



## “Disintermediation in Music Licensing – The Right Holders Dilemma”

Challenges to Collective Licensing

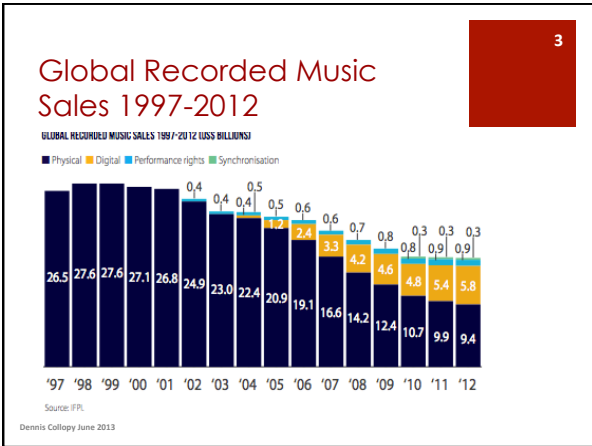
Vienna Music Business  
Research Days  
Friday 21<sup>st</sup> June 2013
Dennis Collopy University of Hertfordshire

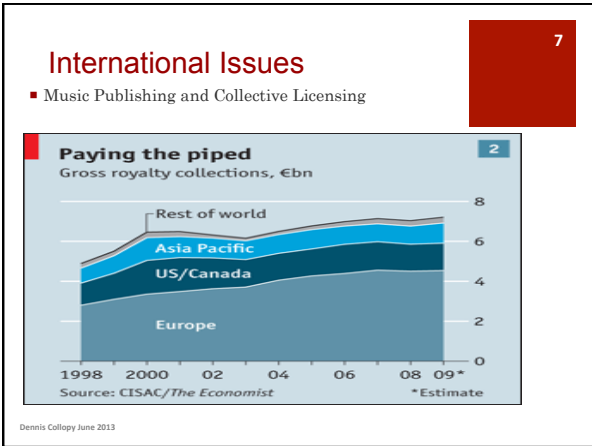
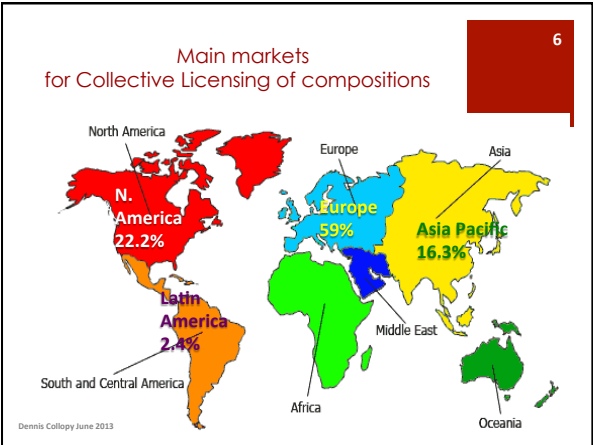
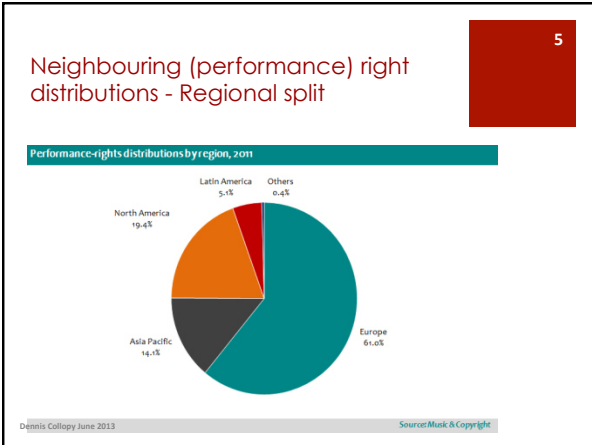
### Some Views on Collective Licensing

- “complex, cumbersome and for the new electronic business models, quite dysfunctional “ ( Peter Jenner)
- the “unholy alliance” of creator and investor (Martin Krestchmer)
- little “harmony of interests between authors and publishers”
- “the relationship between creator and publisher has inevitably shifted from the personal to the impersonal”. (Wallis)
- concern that Anglo-American rights holders might bypass some, if not all, of the existing local societies.
- Sony/ATV should “control our own destiny” and “ have a voice on how these rights are collected, where they are collected and what he or she is to be paid for them” (Martin Bandier)

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### Impact of EC directive

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THE DRAFT DIRECTIVE - OUR WAY FORWARD

- Focus on Rights holders**  
 Creators must be the number one priority.  
 The final text should:  
 Protect the shared interests of authors and right holders.
- Focus on Transparency**  
 Collective Management Societies (CMS) must be transparent.  
 The final text should:  
 Strengthen transparency and reporting in CMS without creating inefficiencies or overlaps.  
 Oblige users to report how they use creative works in an accurate and timely way.
- Focus on Governance**  
 CMS must be governed efficiently and democratically.  
 The final text should:  
 Provide pragmatic & targeted good-governance principles, not a prescriptive regulatory framework.  
 Provide a dispute resolution procedure for claims made both against and by CMS.  
 Take into account all relevant rights management entities, including CMS based outside the EU.

