The emergence and implications of two-sided platforms in the market of music rights

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Introduction

Collective management of music rights has been subject to intensive studies during the last decade. In particular, the European Commission has taken a keen interest in the issue of administration of music rights and has issued several documents, with the goal of establishing a common level playing field for collective rights managers in the European Economic Area. This has led to the adoption of a Recommendation, of 18 May 2005, on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC), which has been welcomed by some but heavily criticised by others. The many initiatives taking place in the field of collective management highlight the problematic aspects of adapting a profoundly traditional and territorial system of copyright administration to the borderless nature of the online world.

This paper will attempt to provide a fresh outlook on the developments that collective management is experiencing in its phase of modernisation. The first part will refer to the traditional justification of the establishment of collecting societies as natural monopolies, and will discuss the implications of such justification in the definition of the relationships between collecting societies and right holders, and between collecting societies and commercial users. The second part will focus on the main effects of the 2005 EC Recommendation, introduced to shape new collective management models that better adapt to digital exploitation of music content via the internet. In discussing such effect, particular attention will be devoted to the strengthening of the right holders’ position within the market, and to the enforcement of their entitlements via digital technology which arguably challenge the existence of collecting societies as natural monopolies. The third part of the paper will provide a revised picture of the ‘right holder-collecting society–user’ relationships. The resulting picture will be one of a two-sided market, where pricing and other commercial strategies need to be reconsidered in the light of the new bargaining positions of the parties involved. This exercise is proposed to draw the attention on new problematic aspects that could arise with online licensing solution from the point of view of competition law.

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Part one: Collective management justification and the competitive argument

In order to understand the complexity of the current issues surrounding collective management it is relevant to consider the emergence of collecting societies in the light of the fundamental function they play in aggregating different entitlements, i.e. large membership in quantitative terms, and diverse and sometime conflicting in qualitative terms.\(^3\)

Collecting societies perform the following main tasks: the license rights on behalf of their members, they monitor uses, they collect royalties from the licensees and, finally, they distribute remuneration to their members. Collecting societies perform these tasks in exchange of an administration fee that members pay to them, i.e. a deduction on the remuneration the society return to the right holders.

1.1. Justification

The economic literature insists on the efficiencies that arise when the four tasks listed above are performed not individually by each right holder, but in an aggregate manner by an organisation that groups the interests of many right holders. Besen, Kirby and Salop focus in particular on the savings that can be derived from the aggregation of the monitoring task.\(^4\)

Moreover, in their 1989 contribution, Besen and Kirby lay down a condition under which collective administration ought to be the preferred solution:

“Collective administration of the copyrights of a group of publishers is efficient if its cost is lower than that of administering the copyrights of all possible subsets of the same group of publishers... This condition will be satisfied if the licensees of [the members of a society] are the same people and the costs of administration for a given licensee do not rise in proportion to the number of licenses he obtains. In such circumstances, a visit by one inspector to the premises of a given user will suffice to administer the licenses of several producers and will be less costly than separate visits by inspectors for each licensing producer.”\(^5\)

On the one hand, the Besen and Kirby conditions focus on the efficiencies created if the consumers of the different subsets of owners are the same. In practical terms, a broadcaster who seeks a licence would probably be interested in many different parts of the repertoire and would find it useful to go to a collecting society where he can obtain a single authorisation for the use of many parts of the society’s repertoire. On the other hand, also the subsequent phase of the administration process determines the sustainability of the collective model. Monitoring one use on behalf of one right holder is as expensive as monitoring the same use of behalf of many right holders, with the difference that in the second case the costs incurred in the task of monitoring are split among the many right holders for which the task is performed.

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\(^3\) Towse, Ruth, “Copyright and Economic Incentives: an Application to Performers’ Rights in the Music Industry”.

