in territories represented at the meeting.

Turkey – Ali noted no difference between commercial and production music and prime time and off time, adding that while public broadcasters could pay a licensing fee, private companies don't pay anything for music libraries. Ali was hopeful that with Turkey implementing the EU acquis, the situation may change.

Romania – In Romania there are two societies; one for master recordings and another for performances. Production music publishers are included in the society. In the past, they didn't receive any royalties as this music was not considered as being commercially released. Publishers needed to prove that albums had physically been available in shops. Some years ago, a composer of jingles went to court against the society and this approach has changed.

Germany – Performing rights societies refused to pay PMP until a judgment was delivered by the Highest Court of Germany, according to which, music is considered to be released even if distributed on tape to a radio station. ICMP Secretariat will send an English translation of this judgement to the group.

Italy – SCF is the society collecting both performing and master rights. However, you can collect even if you are not a member. Broadcasters RAI and Mediaset pay neighbouring rights, but not Sky, although SCF is trying to get them to do so.

Poland – There are separate societies for producers' rights and authors' rights, and production music is unable to collect royalties as there are clauses in the contracts with broadcasters stating that no income can be collected from neighbouring rights.

Bulgaria – Stanislava noted that production music publishers can be full members and even board members of the society, and that no discrimination against this type of music takes place.

Nordic countries – Music publishers are not yet members of the neighbouring rights society, and the lumpsum obtained for production music is unacceptably low.

Greece – A complaint was filed by publishers to the Ministry of Culture to stop discriminating against this type of music.



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The conclusion of this roundtable discussion was that the argument used by neighbouring rights societies of commercial vs. non-commercial releases happens in several countries. It is important to ensure the application of the WIPO internet treaties, in which it is clearly stated that anything that has been posted on the Internet should be considered as a “commercial” release. Correct application of WIPO treaties is necessary in all EU Member States, as these countries are all party to them.

#### **5. Issues with CMOs**

It was explained that some commercial entities are recently entering the collective management market. Considering the CRM implementation, some Governments see the entrance of these for-profit companies as a way to end the legal monopoly of CMOs and are considering carrying out a complete liberalisation of the collective management market. From ICMP’s perspective, competition is desirable but these entities need to comply with certain requirements of the Collective Rights Management Directive, such as transparency.

Another complex topic discussed was the lack of transparency on licensing agreements due to NDAs (non-disclosure agreements) that CMOs sign with platforms, how major platforms license mechanical rights and whether publishers are being pressured to enter into buyouts.

**Next meeting will take place in Bucharest in September 2018**