

Report by Mr. Adolf Dietz

"Very recently the European Commission has published a document, dated Sept. 12, 2005 and entitled "Impact Assessment on Reforming Cross-Border Collective Management of Copyright and Related Rights for Legitimate Online Music Services"; that document is based on an earlier document dated July 7, 2005 and entitled "Study on a Community Initiative on the Cross-Border Collective Management of Copyright". The Document of Sept. 12, 2005 is accompanied by a "Draft Commission Recommendation" on the same subject, to be based on Article 211 EC-Treaty.

The main purpose of both documents is to facilitate - on the basis of a Recommendation to the Member States - online distribution of music Europe-wide and to help to form the legal conditions for the establishment of corresponding business models without territorial limitations.

If the main purpose of the documents cannot in itself be criticized it is more than doubtful whether the planned means to realize that purpose are in conformity with the territoriality principle of copyright law, with the social and cultural functions of that branch of law (including cultural diversity), and also with the proven and traditional practice and structures of collecting and distributing authors' remunerations by collecting societies in the individual member countries.

Both documents represent a radical shift away from such structures and are in danger to throw the baby (traditional copyright and, indeed, authors' rights protection) out with the bath water, exclusively in the interest of "streamlining" (a word often used in the documents) music exploitation in the digital era, mainly in favour of the major globalized music companies with their global repertoires and very probably to the detriment of smaller only local and regional repertoires mostly administered by smaller collecting societies. That is the more regrettable since the European collecting societies have themselves already developed corresponding business models (such as the Simulcasting as well as the Santiago and the Barcelona Agreements); the latter also achieve the purpose of offering a "one stop shop" system to music users without however destroying the whole traditional structures. Unfortunately the competition division of the EU Commission would not accept these models without important changes, unacceptable as it seems to the collecting societies at least as far as the Santiago and the Barcelona Agreements are concerned.

From the point of view of our Association, therefore, the plans of the EU Commission merit a high degree of critical attention since it cannot be the task of copyright law to "streamline" everything only from an economic point of view. As a consequence, I would recommend that ALAI takes a critical view on the latest documents and developments at EU level".