\(^4\) Besen, Stanley M., Kirby, Sheila N. & Salop, Steven C., “An Economic Analysis of Copyright Collectives”, Virginia Law Review, 78, 390 (“It is less expensive for a single agent to monitor establishments of behalf of a large number of songwriters than it is for multiple agents, each representing a single songwriter, to monitor the same establishments. By combining their efforts, a group of songwriters may find it feasible to identify unauthorised uses, and either prevent them or collect for them, when individual songwriters might not”).

1.2. The natural monopoly argument

Provided the efficiency gains that descend from aggregation, organisations appointed for collective administration developed along similar paths\(^6\) and became large entities, holding an important market power, which resulted in a strong bargaining power that they exercised in their relationship with the users as well as in their relationship with their members. In Europe, collecting societies mainly acted as monopolist in relation to the rights they administered, for they were the sole appointed institution within their national boundaries. For example, PRS (the Performing Rights Society) in the UK was the only institution for the licensing of music rights for public performances within the UK territory. The implications of the existence of a monopoly are numerous, and have required over time a particular surveillance to be exercised by national competition authorities as well as the regional competition authority (European Commission) in reason of the collaboration existing among collecting societies for the reciprocal representation of repertoires. Reciprocal representation agreements allowed the licensing of repertoires beyond national boundaries. In addition, even where some level of competition existed (e.g. United States with three performing rights societies), competition issues have arisen. The United States offer an example of how competition principles and related case-law can establish a high level of supervision (and thorough intervention) on collecting societies.

A portion of the economic literature puts forward the argument of competition by considering that collecting societies are in fact natural monopolies. It is more efficient to have a performing rights society per country to ensure that the costs of running such organisation are not duplicated, to the detriment of members that could be paid higher royalties instead. The case of the US is sometime identified as an exception\(^7\), while the concentrated solution is preferred in those emerging economies that experience collective administration for the first time. However, it is useful to refer to the comment offered by Katz that the term ‘natural monopoly’ “does not refer to the actual number of sellers in a market but to the relationship between the demand and the technology of supply”.\(^8\) In this case, the technology at issue would correspond to the heavy infrastructure (e.g. human capital, technological investment etc), both tangible and intangible, required to perform the tasks of licensing, monitoring, collecting and distributing. These costs are high to the point that is preferable for the demand to be met by one firm rather than a multitude of them. In presence of a monopoly, however, a number of regulatory countermeasures have to be established, in order to ensure that socially desirable outcomes are achieved.\(^9\) Competition

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\(^6\) See Besen, Stanley M. & Kirby, Sheila N., *Compensating Creators of Intellectual Property – Collectives That Collect*, RAND Corporation (1989), vi (“The nature and form of the collective administration of any given set of rights will be similar in all countries. This is so for three basics reasons. First, reciprocity – whereby rights holders who reside in one country obtain payments through the copyright collective in the country where the right is licensed – is promoted where collectives have similar forms. Second, newer collectives are likely to model themselves after successful collectives that administer the same set of rights in other countries. Finally, the similarity of rights themselves leads to similar forms of administration”).

\(^7\) Besen, Stanley M., Kirby, Sheila N. & Salop, Steven C., *op. cit.*, 397. The author considers that the case of the US does not contradict the natural monopoly argument, because it is especially in the vast territory of the US that the conditions for the emergence of more than one society can arise. More emphasis should in fact be put in the consideration of elements such as the size of the territories that US collecting societies license, and some qualitative aspects of the US music market which cannot be found in any other part of the world.

\(^8\) Katz, “The Potential Demise of another Natural Monopoly: New Technologies and the Administration of Performing Rights”, Journal of Competition Law and Economics 2.2 (2006), 552. The author continues his observation by specifying that “the observed fact that in the United States there are three PROs [Performing Rights Organisations] is not necessarily inconsistent with the natural monopoly argument” (fn. 46).

\(^9\) Ibidem.
law is one of these countermeasures. This underlines the role of competition authorities in the regulation and harmonisation of collective management. In response to the natural monopoly argument, the large-scale process of deregulation that has invested other industries (such as airline, telephony and electricity) over the years has eventually called to a re-consideration of whether collecting societies truly are/remain natural monopolies, or whether the costs structure and other characteristics of the business have now changed in reason of the different ways content is consumed and enjoyed.

