Collecting Society Code of conduct

Introduction

Collective licensing is essential. It ensures fundamental income for composers, artists and performers as well as music publishers and record labels. Currently record labels, in particular independents/SMEs, face serious difficulties in obtaining public performance, broadcast and other revenues that are due to them in Europe and elsewhere outside their home territory. Apart from some bilateral agreements, these revenues simply do not flow in Europe and internationally. Even established companies in the business for 30 years face multiple barriers. There is no system of reciprocity among record company collecting societies. Record companies have to register with each society, working in over 20 languages, with different rules.

This effectively makes it impossible for most independents/SMEs to collect their public performance, broadcast and other revenues outside their home territory. This is a clear barrier to mobility and free movement.

The aim of this code of conduct is to encourage record company collecting societies to solve these problems via common standards to key issues such as membership, governance, transparency and equal treatment of SMEs active as record producers. The overall objective is to ensure proper flow of revenues across borders in Europe and internationally. This draft is based in particular on the practical experience of thousands of established SME labels.

i. Retroactive payments (the period varies, but could be 6, 10, 13 years) for unclaimed money (i.e. societies should not be able to insist on companies forgoing accrued revenues (currently the case in the UK and Germany for example)).

ii. Lists of unclaimed monies to be published internationally every year.

iii. Membership to be open to all. Application forms to be available in English.

iv. ISRC codes (and not country specific codes like the LC code required in Germany for example) must be established as sufficient for correct payment.

v. Societies to refuse multiple ISRC registrations for the same track. Societies to pay registered ISRC owners only (who would then account to their licensees under the terms of their licences. (Current practice is the opposite with the licensee generally collecting the performance revenues)).

vi. Broadcasting revenues should not be distributed on retail market share but on real useage data which licensees should be obliged to provide. There should be no weighting of plays according to time of day/night ie all plays should be given equal ranking. For performance and private copying exploitation where there is no detailed useage data, commercial broadcasting data should not be the default especially where market share data includes more repertoire. Where market share data is used, it should be at least top 200.

vii. There should be no requirement for a locally registered company or bank account in the territory (e.g. as currently required in Switzerland).

viii. Societies should not discriminate between members in terms of the fees they seek from licensees, or the management fees that the society charges, or their distribution policies.

ix. There should be no distinction (in the collecting society system itself, or the regulation of pan-European licensing, or as a consequence) on the basis of repertoire origin. This was one of the unfortunate consequences of the 2005 recommendation where Anglo-American repertoire became separated in practice to local repertoire in terms of on line music publishing rights.

x. A global track based database should be top priority with neutral management and equal treatment for the majors and the SMEs in terms of approval of database build/functionality, membership, management fees, access to data and participation in earnings. Local repertoire should be included on an equal basis.

xi. Ultimately the industry should aim for a structure with a single global society with strong local offices and a single database.

xii. Societies should agree a system of reciprocity to ensure proper flow of revenues.

xiii. Track based accounting should be standard.

xiv. Common accounting standards should be agreed.

xv. Effective dispute resolution procedures should be agreed.

xvi. Collecting societies and national trade associations should be separated both in terms of structure and management.

xvii. Where a proportion of monies can be or must be used in the "general interest" this can also mean strengthening the local SMEs and local professional music sector including their trade associations.

xviii. Where monies are diverted to support trade body costs such as anti-piracy or other, the independent/SME trade body in the same territory should receive the equivalent financial support.

xix. Where monies are used for purposes such as anti-piracy, the actions must be in the interests of all society members, including SMEs who should also share in any proceeds.

xx. A significant proportion of unclaimed monies is the revenues that are currently not flowing to independents/SMEs all over the world due to the problems highlighted above. Since most have no means to collect this, the revenues should go to the independent community. It should be distributed to the independents/SMEs based on their share of total (ex major) revenues distributed in the previous year.

xxi. Each society will ensure that its membership, distribution and other rules encourage diversity and new music and will agree a percentage of revenues to be allocated amongst professional members - not on useage data or market share basis but on a "solidarity basis". In recorded music we recommend 5 to 10% be shared on the basis of the number of new copyrights registered during the year or on some other basis to promote diversity and new music, such as allocating more to recordings which have not been played on the radio before. This type of approach is standard practice in other sectors, such as sport, to improve the competitivity of the smaller actors and encourage investment in new talent.