

Andrus Ansip

Vice-President, Digital Single Market

Günther Oettinger

Commissioner for Digital Economy and Society

European Commission, Rue de la Loi 200 1049 Brussels

Maria A. Pallante

United States Register of Copyrights and Director US Copyright Office

Jacqueline C. Charlesworth

General Counsel and Associate Register of Copyrights

U.S. Copyright Office, 101 Independence Ave. S.E., Washington, D.C. 20559-6000

Luxembourg, 21st May 2015

Open letter on Record Label and Music Publisher Deals in the Digital Market

Dear Policy Makers,

As the European Commission is implementing its Digital Single Market Strategy including the pillar of maximising the growth potential of the digital economy; and as the music industry absorbs the United States Copyright Office's report on Copyright and the Music Marketplace, which covered "Licensing Efficiency and Transparency", and many other important policy makers around the world review copyright, and the copyright industries, we, The International Music Managers Forum (IMMF), a trade association representing artists and managers around the world would like to share our observations on some of the dysfunctionality of the music market.

Instead of mystery deals hidden from the artists whose copyrighted creations the deals exploit there should be an obligation for transparency. Digital promises greater transparency than the old physical markets. The artists sign deals with labels and publishers. We don't just want artists to be paid fairly, we also want them to get the relevant usage data. *It is impossible to prove fair remuneration is occurring without transparency.* In copyright debates it is important that creators, and their representatives are heard from, labels and publishers are our "partners" but we don't always have the same interests.

We have long been *calling for greater transparency concerning the accounting of royalties to artists from both record labels and music publishers.* So we were intrigued to see The Verge website reporting that they had obtained a 2011 agreement between a major label (Sony) and a streaming service (Spotify): <http://www.theverge.com/2015/5/19/8621581/sony-music-spotify-contract>

illuminating

In the Verge's Sony/Spotify term sheet, Clause #4 shows advances of over 40 Million USD paid to the label. This money is for a streaming service operating in Canada and the US only, but of course it uses music from around the world, these "advance payments" relate to artists from around the world. IMMF members include *artists and managers from around the world*. From the United States to Estonia, and from Germany to New Zealand.

There are many other interesting clauses in the leaked document, such as #14 "Advertising Inventory", which sees the label earn free and discounted advertising as one inducement for its licensing music to the service. We note that *labels only earn any share of the income from artists' recordings on the basis that the label will support the artists/recordings in a number of ways*. One of the fundamental ways labels support artists is through marketing the recordings. Labels take on marketing obligations, and in return labels earn a large share of the royalties. *If a label is trading music rights for any income that is not royalties*, for example a label is receiving advances, or a label is receiving free advertising (lowering the labels marketing costs) *should this alter the basis upon which royalties are shared between labels and artists?* Let's not forget the labels also own shares in Spotify.

Data

Clause #15 covers "Additional Reporting And Data Sharing", and suggests labels have access to *online real-time detailed statistics and usage data*. We are used to seeing detailed granular reporting from many of the digital music services, and the music distribution companies who deal with digital music services. Do all record labels intend to pass on usage data to relevant artists?

We take this opportunity to remind policymakers that artists only make deals with music rights holders (labels and publishers) in order to have the music exploited *for the artist*. *Artist's earnings are based on copyright, whereas label and publisher earnings are based on servicing artists*. When artists are trading their rights in business agreements with labels, publishers, and collective management organisations the *agreements need to function to incentivise creativity*. Copyright markets need to function efficiently in the B2B (creator to intermediary) phase, and not only in B2C (intermediary to consumer) terms

Hidden Terms

Music is at present often exploited under clouded terms in hidden deals, with complex formulae used to calculate royalty rates, and with little transparency regarding source values. *Artists should have access to all relevant information concerning all exploitations of all rights*; any contract where a label or publisher waives the artist's right to receive such information should be considered void.

We are not against commercially relevant Non-Disclosure Agreements (NDA's). We (artists and their representatives) just want the basic information relating to usage (of the music and the artist's name and likeness) to be shared with us by our commercial "partners", the labels and publishers. The information relating to ad-revenue services, subscription services, equity stakes, technical payments, marketing payments etc, is as relevant to an artist and their representatives as the information artists expect to receive relating to vinyl records or CD's. Digital should bring transparency and granularity.

Out With The Old

Significant problems in music arise from a number of “standard practices” clung to by record labels, music publishers, and found in Collective Management Organisation rules and regulations. These practices developed incrementally over a long period of time as a series of responses to a series of changes in how music was sold before the digital market arrived. Many of those practices relate to redundant formats and business models, and are simply out of date. However *the relative weakness of artists in terms of negotiating with other industry stakeholders makes it extremely difficult for artists and their representatives to lead modernisation in the music industry. We see the opportunity of digital and we want to grasp it.*

Consumers and innovative services have been change agents in terms of how music is consumed. *Creators could also drive progress delivering even greater diversity of both creators and of content... if fairness and transparency was reliably expected in the music industry.*

There is a blockage. How music is delivered to consumers has been transformed by the opportunity of digital, however creators are left with a back office infrastructure, which has not yet been transformed by the power of digital innovations (and therefore ultimately consumers are also disadvantaged). A lot of the issues in the music industry arise from the failure to fully *seize the digital opportunity to restructure business practices*, and deal terms to reflect the changed environment.

In With The New

The technology exists to remove the blockage. Only two positions in the music value pipeline are essential: i) creators and ii) consumers: Fan to artist, artist to fan. The purpose of copyright is to foster creativity. *The purpose of a digital market is to benefit creators and consumers.*

We asked in 2014 if ALL the value won in the negotiations by the rights holders (labels and publishers) with digital music services is shared with the artist? We knew then that artists tend not to see the deals that are being done by the rights holders (labels and publishers) who represent the artist’s music. The artist relies either on trust, or on expensive auditors and lawyers to ensure that they (the artists) are getting their fair share.

Kind regards

Kari Karjalainen (IMMF Copyright Committee chair)
Volker May (IMMF Vice-Chair)
Olivier Toth (IMMF Executive Director)
on behalf of the International Music Managers Forum