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## EC Recommendation 2005

- Impact of this +CISAC decision 2008
- "liberated" rightsholders to remove rights from most local Euro CMO's
- Meant to improve efficiency of digital single market
- Contrary effect – greater fragmentation and uncertainty within licensing framework

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## Collective Licensing

- Collective Licensing has been the bedrock of European Music Licensing – both authors rights and neighbouring rights
- Have the 2005 EC Recommendation and the 2008 CISAC decision begun the erosion of the European Model of music licensing ?

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## Music Publishing

- Why Collective Licensing
- In UK and USA – pure economic rationale
- In EU much more - CMO's integral part of rights ownership
- Conflict between common law and civil code approaches
- Common law CMO's perform agency functions – more limited controls
- Civil Code CMO's more power than publishers

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## The Music Publishing Value chain

- This value chain is under pressure to change
- Is it right that unaccountable national monopolies are able to maintain a stranglehold on the licensing of music ?
- The following examples highlight how much money is taken by intermediaries
- Is this still viable in the modern era?

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### The changing role for Publishers

- The role of music publishers as gatekeepers is changing – increasingly their role is more of a service based one
- offering support for those who want it on ensuring material is 'registered' with collection societies and any money generated is collected speedily and transparently
- Kobalt ( see CEO Willard's quotes) and BMG Rights Management (see MIDEM 2011 interview with Hartwig Masuch)
- Both advocate a complete change of attitude for the role of music publishers – less about A&R and more about a service

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### EU Collective Licensing Market overview performing right deductions

PR Deductions in 2008  
Source: CISAC

Country	Admin rate (%)	Social & Cultural (%)	Total (%)
Austria	12.00%	8.00%	20.00%
Belgium	24.00%	10.00%	34.00%
Denmark	10.00%	11.00%	21.00%
Finland	14.00%	6.00%	20.00%
France	22.00%	10.00%	32.00%
Germany	18.00%	12.00%	30.00%
Ireland	22.00%	0.00%	22.00%
Italy	12.00%	18.00%	30.00%
Netherlands	11.00%	10.00%	21.00%
Norway	11.00%	17.00%	28.00%
Portugal	11.00%	16.00%	27.00%
Spain	16.00%	14.00%	30.00%
Sweden	16.00%	14.00%	30.00%
Switzerland	11.00%	16.00%	27.00%
UK	16.00%	0.00%	16.00%

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### Commission rates

- Collection societies make variable deductions
  - UK – PRS For Music – 11% overall but going up – almost 15% performing right income but only 8% mechanicals
  - USA – ASCAP – 11% but going up -much less for mechanicals via Harry Fox Agency ( 5%)
  - Germany 20% + cultural deductions 10%
  - France 22% + cultural deductions 10%
  - Italy –SIAE -18.7% + Cultural deductions of 10%
  - Belgium – almost 35% deductions

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### Further Accounting issues

- In US and UK Collection societies account quarterly
- In most EU countries they account semi-annually
- The delay in receiving income can be anything from 2 to 5 years from time money is paid by the music user to the time the songwriter is paid
- Writers are able to audit their publishers books but will not have access to their overseas affiliates and cannot audit a collection society

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### The Gravy Train Impact of Collective Licensing Costs on UK/USA Creators 1

Calculated that within certain EU markets :

- Songwriters can receive as little as **40%** of the monies paid over by the user of Musical works (75% net Receipts deal)
- This can go down to as little as **17.5%** of what is paid by the original licensee of a musical work (50% net receipts deal)
- Even for so called "source" deals writers will usually only receive **67%** of what is paid by the user
- Only with Kobalt type deals do we see writers receive around **75%** of what was paid out by the licensee of a musical work

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This assumes PRO deducts 30% commission and from remaining 70% the UK or USA songwriter receives his/ her share dependant on specific terms of music publishing agreement

