

Conference October 7th 2004

by invitation only



European Music Cultures Sound or Silence



Initiated by Buma/Stemra

Congress Report SOS: Sound Or Silence

Opening

When the conference SOS: Sound or Silence was opened at 9.45 by singer/songwriter Xander de Buisonjé, one target at least had been achieved, namely the attendance figure. Around 140 participants from the Dutch and international music world, including many politicians and officials from the European Community and various member states were present in the "De Witte" Society premises in The Hague. During the conference, extensive discussions took place between European collective management societies about the necessity to protect the national musical cultural heritage of each member state. Music collective management societies play a vital role in this.

Xander de Buisonjé welcomed those present on behalf of 16,000 Dutch songwriters affiliated to Buma/Stemra. He recalled that when he was approached by Buma/Stemra to open the conference, it gave rise to a few questions. Especially: is the national music culture really under such a serious threat? He noted that it was a coincidence that the conference was being held in the very week that the top 3 numbers in the national hit parade were Dutch. But he confirmed the fact from his own experience that songwriters in the Netherlands are having a difficult time. According to de Buisonjé, the report drawn up and presented later by Cap Gemini was evidence that the threat throughout Europe was genuine. And that, should the policy remain unchanged, the national music product in this part of the world would be seriously diminished. De Buisonjé also mentioned that he heard all different kinds of music on his holiday travels around Europe in the past. This had certainly influenced him in his song writing activities. But he could not avoid the conclusion that as he now travels through Europe, music has become very similar. He then went on to discuss the role of Buma/Stemra in promoting the national music product, apart from collecting royalties. He expressed his approval for the role the music collective management society plays in promoting the national music product. He thanked Buma/Stemra for offering composers a platform at the conference to express their views to politicians and policy makers.

He then introduced Mrs. Medy van der Laan, the Netherlands Minister of Culture. She began with the example of the Dutch dance-act Junkie XK and his remix of an old Elvis Presley hit. In Presley's time, it would have been regarded as an insult. Now it is being hailed as a refreshing cultural contribution. She said that this was a good example of what can arise when an artist or composer is completely free to make music. And Elvis's work is protected by musical copyright. So everyone is satisfied. In this way, there are countless musicians who are active not only in creating new music, but also interpreting existing music. And all this is possible, thanks to a properly functioning copyright law, according to the Minister.

However, she continued, nowadays there is the Internet with the Napster's and KaZaa's of this world. This kind of software is in complete contradiction to the necessity of composers to generate an income from their work. On the other hand, there are the interests of the consumer to make free use of music. As well as the interests of the music industry. It has meant, according to the Minister, that new technology and new distribution methods have resulted in an enormous, worldwide misuse of music. Another effect has been a greater concentration in the music industry, resulting in an American dominated sector. Through this wave of mergers and acquisitions, and the economic laws of the sector, consumer choice over the past years has been considerably reduced.

According to Mrs. Van der Laan there are similarities with the film industry, where the power lies in the hands of an oligarchy of a few, worldwide operating media companies. From a cultural point of view, how can we make the best of the current situation, was the question posed by the Minister. And what should be the role of Government?

Until now, regulation has been tried: rules and yet more rules. The Minister was of the opinion that we should have drawn the conclusion by now that this no longer works. But what would? Should the authorities take a step backward, instead of promoting still more new laws? She had come to the view that new laws would not be able to prevent the current situation. But she was unable to propose an alternative course of action. The right of freedom of expression is not only a cultural question it is also central to democracy itself. In her opinion, a way must be found to achieve a new balance between all the interested parties. And this would not be served by new regulations, but by offering all concerned room for manoeuvre, which is why she found the example of Junkie XL so interesting, as it demonstrated how everyone concerned could freely find common ground and come to an arrangement. Perhaps, this is the way forward, according to the Minister.

