

Dr Eoin O'Dell  
Chairman  
The Copyright Review Committee  
Room 517  
Department of Jobs, Enterprise and innovation  
23 Kildare Street  
Dublin 2

11<sup>th</sup> July 2011

Dr. O' Dell

Our company Sports & Media Rights International Ltd (SMRI) advise clients both in the online and off line space with regard to their music copyright responsibilities from companies such as the Irish Music Rights Organization (IMRO) throughout Ireland and in all kinds of business types.

The cost of setting up in business can be a significant barrier to innovation especially for small and medium enterprises (SME's). It is these SME's that are seen as the main drivers of innovation growth and jobs in Europe and therefore an environment needs to be created that encourages growth in these sectors.

The current territorial monopolies of music rights licensing organizations in Europe has already been identified at a European level( the CISAC case) and other more recent reports ( the Hargreaves report) as an area that needs to develop a cross border copyright licensing system.

Copyright collection societies can offer a license for virtually the worldwide repertoire of copyright music and this is an essential service especially for innovators and new business start ups. However It is also an essential service for traditional off line businesses whether that be hotels, public bars, retails stores, broadcasters, etc.

The current copyright collection societies licensing system does not allow a music user to secure a license from another EU state, which is at odds with the stated intention of EU policy with regard to the free movement of goods and services in Europe. It also leaves companies in Ireland at a significant commercial disadvantage to other similar businesses in other EU states

### **On line example**

With regard to online music rights charges let us look at the cost of music downloads in the online space and make a comparison between IMRO and the PRS the UK copyright collection society. Whilst the percentage charge is the same for both societies there are significant differences between the minimum music royalties that would be charged. These minimum royalty charges are the ones most likely to be faced by 'start ups'.

Music Download	IMRO Royalty Rate	PRS Royalty rate	PRS royalty rate in Euro( rate @ 0.8712	Percentage variance cost between IMRO & PRS
Royalty Rate	8%	8%	8%	Nil
Number of musical works in bundle (*Minimum Royalty Rate)				
1-7	€0.06	£0.04	€0.046	30%
8-12	€0.05	£0.035	€0.04	25%
13-17	€0.045	£0.03	€0.034	32%
18-29	€0.035	£0.025	€0.029	21%
30+	€0.03	£0.02	€0.023	30%

*\*minimum royalty rate is applicable if 8% charge is less than the charges above for bundles*

(Source [http://www.imro.ie/sites/default/files/JOL%202011%20Summary\\_0.pdf](http://www.imro.ie/sites/default/files/JOL%202011%20Summary_0.pdf)) Table 1 royalty rates

(Source <http://www.prsformusic.com/users/broadcastandonline/onlinemobile/MusicServices/oml/Pages/onlinemusiclicences.aspx>)

This demonstrates that a music user in the online space in Ireland is at a significant commercial disadvantage to their colleagues in the UK when minimum charges apply.

I firmly believe that consideration of cross border licensing should be given not just to those businesses operating in the on line world but also those in the offline space

If we take the Irish Music Rights Organization (IMRO) as an example online revenue amounted to only 1% of their 40m revenue in 2009 the rest came from traditional off line businesses.

(source <http://www.imro.ie/sites/default/files/IMRO%20Report%2009%20Med-Res.pdf> page 14) On line business will no doubt develop significantly over the coming years. However off line traditional businesses are likely to remain for some time the businesses that pay the most in music rights and therefore should not be at an innovative or commercial disadvantage to online business models

### **Off Line model**

The public house sector in Ireland employed at one time over 100,000 people. This sector is in serious decline and up to 25000 jobs were expected to be lost by the end of 2010. Virtually every pub in Ireland requires a music rights license. An average amount of music use by

publican clients of my company would be live music 2 times per week and a background music charge.

The current IMRO charge for this type of music use in comparison with the UK copyright collection society the PRS would be as follows.

Live musicians 104 nights capacity 200	IMRO charge €2639.52	PRS Charge £1726.40
Background Music charge capacity 200	IMRO charge €770.90	PRS Charge £224.38
Total	€3,410.42	£1,950.78 (STG£ rate 0.8712)= €2,239.19

( Source <http://www.prsformusic.com/SiteCollectionDocuments/PPS%20Tariffs/P-2010-10%20Tariff%20AWE.pdf>)  
( Source IMRO HRNPD tariff)

This results in an Irish public house paying over 52% more for their music rights in Ireland then their colleagues in the UK. Again the ability to shop around in Europe would have significant financial advantages to music users in the off line space and lead to innovation and jobs.

The cost of rates in an uncompetitive market place I believe are barriers to innovation in that a person who wishes to start up a new business whether in the online or off line world may decide not do so because of the barriers & costs that local music rights monopolies may put in the way.

A basic principle of competition is that it creates greater efficiencies in the market place and as we have seen in other markets this leads to job creation. In the telecoms sector, the increase in consumer choice, decrease in prices and greater availability of services is testament to the proper control and regulation of a former state monopoly.

As you are aware there is significant support at EU level for cross border licensing so that competition can be introduced however I believe that this should be not only in the online world but also the off line world as demonstrated above. Competition would create greater efficiency with regard to these types of organizations and therefore reduce these barriers to innovation and lead to job creation.

A cross border copyright licensing model for off line AND on line business will create greater efficiencies in the market.

I believe a long term goal should be for collection societies to open up their repertoire to other companies who can then offer similar products and services to IMRO and create greater competition in the market place. In the immediate short term all types of music users, online AND off line should be allowed shop around in Europe for their music rights license from existing copyright collection societies.

A reorganization of the market would also create additional exciting opportunities for IMRO to further its influence and market share in a wider European market.

I would suggest that the difference in charges and cost base as set out above clearly show that there may also be a structural issue of competition and pricing that should be addressed by the Government in the context of its commitments to the EU/IMF in respect of the general competitiveness of the Irish economy generally and the service sector in particular.

I would therefore ask that as part of the review that a recommendation is made by the group that

- The decision of the European Courts of Justice in the CISAC case be fully incorporated into Irish legislation
- That Section 175 of the Copyright and related rights act 2000 makes a provision that would allow the registration of copyright bodies outside of the state to register here in Ireland and invite them to compete here in Ireland.
- And for the group to also suggest that on a EU level the Irish government should apply pressure in line with the Hargreaves report and the already stated policy of the EU to establish a framework for cross border licensing in the on line AND off line space.

I would be more than happy to meet with you and your committee to discuss further should you so wish and in the event of any public committee hearings with regard to this issue taking place I would welcome the opportunity to attend.

Yours Sincerely

-----  
Sean Stokes  
Managing Director  
SMRI  
'The Corner House'  
Main Street Cabinteely  
Dublin 18  
Ireland  
Ph/Fax: +353 1 2024491  
Email: ss@smri.ie