1.3. Two implications of the monopolies

Two specific implications of the monopoly status historically acquired by collecting societies must now be mentioned. Firstly, the issue of competition appears to arise from the large discretion that can be exercised by collecting societies in their relationship with members and commercial users. Such discretion, as argued by Katz, largely depends the practice of granting ‘only’ blanket licences, i.e. licences for the entirety of the repertoire, without qualitative or quantitative consideration of the actual use that the licensee makes of the repertoire in question. If only blanket licences were issued, there would be no room for negotiation for commercial users, but there would also be no room for challenging the remuneration that members of the collecting society receive for the use made of their work. Thus, on the one hand, only the tariff set by the national collecting society would be available for users; on the other hand, the criteria of distribution adopted by the society will rule how much members are entitled to receive. This is not to say that collecting societies’ conduct is necessarily abusive, but to point out at the tension that indeed exists in this respect. As a further note, it is important to observe that the issuing of blanket licences is not per se an abuse under competition rules. Blanket licences continue to be issued and to represent an important source of scale economies for users and for the societies. However, enforcement of competition principles has contributed to promote alternative licensing packages (e.g. per programme), which establish a more direct link between the licensed content and the licence fee and limit the discretion of collecting societies vis-à-vis commercial users.

Secondly, the use of reciprocal representation agreements for the cross-border exploitation of repertoires is often considered as problematic. It is alleged that reciprocal representation agreements are the main instruments responsible for the perpetuation of national monopolies in the field of music rights administration. Overall, the delimitation of collecting societies’ activities to their national boundaries can be related a main characteristics of the exploitation of works protected under copyright, namely the territorial

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10 This paper does not address the issue of price discrimination, i.e. discrimination between ‘high-valuation’ commercial users and ‘low-valuation’ commercial or private users. A discussion on this can be found in Katz, Ariel, “The Potential Demise of another Natural Monopoly: New Technologies and the Administration of Performing Rights”, Journal of Competition Law and Economics 2.2 (2006), 550. Even if a certain degree of discrimination is allowed, the European case law has explicitly forbidden discrimination among the same categories of users, to prevent collecting societies to charge different prices for the same service to the same type of users.


12 Note that this submission is contested by Will Page (“Lost in Translation? A Critique of Katz Papers”, MCPS-PRS Economic Insight, Issue 4 (18 January 2007)) when he says: “In reality, blanket licences are based around a formula which usually takes account of the licensee’s level of music usage and either le licensee’s revenue or audience figures. Also, the blanket licences are often negotiable to take account of the unique circumstances of the end users. Blankets also encourage a wider use of the available repertoire at no incremental cost”.

13 For example in the Ministère public v Tournier decision (Case 395/87, ECR 1989, p.2521; Court of Justice 13 July 1989).
nature of such protection. Copyright rules are national rules. International Conventions or Treaties affect the national rules but do not confer an ‘international right’ as such. In reason of this, collecting societies have become instrument of copyright administration and enforcement on a territorial basis. This has not limited the ability of collecting societies to exploit their repertoire beyond national boundaries. Exploitation of foreign repertoires, however, has required collaboration among the collecting societies (and their umbrella representatives). Over time, they have created a large nexus of bilateral agreements of reciprocal representation which has allowed the contracting parties to licence their respective repertoires within the national boundaries of their competence. Such a practical solution allowed users to access foreign repertoire and right holders to widen their audience beyond national boundaries. However, it is argued that this solution has unreasonably strengthened the monopolistic position of national collecting societies, and the fragmentation of the activities on a territorial basis. In the second part of this paper, the discussion will focus on how technological changes have affected licensing practices, and how the harmonisation efforts proposed by the European Commission do not favour the traditional territorial models and the instruments of reciprocal representation.