The next speaker was Yngve Slettholm, Secretary of State for Culture in Norway, who outlined the situation in his country. They too are confronted with globalisation. They too are confronted with a shrinking number of music products, published by a decreasing number of increasingly powerful record companies, which are mainly interested in an international repertoire. Maintaining its cultural identity is essential for Norway, perhaps even more essential than for the Netherlands. Norway has only 5 million inhabitants with their own language and

culture. The language pool is therefore only one third of that of the Netherlands. To compensate for this, there are extensive support regulations in place for Norwegian composers, artists, festivals, concerts and so on. Special CD's with Norwegian music are also produced and distributed free to, among other, libraries. They are also used to promote Norwegian music in other parts of the world.

The Norwegian Buma/Stemra has a cultural fund at its disposal for commissioning, among other things, work from Norwegian composers. The fund is financed from the royalties collected by their collective management society.

Broadcasters must fill their airtime with at least 35% Norwegian music. There is also a tariff on the number of CD's sold and recordable media. This money is also used to support the national music product.

On top of this there is the Government's \approx 6.2 million contribution in the form of compensation for Norwegian composers. Two-thirds of this money is distributed to individuals; the rest is spread among rights holders through all kinds of promotional programmes.

According to Yngve Slettholm, it is vitally important to keep the question of cultural identity high on the political agenda. In terms of delivery, Norway is doing well in carrying out its policy. Almost half of all concerts consist of Norwegian music and everything indicates that this figure is on the increase. A welcome sign, according to the Norwegian Secretary of State.

Presentation research

The next item on the agenda was the presentation of the research carried out by Cap Gemini on behalf of Buma/Stemra. The researchers were given the task to collect figures about the share of the national music product in each country and to draw up an inventory of the activities of music collective management societies in stimulating the national product. Willem-Jan Roelofs, Vice-President of Issue Management & Public Affairs at Cap Gemini, presented the report's conclusions. The research demonstrated that in every country in Europe, including the four large music countries of Germany, France, the United Kingdom and Italy, the particular identity of the national music product is under threat and that music collective management societies play an extremely significant role in supporting it.

Harald Hartung, from the Directorate General for Education and Culture of the European Commission gave the viewpoint of the Commission in relation to the maintenance of national music cultures. According to him, many aspects play a role, such as the internal market, copyright laws, cultural exchanges and the option to support small and medium sized businesses.

He limited his contribution to the view of 'Brussels' on cultural identity. A characteristic of the European music market, according to Mr. Hartung, is that it is dominated by four, large, worldwide operating record companies. A second characteristic is the growth of new technology, particularly the distribution of music via the Internet and mobile phones. This creates an enormous challenge for all those involved and for enforcing copyright laws. In Mr. Hartung's opinion, these developments are not only challenges for the sector, they also offer new opportunities.

Mr. Hartung noted that whereas the European film industry enjoys financial support, this is not the case for the music industry. He immediately added that the support programme for the film industry is based on the dominance of American films, which has almost wiped out the European film product. In this situation, according to the Commission, market forces have failed to function properly.

"For the music industry, it is not a lack of market forces, but technology, which has to shoulder the blame", in his opinion. He related that in 2007, a new cultural programme will be instigated, with a total budget of \approx 408 million spread over a period of around 7 years. This programme will offer new opportunities for financial support in the music sector. The programme is intended to help the cultural sector in general, and the music industry in particular, to make a greater impact at a national and European level. According to Mr. Hartung, the programme is a great step forward. It is open to every cultural sector, of which the music sector is one. It is also not only open to organisations, but also to companies, with the understanding that any projects submitted must be non-profitable. In this way, the European Commission is going much further than any previous activity. A third element is that it must encompass an intercultural dialogue. This implies, for example, that artists will be offered the opportunity to perform in different countries. "In particular, we recognise that this is especially a problem for new artists", according to Mr. Hartung. "Since the first of May 2004, the Community has been expanded to include another 10 countries, achieving an unprecedented cultural diversity. Music can specifically lead to an intercultural dialogue. An important advantage here is that the language of music knows no boundaries. Therefore, let us harness the power of music". Mr Hartung then posed the question as to which subjects should be dealt with in the future. One such subject is the creation of music information centres. We have already achieved good results in this direction.

