

Brussels, 12 September 2005

**Commission staff working document of 7 July 2005  
“Study on a Community initiative on the cross-border collective management of  
copyright”**

**HOTREC<sup>1</sup> comments**

The Commission staff working document analyses three alternative strategies for improving cross-border collective management of online music services: (1) leave it up to the market, (2) review the reciprocal representation agreements of collecting bodies or (3) give right-holders the choice of authorising a collecting body of their choice to manage their works across the entire EU. The working document assesses the third option as the most likely to bring about efficient cross-border copyright management, including multi-territorial licensing, and boosting on-line music sales.

We note that the working document represents a radically new approach to copyright management as compared to the plans set out in the Commission’s 2004 Communication<sup>2</sup>. The latter concluded that a legislative framework on good governance should be introduced with regard to collecting societies, their establishment and status, relationship with users and rightholders, as well as external control. Strangely enough, the apparent u-turn in policy is not explained or even referred to in the working document.

HOTREC strongly regrets the new approach taken in the working paper. It represents on almost every account a step backward compared to the 2004 Communication:

- (i) *it only applies to on-line copyright services, hence excluding the large off-line market from any prospect of more efficient copyright management in the future.*

As opposed to the 2004 Communication, the concerns of off-line users, including the hospitality sector, concerning the functioning of copyright management are brushed to the side in the new approach. The working paper quotes the worth of the digital music market at US\$330 million in 2004 (p. 20). It is a pity that it has not also estimated the

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<sup>1</sup> HOTREC represents the hotel, restaurant and café sector at European level. This sector counts 1.4 million businesses and provides 7.5 million jobs in the EU alone. HOTREC brings together 36 National Trade and Employer Associations representing the interest of the sector in 22 different European countries.

<sup>2</sup> COM(2004) 261 final

value of the off-line market for copyright, which is arguably of much greater importance.

The study does say that the approach would provide the “most sustainable long-term model” also for off-line royalties but that it would not be realistic to implement it in this area immediately (p. 55). The study offers no detail, however, as to how the model would operate in the off-line world;

(ii) *it departs from the “one-stop-shop” principle*

HOTREC notes that the model favoured by the working document does away with the one-stop-shop principle by eliminating the current system of reciprocal representation agreements. From a user perspective, it is doubtful whether this would entail increased efficiency as a lot of time would have to be invested in negotiating multiple licenses in order to access a sufficiently broad repertoire;

(iii) *it does not address user concerns for increased transparency and efficiency in collective copyright management*

While the study emphasises the benefits of the preferred approach to rightholders in terms of increased transparency and efficiency in the way collecting bodies operate, it does not indicate what, if anything, users stand to gain in these areas. HOTREC members have consistently complained about lack of transparency with regard to administrative costs, complex tariff structures, and a weak link between cost and benefit for users. This situation would probably not improve as a result of the working paper’s approach;

(iv) *it is unlikely to bring about tariff reductions; indeed, tariff increases are the more likely result*

The study clearly does not take a neutral view with regard to the level of tariffs. On the contrary, it suggests that the favoured approach would allow for “premium content to be priced higher” (p. 43). Unfortunately, the study may well be right that the outcome could be a hike in tariffs should, following the working paper’s intention, a few large collecting bodies take over the market. Under the present situation HOTREC members are already concerned with the tariff increases – sometimes amounting to several hundred percent – that collecting bodies request for renewing a licence. Moreover, these increases are often difficult to justify with regard to any objective factor (e.g. user company turnover, profit, actual number of customers).

(v) *it will not facilitate fair dispute resolution mechanisms*

The lack of effective and cost-efficient arbitration is another common complaint among users which the working document’s rightholder centred approach fails to address. In many countries, access to court is prohibitively expensive. Ordinary courts are not the most appropriate instances for resolving the value of a certain use of music. In practice, therefore, it is rarely possible to challenge a tariff in court. What would be needed is more widespread availability of specialised tribunals/arbitration mechanisms which could resolve complex disputes over tariffs and other licensing terms. Once again, the 2004

Communication provided a more satisfactory response to the issue of external control of collecting bodies than the present working document.

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In a general way, it is unfortunate that the Commission staff working document should express two major imbalances: on the one hand by favouring rightholders over users and, on the other hand, by addressing the concerns of on-line users at a complete disregard of those of off-line users. The working document disappoints by not including a thorough impact assessment from the point of view of users. HOTREC would urge the Commission to come back to the globally balanced and comprehensive approach which characterised the 2004 Communication.

Marguerite Sequaris  
Chief Executive  
HOTREC