**Part Two: A soft-law approach for a radical reform**

Collective management, to a large extent, has been an instrument for the non-discriminatory protection of creators (i.e. independently from their success) and for accessibility to the benefit of users (e.g. thanks to the collective negotiations at the basis of the many relationships between collecting societies and users’ representatives). Following its 2005 Recommendation (European Commission Recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services, 2005/737/EC), the European Commission has called for a change. It has encouraged and endorsed the adoption of collective management practices whereby right holders should ‘should have the right to entrust the management of any of the online rights necessary to operate legitimate online music services, on a territorial scope of their choice, to a collective rights manager of their choice, irrespective of the Member State of residence or the nationality of either the collective rights manager or the right-holder’ (emphasis added). The Commission promoted this approach with the hope of reducing the distortions of traditional territorial fragmentation of collecting societies’ actions which, arguably, would be unjustified in the digital era and in the light of the borderless nature of the internet.

### 2.1. Fragmentation of repertoires and proprietary models of administration

The result of the election of this policy by the European Commission has lead to a re-structuring of the supply of online rights in the music market. Large right holders have

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14 An accurate definition of Reciprocal Representation Agreement was provided by the ECJ that defines it as “a contract between two national copyright-management societies concerned with musical works whereby the societies give each other the right to grant, within the territory for which they are responsible, the requisite authorizations for any public performance of copyrighted musical works of the other society and to subject those authorizations to certain conditions, in conformity with the laws applicable in the territory in question” ([Lucazeau and others v SACEM](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018DC0493&from=EN) (Cases 110/88, 241/88 and 242/88, ECR 1989, p.2811, Court of Justice 13 July 1989), §11, and [Ministère public v Tournier](https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:31987X395&from=EN) (Case 395/87, ECR 1989, p.2521; Court of Justice 13 July 1989), §3).

15 A Recommendation is an instrument of ‘soft-law’. It cannot be invoked by individuals, directly or indirectly, before national courts. However, the case law indicates that they ought to be considered by national courts in the interpretation of existing laws (for further discussion on the appropriateness of the Recommendation as regulatory instrument, see Frabboni, Maria Mercedes, “Collective management of copyright and related rights: achievements and problems of institutional efforts towards harmonisation”, inResearch handbook on the future of EU copyright (Edited by Derclaye, Estelle), Edward Elgar, forthcoming (2009), 396).
decided to appoint only one of the European performing rights societies for their online rights, and subsequently withdrawn their repertoire from the nexus of reciprocal representation agreements.\textsuperscript{16} This meant that no other society apart from the one appointed is any longer allowed to licence the repertoire belonging to that right holder if a user also intends to engage in online uses. Importantly, this new business model has determined that, as far as online licensing of music rights is concerned, the market has shifted from the fragmented situation of ‘natural’ monopolies existing on a territorial basis, to a multi-territorial oligopoly and the very probable demise of reciprocal representation agreements as instrument for the cross-border exploitation of the repertoires. The following table illustrates the alliances shaped according to the new model.\textsuperscript{17}

<table>
<thead>
<tr>
<th>Denomination</th>
<th>CS involved</th>
<th>Right holder</th>
<th>Repertoire</th>
</tr>
</thead>
<tbody>
<tr>
<td>CELAS</td>
<td>MCPS-PRS (UK) and GEMA (Germany)</td>
<td>EMI</td>
<td>Licensing of EMI Anglo-American repertoire in Europe</td>
</tr>
<tr>
<td>PEDL</td>
<td>MCPS-PRS (UK), GEMA (Germany), STIM (Sweden), SACEM (France)</td>
<td>Warner Chappell Music</td>
<td>Licensing of WCM Anglo-American repertoire in Europe</td>
</tr>
<tr>
<td>SACEM-UMPG</td>
<td>SACEM (France)</td>
<td>Universal Music Publishing Group</td>
<td>Licensing Universal English language and French language repertoire in Europe</td>
</tr>
<tr>
<td>Alliance Digital</td>
<td>MCPS-PRS (UK)</td>
<td>(encouraged by the Music Publishers Association – likely to be successful among independent music publishers)</td>
<td>In course of definition</td>
</tr>
<tr>
<td>ARMONIA or the 'Joint Venture Alliance' (JVA).</td>
<td>SACEM (France), SGAE (Spain) and SIAE (Italy)</td>
<td>Rights managed by the member societies</td>
<td>Licensing (under exclusive mandate) of the respective repertoires</td>
</tr>
</tbody>
</table>