This year an Award has been created, which rewards musicians for high volume sales of their music beyond their national boundaries. The data for this is supplied by the trade magazine Billboard.

Further attention should be paid to creating European Music Offices throughout the world. "Setting up such a support centre in a city such as New York, for example, will especially help smaller countries in promoting their music in other parts of the world". Mr. Hartung ended his contribution by applauding the initiative to organise such a conference. "The Dutch Presidency of the EU has taken the initiative to organise this conference. Given the attendance today, I think it is fair to say that we are on track in terms of intensifying our intercultural co-operation".

Next on the agenda was the presentation of the first copy of the Cap Gemini report by Cees Vervoord Chairman of the Board of Buma/Stemra to Minister Van der Laan.

Panel1

After the coffee break, the first Panel discussion, about the Cap Gemini report took place, led by Jean François Michel, General Secretary of the European Music Office. The Panel focussed on the state of affairs of European music culture, as outlined in the report.

First to speak was Mrs. Claire-Lyse Chambron, from the French Ministry of Culture and Communication. She provided the Panel with a number of examples of the regulations drawn up in France, which had ensured that the national music product plays an important role in the French music sector. These included the implementation of a package of fiscal and economic measures. As a result, considerable amounts are from Government funds are spent on the promotion of French music abroad. The export of French music is also subsidised. There are promotional offices in, among other places, Los Angeles and Buenos Aires. According to Mrs. Chambron, based on the Cap Gemini report, it can be concluded that the French strategy has been successful. In her opinion, it is unavoidable that attention should be paid to the promotion of cultural identity at a European level. France is a supporter of generous budgets being made available, at a European level, obviously as a part of other measures, such as combating piracy and so on.

She said that she was extremely surprised that the French quota system for broadcasters was so effective, according to the findings of the report. France would therefore do its best to maintain the system, whereby French broadcasters are obliged to transmit a large percentage of French music.

She was pleased to note that, according to Mr. Harald Hartung, the European Commission was extremely concerned about the fate of the music sector. It is right that the cultural programme proposed by the Commission, should have an integrated approach, in which the music sector is just one of many other cultural sectors. This essential as the European programme is the only one of its kind at present. "We now have a unique opportunity to establish an integrated approach concerning the promotion of our European cultural identity".

In terms of piracy, she was of the opinion that tackling it also had to take place at a European level. A common approach to the promotion and defence of a nation's own culture by all European countries is more necessary now than ever.

Peter Jenner, General Secretary of the International Music Managers Forum, supplied the second contribution. He went on the front foot right from the start: "If the European Union thinks that European culture can be promoted with an amount of \approx 400 million over a period of 10 years, then I am not only surprised, but shocked". According to Mr. Jenner, Europe's only export product is creativity, now that almost all its industrial activities have disappeared.

"And if he says there are no internal boundaries within Europe, I disagree. Less well-known acts especially have huge problems with the enormous amounts of bureaucracy they encounter in every country where they perform. Groups like Pink Floyd have no problems in dealing with this, but smaller acts can't cope. I am describing a scandalous situation".

He came out firmly in support of music collective management societies and their activities in promoting the national product. They are working hard to achieve greater efficiency, although not all of them had succeeded. But if the Commission were now calling for greater internal competition, this would only leave the artist and music culture in a much worse situation than at present.

He appealed for a proper assessment of the financial situation of artists and composers, as they are seriously under threat. He thought it would perhaps be sensible if the sector formed a kind of European Council, which could talk with the Commission on an equal footing. Everyone involved in the sector should be represented, including the record industry. It must be avoided at all costs that the only agenda is the agenda of the record industry "because then everything will be dictated from New York".