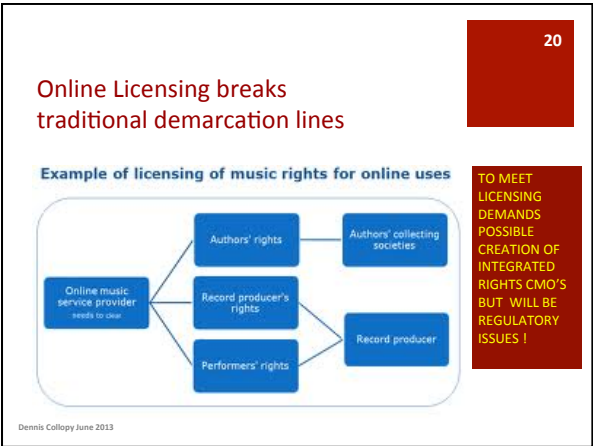
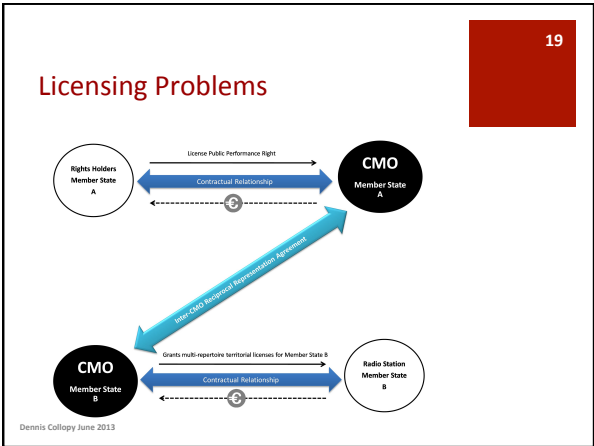
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### The Gravy Train: Future Collective Licensing Costs for UK/USA Creators

- Kobalt model reflect on-going disintermediation within music publishing value chain
- Removal of the 'local' sub-publisher element through direct membership of CMO's
- Should disintermediation in the value chain stop at this?
- Will publishers increasingly license works for digital using a single CMO /Licensing platforms/portals? (cf CELAS and IMPEL)
- Such digital licensing portals could radically reduce the costs of collection and eliminate the kind of 'extra' deductions such as social and cultural


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This assumes PRO deducts 30% commission and from remaining 70% the UK or USA songwriter receives his/ her share dependant on specific terms of music publishing agreement



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## Ticking Bombs



- ① EROSION OF INTERNATIONAL LICENSING NORMS
- ② RELEGATION OF CMO'S TO NATIONAL ONLY ROLE
- ③ CMO'S REDUCED TO WORKING ON NON DIGITAL LICENSING e.g. LIVE?

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## Oligopoly of Music Owners


- Copyright Silos



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## Oligopsony of Music Users



Less Market Control More

Perfect Competition Monopsonistic Competition Oligopsony Monopsony

Many Number of Competitors One

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## Recordings licensing

- UMG, Sony and WMG oligopoly
- Plus Merlin for indies
- Means just 4 calls from Apple to make a world wide deal for new streaming services
- Their in-house publishing divisions also gained superior rates 'directly'
- Is this the future of music licensing?

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Impact of decline in mechanicals



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This slide features a red square in the top right corner with the number '25'. The main text reads 'Impact of decline in mechanicals'. Below the text is a graphic showing the word 'EARTHQUAKE' in white capital letters on a blue background with a seismograph-like waveform. At the bottom left, there is a small text credit: 'Dennis Collopy June 2013'.

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Further risks ahead



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This slide features a red square in the top right corner with the number '26'. The main text reads 'Further risks ahead'. Below the text is a photograph of a yellow diamond-shaped road sign with a black border that says 'RISK AHEAD' in black capital letters, set against a blue sky with white clouds. At the bottom left, there is a small text credit: 'Dennis Collopy June 2013'.

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Reduced Role for CMO's in digital era



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This slide features a red square in the top right corner with the number '27'. The main text reads 'Reduced Role for CMO's in digital era'. Below the text is a graphic consisting of a red oval with the word 'DANGER' in white capital letters, and below that, the words 'Imminent Existential Threat' in black, bold, italicized font. At the bottom left, there is a small text credit: 'Dennis Collopy June 2013'.

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Solution: Reinvention



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This slide features a red square in the top right corner with the number '28'. The main text reads 'Solution: Reinvention'. Below the text is a photograph of a yellow rectangular sign with a black border. The top part of the sign says 'Future' followed by a black arrow pointing to the right. The bottom part of the sign says 'Past' followed by a black arrow pointing to the left, which is crossed out with a large red 'X'. At the bottom left, there is a small text credit: 'Dennis Collopy June 2013'.