IMMF thoughts on digital licensing

Artists and Consumers need a working market place for (music) copyrights. To have a working market place we need the following:

1. The *most essential* thing is an international database of songs (eventually linked also to associated recordings), preferably one single database, but functional, accessible, "working" databases is the main requirement. The function of the database should be to identify the creators behind each song and to point the creators (and any intermediary rights holders they have contracted with) to the users, and to also point the users back to the creators (rights holders). The users (licensees) have the greatest need for this information; they need clarity of risk and of cost before investing in music rights. An international database is in the best interests of creators (authors and featured performers), it is essential in order to: a) create a functioning market place for all kind of music (for licensors and licensees); and b) to ensure that the pipeline of license remuneration (the money and the data) can be effectively monitored and audited.

2. Copyright legislation should be harmonised globally, starting regionally (for example across the EU countries); to the extent that: a) EU-wide licenses can be easily provided; and b) the legal presumption would be that digital licensing agreements include ALL the so called economic rights. Economic rights i.e. the right to use, make, copies, make available, modify, make derivative work's from; hence the rights owner (who has licensed a song) would be left only with the protection of "moral rights" (parental rights and a protection against defamatory use of the work). Splitting rights territoriality and/or based on old licensing models, is not logical or efficient in the digital worldwide market place, we have arrived at a time of mass usage, enabling that is a common good, and delivers further opportunities.

3. Copyright legislation should be harmonised in EU countries such, that collecting societies (or equivalent mass license providers) should each have the same basic rules (including cross-border licensing and frequent third party auditing) these rules and the harmonisation of society practices would make the societies transparent. The aim is to develop collective bargaining machines, licensing automats for mass usage of music by a greater number of users. The societies would also represent all creators (blanket license + "orphan" creators) in their "jurisdiction". Local issues, cultures, and languages, can still be represented within an international grid, it does not follow from a convergence of rules and systems that a convergence of control and accountability is essential. The topic of national versus supranational bodies is an ongoing debate, but central databases and rules can occur regardless, and the needs of creators locally to have the support of a local society (PRO/CMO) that they can hold accountable may be advantageous, especially to creators in smaller markets. The agenda here is for mass usage, and confident and engaged creators.

4. Collecting societies (or equivalent mass license providers) should have the right to give licenses for **"Mass usage"** when the licensed song has already been released digitally in a territory. A mass usage license is here defined as: a license for non-exclusive reproduction and for making available, for mechanisation, for streaming and downloads by a pay-per-listen/view, subscription, or ad-rev funded model, or other large catalogue offerings, and for the end user to have the right to amend the song. Remembering that the original creators should have the right to receive remuneration from every phase of redistribution. There should be no economic rights for creators of user-generated content. There should be the presumption that the creator of amendment (arranger, translator) gets no royalty for her work, but if one adds new content into existing art (i.e. performance to lyrics or visual to audio) these added features could have an independent economic rights. User generated content (UGC) would however create parental rights (moral not economic) to the UGC creator.

5. The rights holders (original creators, publishers, producers) would license rights for **"Individualised usage/Direct licensing"** (definition here: individual/direct is **exclusive**; for example score music, product campaigns, special physical products (vinyl, cd, etc.) for a **limited period of time** before digital release in relevant territory. Once music has been licensed for mass-usage you can no longer individualise licensing (for example block territories).

6. In a single case if a rights holder declines to answer a correctly served license request for "Individualised usage/Direct licensing" the relevant societies (or equivalent mass license providers) should have the right (after a notice period) to license the right of such "orphan" creations for the price agreed with the original creator / the industry standard price. Also, if the creator does not register a song with the database they don't get paid. The database takes handling fees from licensors and licensees to cover the costs. The party/parties granting licenses (using the database) will take their service fees from licensors and licensees. These latter services and fees should be open to competition, but so that a single license provider should be obliged to give service to any artist for the same service fee. Mass license providers distribute the remuneration according to the split declared in the database. No secrets, open market, transparent, the best and most efficient licensing services prevail.

7. If a licensee (rights holder) declines to exploit the music, all the rights should revert / transfer to the creators; the rights holder (producers) neighbouring rights should revert from the producer if a recording is not kept available for consumers digitally. This will increase the availability of content to citizens, and support creators.

8. All Mass Usage rights should be available to be licensed worldwide from any of the Mass License providers that control any of the rights in the work. It should be the license providers' problem to find the additional rights required to use its own rights, not the licensees (customers).

9. Collecting societies should have the right to license even those works that are not in the database but they should be obliged to remunerate only those works that have been registered. Collecting societies should safely preserve the monies received but not distributed them until the correct owner is found. The same would apply in the case of competing claims. It is open for discussion as to if it should be the same collecting society who decides, or if another collecting society or other adjudicating body should decide which claim is valid).

10. There should be a dispute resolution body for claims concerning registrations in the Database (i.e. EU trademark system and OHIM). Civil and criminal cases between parties should be left to member states' courts.

11. Lyrics and audio-visual recordings should be registered in the database and clauses from 1-9 should be applied, because now and in the future the end user (and therefore the content providers to consumers) do not distinguish the arcane differences between the fragments of rights forming each chunk of music for the consumer, and they (end users and content providers) couldn't care less.