He finished with a reference to the aircraft industry, which, although much less profitable than the music sector, received huge financial support. So too European music, he concluded.

Lauri Rechartt, Deputy General Counsel, Director of Licensing and Litigation of the IFPI, said he was shocked by Mr. Jenner's remarks about the record industry and the supposed American dominance of the sector. He referred to the IFPI, which has many record companies as members from 35 countries. Mr. Rechartt paid considerable attention to the Artist & Repertoire role of each record company. It is this role in particular, taken very seriously by every company, which keeps them extremely active with the discovery and promotion of the national repertoire. "In short, if record companies didn't exist, they would have to be invented". He also stated the industry has been very successful in this role. In countries such as France and the United Kingdom, the share of the national product is more than 50%. While in countries such as Germany and Italy, this figure is still above 40%. Yet the music industry has a huge problem and is not in particularly good health. He cited France as an example where music sales have recently dropped by 20%. According to Mr. Rechartt, piracy is to blame, both online via the Internet and offline such as illegal CD's. These areas should be the focus of Governments' and the industry's attention.

He went on to say that there should be no difference in the fiscal treatment of various cultural products. Therefore not 19% VAT on books and CD's yet only 6% on books.

Ms. Magorzata Dzieduszycka, Director of International Relations Department at the Ministry of Culture in Poland, recounted the musical heritage of her country. The protection of the musical heritage in Eastern Europe has top priority, because music had been such an important form of expression throughout history, no matter which regime. Under the communist regime, folk music was the only music to be broadcast freely. This is the reason it is still an important musical influence. "In the meantime, no one in the West paid us much attention. They were only focussed on themselves. This is the reason we know more about the West than vice versa. But if we are talking here about intercultural contacts, we have to know where other countries stand". She pleaded for a kind of cultural norm, which lays down the elements, which bind Europeans together. But that gives rise to a lot of questions. Should Dutch schoolbooks contain stories about Hungarian painting? And what should be the role of Governments in formulating the cultural code, she inquired. One fact stood out, as far as she was concerned. English has established itself as the European musical language. But it is also true that more music is being produced in languages that, until very recently, we in Europe knew nothing about. "So it is important to fight for cultural identity. But we mustn't forget that it can also lead to a form of nationalism".

Discussion

In the open discussion, the French composer and Sacem Chairman, Laurent Petitgirard remarked that the

success of French policy was largely due to the French music collective management society, Sacem. "They have had to battle almost every day with the Government to establish this policy". From various remarks made during the discussion, it became clear the Cap Gemini report, although valuable, should only be regarded as a first step. Much more should be investigated, according to those in attendance. For example, what constitutes the international repertoire from French broadcasters? If it also embraces a European repertoire, how would Europe approach the fact that the French would de facto be pursuing a protectionist policy towards other member states? When asked about France's approach to piracy, Mrs. Chambron replied that a complete answer had not yet been found to this subject. Discussions were taking place between various Ministries and an action plan was being drawn up. "We are obviously in the good intentions phase, and not yet ready with concrete plans. The first step is an agreement with the Internet providers that they will co-operate in tackling this problem".

Afternoon Programme

PANEL 2

European Music Cultures and the Role of Copyright Organisations

The afternoon programme began with a panel discussion about European musical culture and the role of music collective management societies. The Panel was chaired by Prof. Antoon Quaedvlieg, from Nijmegen University.

Dr. Herbert Ungerer from the European Commission (Competition Directorate, Head of Division) was of the opinion that the current European Commission is the main champion of protecting intellectual property. But the Commission also has to take note of legal decisions, which more or less dictate that the protection of intellectual property is allowed, but not if it affects market forces. The Commission has tolerated societies, although they have a monopoly. Until now, the Commission has rejected all complaints. But the world is changing. National borders are no longer relevant, given the new technology. A new music market is being created. One thing is certain. The Commission is in favour of a one-stop-shopping music market. But this should only take place in a competitive environment.