\textbf{Table 1}

It is important to indicate that the withdrawal of the repertoires – for online exploitation - also meant that collecting societies ceased to cooperate in the exploitation of each other repertoires. The solidarity element highlighted in the opening part of this paper has found no space under the new scenario.


\textsuperscript{17} See European Commission, ‘Monitoring of the 2005 Music Online Recommendation’ (7 February 2008).
It has been argued, by Robert Merges, that the (traditional) aggregation of different interests under the institutional presence of collecting societies can be described as ‘contracting into liabilities rules’.\(^{18}\) He recognises that the foundations of collecting societies is to be identified in “the high costs of contracting – both among members, and between members and users – [which] drive the right holders to pool their property rights in a collective organization”, and subsequently submits that “it is the high transaction costs associated with the initial entitlements that lead the parties to establish the organizations” and “the property rule entitlements granted at the outset actually lead to a liability rule like-regime, though one based on collective valuation by firms rather than by an arm of government”. While on the one hand the compensatory element of the remuneration that members of a collecting society receive from collective licensing of large repertoires is easily identifiable in the traditional forms of collecting societies, this is problematic when considering the new online music platforms listed above. Here, the collective character of the activity is replaced by a form of ‘individual management’, whereby the organisation only serves the needs of a large right holder (a major music publisher, for example). Arguably, in such an individual-centred model, the impact of property rules suddenly becomes stronger, and determine different a different type of relationship between a collecting society and its member(s). While property rules would reinforce the rationale of copyright law as legal instrument to ensure incentives (i.e. a flaw of remuneration) for creators, the question that naturally arises is whether collective management is effectively collective, and whether online exploitation does not actually need the same solidarity-oriented rationale which initially determined the emergence of collecting societies.

2.2. Enforcement of property rights via technological measures

Another argument according to which property rules are likely to become preponderant in the characterisation of the relationship between a collecting society and right holders descend from the increased level of control that can now be exercised in relation to digital uses. As Katz indicates, the internet appears to allow “users to locate licensors, communicate with them and obtain licences more efficiently than was possible in the offline world”,\(^{19}\) and if “proper databases with adequate search capabilities are maintained and made available online, users can easily identify the relevant rights-holders in every song they are interested in performing”.\(^{20}\)

In the light of the submission that technology can indeed facilitate some of the tasks that collecting societies traditionally perform, certain commentators have even suggested that this could lead to the elimination of collecting societies altogether.\(^{21}\) Katz, who poses an explicit challenge to the very existence of collecting societies, recognises that the internet makes transfer of information (e.g. locating the relevant right holders) easier, but additional instruments need to be adopted to effectively control the use of music and to collect


\(^{20}\) Ibidem.

\(^{21}\) See Besen, Stanley M. & Kirby, Sheila N., Compensating Creators of Intellectual Property – Collectives That Collect, 3 (“[O]thers have argued that technological innovation may, by reducing the cost of individual administration of copyrights, provide an alternative to the use of collective administration. Nonetheless, it appears likely that, at least for the near term, copyright collectives will be the preferred means through which administration of small rights is affected”). Considering that Besen’s and Kirby’s contribution dates back to 1989, it can be said that the prediction for the ‘near term’ (and perhaps ‘not-so-near term’) was accurate.
remuneration.\textsuperscript{22} In this respect, control and collection can be performed without the aid of collecting societies via the use of DRM technology. DRM would work as “gatekeepers that require identification prior access”, and would enable continue monitoring.

