

LATHAM & WATKINS

Collective Licensing in the EU after the *CISAC* Decision

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CISAC Decision ... and then?

- Implementing CISAC
 - Interim relief requests of societies were rejected
 - Enforcement of the Decision must follow
 - Scope of decision is key
- Beyond CISAC getting the market moving
 - Market power shift from societies to publishers
 - Will the societies change business model?
 - Publishers seeking to consolidate power in products where they can control pricing and usage
 - Control = Injunctive relief

Life after CISAC

- Combining “multi-territoriality” and “global repertoire”
 - Why is that needed?
 - For what is it needed?
- The need for multi-territorial licenses is established in CISAC
- Global repertoire is essential (and perhaps an essential facility) at broadcaster and consumer levels

When is what license needed?

Collective Licensing of Global Repertoire

Global Repertoire is a *necessity* for these services
No exclusive exercise of rights by publisher/author
No injunctive relief / sufficient remedy

No competition in underlying rates (copyright
Tribunals or agreed arbitration to set local
rates for the global repertoire)

But model must ensure competitive service
offering in management services (representing
ca 30% of value of licenses)

Equal treatment of all members ? (“solidarity”)

Individual Licensing of Repertoire

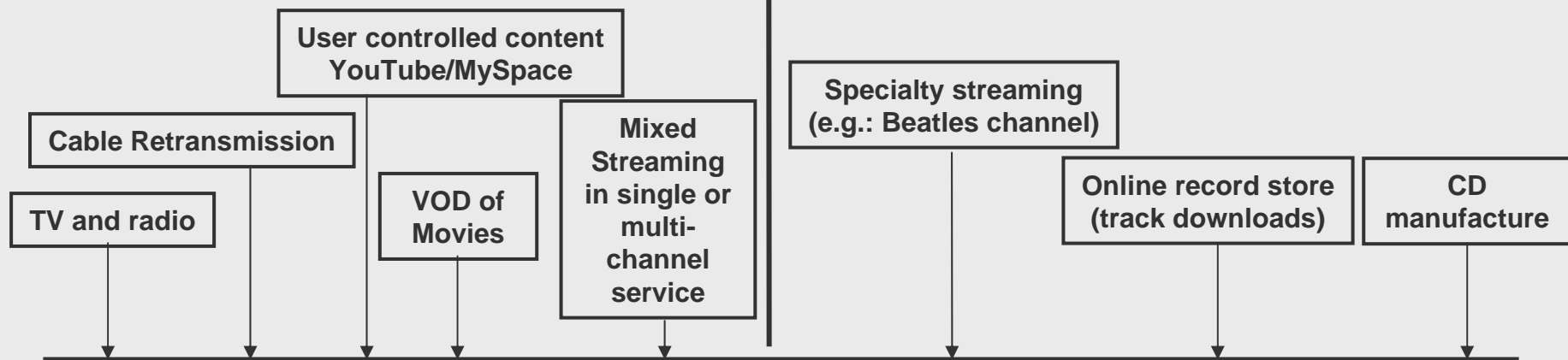
Single Repertoire licensing feasible, but inconvenient
Exclusive exercise of rights
Injunctive relief where rights are not cleared

Right holder has exclusive right to set the rates

No issue of competition in respect of same rights as
single source or agency relationships (PEDL/CELAS)

Licensing via PEDL/CELAS is not “collective
licensing” / not based on *membership* of society

No equality of treatment of rightholders by the society.



What is needed now?

- Models for the right side are being developed by music publishers
- It is on the left side where movement is required; The market needs:
 - A new **legal blanket licensing model** for the global repertoire
 - Applying to **services where cross-border licensing is feasible**
 - Involving **multiple one-stop-shops**
 - And to protect the rights, it should be based on the tariff and law of the **country of exploitation of the copyright**

The current situation is not tenable

- The current territorial licensing system is wasteful
- Partial repertoire means that broadcasters/operators are forced to operate in partial illegality, or limit music use
- Innovative products are being killed off or curtailed
- Consumers are being denied new products
- No benefit to anyone of current practices

Is it time for the Commission to take a more complete look at problems in the music rights licensing sector ?