The lack of competition is bad for the market and bad for music lovers. The Commission does also not accept that rights holders in a one-stop-shopping environment can only claim their rights via the national music collective management societies. There must be sufficient choice, both for users and composers.

According to the senior Brussels official, the lack of competition also prevents the creation of a uniform European market, in terms of collective rights management. The Commission will therefore not allow a situation to arise where the traditional starting points and procedures from the old market situation are simply transferred to the digital music market.

And the implications? The Commission expects the societies to improve efficiency, so that as European institutions, they can compete on a world scale. Moreover, smaller players should be given the opportunity to develop into the favoured partners of users and composers. This is also why the Commission is of the opinion that the national clause should be dropped. "This is then only way to ensure a significant role for European organisations on the world stage", according to Mr. Ungerer.

Raina Mercedes Echerer, (former MEP and instigator of the Parliamentary resolution on music collective management societies), remarked that we were involved in a market, which was not functioning correctly. The world music market is dominated by four large record companies. On the other hand, the EU has no mandate from the member states for a cultural policy. Brussels can set the ball rolling at most. "The protection of artists is very necessary and the countries of Europe have successfully done this for many years. But all their achievements threatened to be swept aside. We are already in a situation where young people think it is cool to download music. But we have to convince them that it is damaging. To achieve this, we not only need a cultural policy, but also a lot more, such as the exchange of expertise", concluded Mrs Mercedes Echerer.

Hélène de Montluc, (Chef du Bureau de la Propriété de littéraire et artistique from the French Ministry of Culture and Communication), summed up the most important aspects of the current problems in her contribution. She agreed that the copyright law is probably monopolistic, but that this is the only way to create a certain cultural development. Another important aspect is freedom of choice for the consumer. It is a question of weighing these two aspects in the balance, in combination with economic interests. "Then there is the aspect of collective rights management. It is difficult to maintain a position that we are faced in Europe with a monopoly situation. Every country has its own societies. Royalties play an important role. Composers must have the right to choose to whom they wish to transfer their rights", according to the French official.

The Internet also plays an important role. "The Internet is relevant but we mustn't exaggerate it, because, at the end of the day, the Internet is only a distribution channel".

It is important that music collective management societies update and adapt their organisations and working methods to the new distribution form. De Montluc added that the audiovisual sector and the film industry were also concerned about recent developments. The issues discussed at the conference are not just issues for the music industry. According to Mrs. Montluc, the French Ministry is not inactive in this field. Copyright legislation and copyright protection are vital. But the Ministry also regards copyright management as a genuine part of this discussion. Moreover, the Ministry is encouraging the societies to become transparent. This will act as a stimulus in their social and cultural tasks.

Feargal Sharkey (Chairman of the Live Music Forum and consultant to the music industry) related that British copyright legislation was established thanks to the efforts of two gentlemen, Gilbert and Sullivan, who saw how American production companies profited from their work while they received no payment at all. What is copyright? An economic measure or the protection of intellectual property? He told of how 60% of British composers only receive a few thousand euro per year in royalties. "Every attack on their rights is an attack on those who have the weakest voice of all those involved, namely the composers. And let's not forget we are

talking about a sector which contributes more to the British national product than the pharmaceutical and construction industries". In his contribution, he showed himself to be a firm advocate of the role of collecting societies.

Philippe Kern, Secretary General of Impala) opened his address by thanking the Buma/Stemra for organising the conference within the framework of the Dutch six-month Presidency of the EU. As the Presidency rotates each six months, it falls upon another country every half year to take advantage of the occasion to draw attention to the importance of the music sector.

In his opinion, it was time to approach the problem from a different perspective. Instead of continually complaining, we must look for the opportunities. Such as iTunes from Apple, which has already become a very interesting source of income for some of the interested parties.