The submission that more directly dismiss the validity of the natural monopoly argument (for the internet era) starts from the consideration that pay-as-you-go (per-programme or per-track) solutions are likely to prevail in the online business models.\textsuperscript{23} For the time being, this can only remain an assumption, perhaps backed by examples coming mainly from online music shops than from an actual consideration of the demand for performing rights. Yet performing rights are the focus of the current changes occurring in the market for online music licences. In addition, the fact that it is technologically possible for (some) right holders to adopt technological solutions and license their rights directly does not take into consideration the practical implications that a similar approach would entail for users. For example, the music user will need to identify a multiplicity of rights and rights holders, and then apply to each of them.\textsuperscript{24} Even if such transaction costs are low, they are multiplied. As appropriately questioned, would this produce any distortion on the overall demand of music?\textsuperscript{25}

**Part three: The two-sided nature of the market for online music licences**

It is argued, in this paper, that the proliferation of opportunities offered by digital technologies in the field of music exploitation and consumption does not reduce the relevance of collective administration and of the institutions in charge to perform such an activity. On the contrary, the opportunities arisen with digital uses have widened the potential demand for coordinated forms of rights administration.\textsuperscript{26} Yet, the evolution of online music shops and other forms of commercialisation of digital music has certainly required an update of the system previously in place and the adoption of new licensing business models. This final part of the analysis will refer to the literature on two-sided markets to draw a more accurate picture of new collective management solutions, which better fits with the current evolution of the market and with the regulatory instruments adopted at the regional level. The discussion of the two-sided nature of online licensing platforms will offer a limited discussion of pricing strategies and raises issues on the future on the platforms, which would hopefully be subject to further study at a later stage.

### 3.1. New joint ventures, new relationships

The oligopoly that is taking shape following the 2005 EC Recommendation lacks the element of solidarity / collective action which has so far characterised the activity of collecting societies. The new online ‘joint ventures’, formed by collecting societies unable to enforce any form of territorial exclusivity in the borderless area of the internet, propose a different relationship now established between collecting societies and right holders, which would eventually requires a re-definition of the relationship between collecting societies and commercial users seeking the relevant licences.

- **Right holders – collecting societies:** rounds of negotiations were held to allow right holders to make their choice of which manager they want to appoint for the


\textsuperscript{23} “In the online world, the cost advantages of … bundling [repertoires] are less significant, and per-song licensing is therefore more likely” (Katz, Ariel, “The Potential Demise of Another Natural Monopoly: New Technologies and the Administration of Performing Rights”, 254).

\textsuperscript{24} Page, Will, *op. cit.*

\textsuperscript{25} *Ibidem.*

\textsuperscript{26} For a comparison, see Towse, Ruth, *op. cit.*, 382 (“Collective administration, particularly of secondary use such as broadcasting and other public performance, has developed with the proliferation of rights and uses”).
management of their online rights. The platforms made their offers of the services they could provide, and illustrated the terms and conditions under which they were willing to offer those services. The current scenario of administration of online rights is one where collecting societies compete for the most successful right holders. This situation did not exist in the analogous world, where collecting societies had two sources of revenue, namely a national membership (right holders tended to appoint the collecting society of the country they were based in), and revenue coming from foreign exploitation of the repertoires (through the agreements of reciprocal representation).

**Collecting societies – users:** commercial users interested in an online licence need to approach, under the new arrangement, the collecting society that has received the mandate to licence that specific segment of the repertoire they wish to clear. The crucial question to define the relationship between (online) collecting societies and users is whether the demand for online licences will still entail a large number of blanket licences, i.e. licences for the world repertoire.\(^{27}\) In case users find that the online music service they want to operate does not need a blanket licence, collecting societies will also need to compete for their users and adapt their strategies in order to persuade as many users as possible to buy their licences. This was not the case under the model based on territorial fragmentation.

The following illustration can help visualising the change that has recently occurred. The first image concerns collective management in its traditional form. The second image proposes a graphical representation of the new online licensing platforms.

