

ANTITRUST

PESANTE INTERVENTO SULLA RACCOLTA DEL DIRITTO D'AUTORE

La Commissione Europea per la concorrenza ha recentemente deliberato (**vedi testo allegato**) in materia di licenze per la tutela del diritto d'Autore. In pratica ha "**cancellato**" il monopolio per l'esazione dei diritti su opere trasmesse in internet, via cavo e per satellite.

Una decisione "annunciata" (basterebbe a tal proposito il dibattito sull'argomento che da anni si svolge a livello di comunità europea), ma che ha trovato la **SIAE "impreparata" ad una conclusione che le nuove tecnologie facevano immaginare da tempo.**

Le conseguenze della citata "decisione" sono immaginabili e saranno, anche se non nell'immediato, **dirompenti**.

Oggi il mercato internet in Europa è in ritardo ma necessariamente si allineerà, anche velocemente, ai risultati che già si sono realizzati nel nord-america, e a ciò si aggiunga che la nuova normativa si applica anche alle trasmissioni via cavo e per satellite.

E' ora che la **SIAE esca allo scoperta e dica molto chiaramente qual è la strategia** che si vuole adottare, quali sono i provvedimenti e gli investimenti sul piano tecnologico e professionale che si intendono realizzare.

Se la strategia è semplicemente quella che si è intravista nell'ultimo periodo e cioè quella di "comprimere" il costo del lavoro, sappiamo già che **SARA' UNA PARTITA PERSA**: ci sarà sempre un Paese (magari del terzo mondo) che per quanto riguarda "il costo del lavoro" sarà imbattibile.

La **competizione può essere affrontata** solo sul piano dell'efficienza, dell'eccellenza e delle professionalità.

Così come, alla luce dei nuovi scenari, sarebbe il caso di **ripensare "criticamente" al recente provvedimento legislativo (L. 2/08) che, per quanto riguarda la natura giuridica dell'Ente ha creato un inutile e pericoloso "ibrido"**.

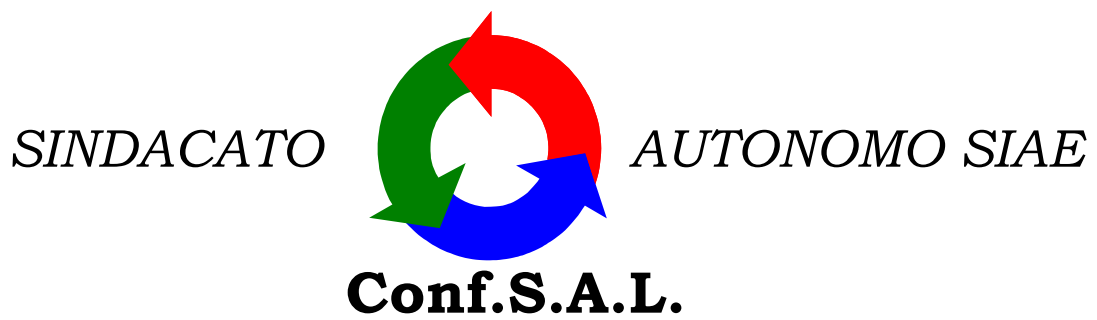


**Antitrust: Commission prohibits practices
which prevent European collecting societies offering
choice to music authors and users**

The European Commission has adopted an antitrust decision prohibiting 24 European collecting societies from restricting competition by limiting their ability to offer their services to authors and commercial users outside their domestic territory. However, the decision allows collecting societies to maintain their current system of bi-lateral agreements and to keep their right to set levels of royalty payments due within their domestic territory. The prohibited practices consist of clauses in the reciprocal representation agreements concluded by members of CISAC (the "International Confederation of Societies of Authors and Composers") as well as other concerted practices between those collecting societies. The practices infringe rules on restrictive business practices (Article 81 of the EC Treaty and Article 53 of the EEA Agreement). The Commission decision requires the collecting societies to end these infringements by modifying their agreements and practices, but does not impose fines. The removal of these restrictions will allow authors to choose which collecting society manages their copyright (e.g. on the basis of quality of service, efficiency of collection and level of management fees deducted). It will also make it easier for users to obtain licences for broadcasting music over the internet, by cable and by satellite in several countries from a single collection society of their choice.

Competition Commissioner Neelie Kroes said: "This decision will benefit cultural diversity by encouraging collecting societies to offer composers and lyricists a better deal in terms of collecting the money to which they are entitled. It will also facilitate the development of satellite, cable and internet broadcasting, giving listeners more choice and giving authors more potential revenue. However, the Commission has been careful to ensure that the benefits of the collective rights management system are not put into question in terms of levels of royalties for authors and available music repertoire."

Music authors (lyricists and composers) sign over to collecting societies the rights to manage on their behalf, worldwide, the copyright of their musical works. Based on the CISAC model contract, collecting societies have concluded reciprocal representation agreements for the collective management of the public performance rights of their musical works so that they can each offer the repertoire of all the artists represented by all the collecting societies participating in the representation agreements. The public performance rights enable authors of musical works to authorise or prohibit the exploitation



of their works by commercial users such as TV channels and radio stations, and to receive royalties every time their music is played.

The Commission opened an investigation following complaints from broadcasting group RTL and Music Choice, a UK online music provider.

The Commission's decision recognises the valuable role of collecting societies and does **not** challenge the existence of the reciprocal representation agreements. It does, however, prohibit certain aspects of those agreements as well as concerted practices among collecting societies.

In particular the decision requires the 24 EEA-based collecting societies which are members of CISAC to no longer apply:

- the **membership clause**, currently applied by 23 collecting societies, that prevents an author from choosing or moving to another collecting society.
- **territorial restrictions** that prevent a collecting society from offering licences to commercial users outside their domestic territory. These territorial restrictions include an **exclusivity clause**, currently contained in the contracts of 17 EEA collecting societies, by which a collecting society authorises another collecting society to administer its repertoire on a given territory on an exclusive basis and a **concerted practice** among all collecting societies resulting in a strict segmentation of the market on a national basis. The effect for a commercial user such as RTL or Music Choice that wants to offer a pan-European media service is that it cannot receive a licence which covers several Member States, but has to negotiate with each individual national collecting society.

The decision will allow collecting societies to compete on the quality of their services and on the level of their administrative costs (which are deducted from the money collected before it is passed on to the author). It will thus provide incentives to collecting societies to improve their efficiency.

In 2007 the Commission sought to resolve the case amicably when formal commitments were offered by CISAC and 18 collecting societies (see [IP/07/829](#)). However, interested parties' comments on the commitments were negative. In particular, broadcasters, content providers and certain collecting societies generally considered that the proposed commitments would continue to make it difficult for a commercial user to obtain a pan-European licence.