He also touched upon the merger between Sony and BMG. The music industry is one of the last cultural sectors, which is entirely dependent on the market, while the film industry is subsidised by various member states to the tune of one and half billion euro.

Discussion

During the discussion that followed, Feargal Sharkey remarked that for creative artists, competition is not a problem. Quite the opposite, as he too would benefit from improved efficiency within the societies. However, he posed the question directly to Mr. Herbert Ungerer: Can rates be a subject for discussion?

Mr. Ungerer responded positively but he repeated that the Commission would prefer that the societies realise they cannot enter the digital age with their traditional structures still intact. The Commission failed to understand why, in the digital age, a composer in country A should be forced to register his rights in that selfsame country.

PANEL 3

European Music Cultures and Protection of Creators Economic Interest

Ton Heukels, Legal Advisor to the Dutch Ministry of Justice, chaired the third and final Panel, which discussed European music culture and the protection of the economic interests of composers.

Jukka Liedes, (Director of the Department of Culture and Media at the Finnish Ministry of Education and Culture), first posed the viewpoint that an entirely new sort of Government policy should be drawn up for the digital age. In the past, problems could be clearly defined and geographically identified. This is no longer possible. It is therefore important that the future must be created and this means countless difficult and complex choices. Moreover, Government policy must be based on a much wider perspective. Simply combating piracy and copyright protection is no longer sufficient. It is all about information, from professionals and from the public: it's about acting as a catalyst when it comes to finding new solutions: it's about creating platforms where new balances can be struck. And new sources of finance are needed to achieve all this.

Next Mr. Liedes discussed European legislation for collecting societies. Finland is critical of these plans. Very different terminology is being used. Transparency, efficiency, internal market. "We have to ensure that collecting managing organisations do not become the victims of over regulation", he concluded.

Eduardo Bautista Garcia, Chairman of the Spanish collective management societies and President of the Executive Bureau of CISAC), declared that he was looking forward to a follow-up study of the presentations given during the conference. This was important in order to discover which dynamics are at work in the sector. Mr. Bautista Garcia made a firm plea for the continued existence of the current music collective management societies. "We are not talking about individual rights but about collective rights. What can an individual composer do in the face of a record company?"

According to him, the desired globalisation favoured by the Commission is already a fact for the societies. "Look at our members, they are completely used to it. They are active in all parts of the world". In his opinion, technology is the greatest asset for music collective management societies. Millions of bits of data are added to the databases of societies every year. "We have the data and it is the music collective management societies which ensure that the royalties are delivered to the rights holders". He posed the question: If the Commission thinks that market forces are so important, why do they not do anything about music criminality?"

Eric Baptiste, (Secretary General of CISC), explained that CISAC is not directly involved in Digital Rights Management. The organisation does conduct discussions about the framework of this technology with technology companies, and in this way, attempts to promote standardisation. He rejected the criticism that music collective management societies were against DRM. This was not true. DRM is certainly a part of the solution in the digital era. Technology has made it possible to better trace music users and to further improve the payment of royalties to rights holders.

But DRM is neither a replacement for collective rights management, nor for music collective management societies. It is a useful tool for the societies. He announced the launch of a worldwide network, in which all the organisations affiliated to CISAC will have access to each others database. In this way, in the course of next year, they will have access to the details of more than 90% of all registered works of music in the world. This is an indication of how the organisations affiliated to CISAC can embrace the new technology in order to better carry out their responsibilities.

Panel member Cees Vervoord, Chairman of Directors of Buma/Stemra, gave up his allocated presentation time, as the conference was rapidly running over schedule. He indicated that from the many positive responses he had received during the day, it was clear that there was a great desire to continue the discussion as to the contribution of music collective management societies to national culture. He announced that Buma/Stemra would seriously consider the usefulness of organising a second SOS conference.

On behalf of the panel members and all those present, Ton Heukels thanked Buma/Stemra for its excellent initiative and closed the conference.

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