*Image 1 - Traditional model*

\(^{27}\) Ariel Katz, in “The potential Demise of Another Natural Monopoly: New Technologies and the Administration of Performing Rights”, argues that “it does not seem that an ability to offer the whole worldwide repertoire is considered imperative for those [new online music] services”, 250.
Under the new model, the vertical relationship between right holders and collecting societies has disappeared. In fact, EMI is the sole ‘member’ of CELAS, so is Warner for PEDL. However, does it still make sense to consider EMI or PEDL as members (within the common meaning of the word)? The issue is debatable, especially when considering the provisional character of the joint ventures in course of definition. However, it is clear that there would be no sense of ‘belonging to a group’ if there is no group to belong to. In Image 2, the preferred interpretation is one that considers right holders as clients on one side of the platforms, and users as clients on the other side of the platform. They both require some type of service from the rights manager: right holders require administration, users require clearance.

3.2. Two-sided nature of the institutions for rights clearance

“Two-sided (or, more generally, multi-sided) markets are roughly defined as markets in which one or several platforms enable interactions between end-users and try to get the two (or multiple) sides ‘on board’ by appropriately charging each side. That is, platforms court each side while attempting to make, or at least not lose, money overall.”

From this definition provided by Rochet and Tirole, it appears that a main concern of the platform is to make sure that the appropriate number/quality of clients are ‘on board’ for each side of the platform. In a model like the one proposed under the 2005 EC Recommendations where collective rights manager compete for right holders, platforms will have (or already have) heavily courted the interested right holders, and in particular large music publishers with strong international repertoires. But the ‘courting’ activity is not limited to one side of the platform. The following comments will explain why that is

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28 “Member: n., a person, country or organization belonging to a group, society, or team” (Oxford Concise English Dictionary, 1999).
29 This point also explains why traditional collecting societies do not fully fit within the ‘two-sided model’ as described in this part of the paper. The nature of the relationship between right holders and the society was one of membership and naturally acquired the ‘belonging’ connotation. The new model proposes a client-shop type of relationship, especially in the light of the freedoms granted under the 2005 EC Recommendation as pointed out in § 3.
the case, with particular reference to the current stage of formation of the new online licensing platforms.

As a preliminary note, looking at Table 1 it is not surprising to see that societies with a strong tradition or strong repertoires (namely UK, France and Germany) have managed to finalise exclusive agreements with the major music publishers.

- **competition for the right holders / getting right holders on board**: the strength of collecting societies from UK, France and Germany in terms of efficiency and reputation would have played a role in the decision by EMI, Universal and Warner. Most probably, the latter were confident that MCPS-PRS, SACEM and GEMA already enjoyed an established working relationship with a wide number of commercial uses, both in the online and offline environment. Existing relationships with users has influenced the right holders’ decisions to favour certain platforms rather than others.

- **competition for users / getting certain users on board**: it has been crucial for the platforms to secure a major repertoire to attract commercial users and ensure a solid and persistent demand. Clearly, getting large right holders on board is going to have a fundamental influence on the income that CELAS, PEDL and SACEM-UMPG will be able to administer. This consideration does not challenge the existence of a demand for repertoire provided by independent music publishers, but insists on the influence that the presence of large right holders on one side of the platform has on the size and composition of the other side.

The externalities produced by the platforms in getting the relevant sides on board are often identified as ‘membership’ externalities. Membership externalities in two-sided markets are accompanied by usage externalities. The presence of both elements is an indicator of the two-sided nature of the model in question.  

3.3. Pricing

A fundamental implication of the two-sided character of the new administration model is that platforms need to ‘choose a price structure and not only a price level for their service’. In other words, when establishing the price of licences issued to users, they have to be mindful of the effect that this will produce on right holders. In establishing the administration fees charged to right holders, they need to consider the effect that this will produce on users. This implication acquires particular importance in the light of the role played so far by collecting societies in their national markets, and of the attention that national and regional competition authorities have dedicated to collecting societies’ actions within their markets. It is submitted that pricing decision by online licensing platforms should be analysed having in mind the two-sidedness of the new business model, which influences a wide range of commercial decisions by all relevant parties involved in the transactions.

One of the characteristics of the usage of new platforms is that one side of the platform will, in many circumstances, engage in multi-homing. A portion of commercial users will in fact connect to several platforms in order to obtain clearance for the use of the repertoire of more than one right holder. Even if it is safe to affirm that multi-homing will arise, uncertainties related to the character of the demand (e.g. how many commercial users will need blanket licences for online uses) make it difficult to identify the effects of pricing in presence of multi-homing. As Rochet and Tirole point out, competitive prices on one
market depend on the extent of multi-homing on the other side of the market. For example, when commercial users need to use more than one repertoire of a major music publisher, there would be an incentive for CELAS to offer more competitive prices and conditions to right holders in order to keep EMI as a client and, possibly, also another major music publisher. On the one hand, an aggressive strategy that collecting societies could adopt to facilitate one side of the platform (right holders) would in fact make the platform more valuable for the other side (commercial users). The outcome of such pricing strategy could subsequently lead to a rise in prices for the latter side. CELAS would be in the position to charge more per single transaction/licence if, following the accession of another major publisher, the latter side (commercial users) would perceive an increase in value for the platform and the services it offers.

From this reasoning, one could be tempted to conclude that there is, at least in theory, an incentive for platforms to expand when commercial users engaging in multi-homing. The theoretical point is valid, and intuitive to a certain degree, but it needs to be confronted with the reality of the current situation, and in particular with actual demand and other non-economic implications. The following concerns (and partial / tentative answers) conclude this part of the discussion.

- The extent to which commercial users demanding online licences are actually multi-homing is unknown. It is submitted that only in presence of a consistent number of ‘multi-homers’ there would be a tendency for platforms to become larger (represent more than one large commercial right holder). An empirical study on this specific aspect would be extremely useful.

- It is not to be taken for granted that large right holders would be willing to be part of the same side of the same platform, even when encouraged by favourable pricing and by the prospect of a higher users’ willingness to pay. Alliances and cooperation within the music industry are also (or, perhaps, principally) determined by non-economic aspects of the way the business is run. If there was a move towards larger (non-exclusive) platforms, it is not to be excluded that the majors would withdraw from the existing platforms and internalise the management function.

- **Competition authorities** would not necessarily welcome pricing strategies that encourage the establishment of larger platforms.

Overall, the potential effect of the two-sidedness of online music platforms could be overshadowed by other factors that influence the equilibria of the music business. However, the acknowledgement of the new nature of the relationships among the parties involved should not be neglected, especially by competition authorities and regulators.

The discussion on two-sided platforms cannot conclude without a specific mention of the consequences of the two-sidedness of the market. As indicated, pricing models and other commercial strategies should indeed be read through a new interpretative lens. Yet, the impact of two-sidedness remains a matter of degree. It is suggested that sometimes the two-sided nature of the business can be critical in the analysis, while other times it is helpful but not determinative. The outcomes of this first experimental period during which online platforms are launching their services will be useful to test the usefulness of the approach.

**Conclusion**

This paper considered the challenges currently brought to the traditional economic justification of collecting societies. It discussed how the new licensing solutions for online music rights, established under the encouragement of the European Commission, do not

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reflect the same rationale of solidarity and reciprocity that existed among collecting societies operating in the analogous world. On the contrary, such platforms are designed to operate on an exclusive basis and require to re-design the relationships between a collecting societies and right holders on the one hand, and the society and its commercial users on the other. The resulting picture reflects the dynamics of two-sided markets. The paper has focused on some of the implications of the new online model, and in particular on pricing strategies that are likely to arise due to the two-sided nature of the market. Many other aspects require attention. In particular, empirical analysis is needed, in order to test the relevance (for competition authorities and other regulatory bodies) of the definition of new online licensing platforms as ‘two-sided platforms’. The next task - and in fact the next hurdle - consists in the actual ability to obtain the relevant volume and quality of data, especially in relation to the demand for music licences, on the basis of which the model could be appropriately tested.