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10 points about copyright from midem 2012

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Introduction

midem 2012 went through a complete overhaul, with greater focus on aspiring artists and technology companies. All this takes place as the music industry's legal environment is changing fast. Here are a few thoughts on this new copyright eco-system based on things heard and seen in Cannes at the end of January.

1. Know your rights!

The opener to The Clash's 1982 album 'Combat Rock' would be appropriate as the tag line to any music industry conference attended by a significant number of artists, including midem. And it certainly was the motto of US jazz composer and pianist Marcus Johnson, founder of Marimej Entertainment Group, who repeated the message at both his mentoring session and during the panel 'Publishers as an Early Ally in an Artist's Career'. "Rule number one," he boasted, "know your rights. Then you can protect them and learn to better exploit them."

For Johnson, artists who do not apply this basic rule face the risk of making important mistakes that will have consequences on their careers and their financial well-being. "Copyright is an asset," he said.

Fellow composer and board member of British author's society PRS for Music Simon Darlow went in the same direction when he advised artists to "never sign any contract without fully understanding its implications" and urged to find proper legal representation before signing any legally binding document.

Why does it matter?

Because nowadays, artists have now a bigger and more complex playground to contend with, and legal shenanigans could often overwhelm them, but if these legal issues are not addressed, they stand to lose a lot, as many sessions at midem has shown.

2. The last of the Mohicans

There's a small tribe that is trying to survive in the current environment: the independent publishers. Many of them, seen in Cannes, have the feeling that they are an endangered species. Their business, in their view, is under threat from the rise of super-publishers (the big remaining three, following the pending merger of Sony/ATV and EMI Music Publishing), the new comers with big wallets (BMG Rights Management, Imagem, Kobalt) who also try to combine recording and publishing rights, and all those who have the backing of bigger groups.

“The stand-alone independent publisher is going to be a rarity, an anomaly,” says Francois Millet, founder of Paris-based Vital Song. “Most publishers these days are attached to a label or a media group, or have the financial backing of VCs. It is going to be very difficult in the near future for people like me to set up shop and trade as stand-alone publishers. They will not stand any chance to survive and compete with stronger and better financed companies.”

In addition, they will not have the capacity to compete on the sub-publishing market, which can give a steady stream of revenues to those who have the financing and the infrastructure to take on sub-publishing deals.

Why does it matter?

Because in a market that is seeing more consolidation on the recording and publishing side, independent publishers are crucial to the eco-system in that they are very often the first port of call and the champions of up-and-coming artists/songwriters. See below...

3. Publishers as the A&R engine of the industry

The central role of music publishers in today's environment can be highlighted by the story from a midem regular, Diane Pinet, founder of Les Editions Bloc-Notes Music in Montreal, Québec. Instead of simply focusing on major acts or catalogues (she has both), she has continued to invest in new acts. A few years ago, she signed to a publishing deal newcomer Bobby Bazini, who showed promises as a songwriter and as a performer. She shipped the artist to all the labels in the French-speaking part of Canada, without any sign of interest. Out of desperation, she self-financed the recording of the artist's debut album and decided to release it herself (and eventually sign a license with Warner Music, which released the album in 38 countries). The album has yielded a top 3 hit single in Quebec, where it has sold in excess of 80,000 units. And since Pinet controls both the publishing and the recording, she can strategise all the major steps of Bazini's career.

“Our work has shifted and A&R is back at the core of what we do as publishers,” says Pierre Mossiat, CEO and co-founder of Brussels-based Strictly Confidential. “Label used to do artist development and invest in careers. But there's not many people left doing that at majors and most indie labels cannot afford this role. So it is up to us to sign unsigned artists, help them record demos, eventually recordings of their songs, pay for independent promotion to put them on the map, find agents and tour promoters and build their careers. Our job has never been so interesting.”

Mossiat recently signed to publishing British alternative rock band Editors and its lead singer Tom Smith, ex-Pipettes Rose Elinor Dougall, Carl Barat and Liz Green. “These signings have one thing in common: they all have great songwriting skills,” explains Mossiat.

Why does it matter?

As custodians of musical works, they are the key component that can help aspiring songwriters to transform their musical dreams into careers. As in the new environment they are back at the heart of the A&R process.

4. Artists and labels could benefit from copyright extension in the EU

It took a few high-caliber US lawyers to explain to an avid midem crowd in which way the recent extension of copyright for recordings in the European Union from 50 to 70 years.

At the panel 'New Horizons in Copyright Law', Michael Sukin, chairman of Sukin Law Group in New York, said that the new EU Directive will ensure that "songs get better protection, records get another 20 years, artists get new money, artists get termination rights." During the International Music Publishing Summit, Sukin broadened his point by suggesting that the Directive created legal certainty and clarity on a pan-European level.

Why does it matter?

Because this puts Europe on par with America when it comes to duration of copyright, and it will provide artists and labels with longer periods of time to earn revenues from their works, or the ownership of musical works, before they fall into the public domain. Opponents to this measure argue, on the contrary, 50 years is already a long period of time and that the extension to 70 years gives ownership for too long before the public can benefit from the works without restrictions, and that it does not generate significant additional revenues for artists.

This is certainly an issue that will be revisited during the next few midems...

5. It's the data, stupid!

One of the hot topics at midem was the state of development of the cross-industry project named GRD or Global Repertoire Database. A more detailed midem blog I outlined the discussions that took place in Cannes. These were reports on the public discussions at the panel that took place during the International Publishing Summit, co-organised with music publisher's body ICMP, but there were many offline meetings between professionals in Cannes, trying to iron out a whole range of issues, such as governance, transparency, integration of existing databases, commitment of all parties, etc. Sources close to the discussions (that have continued since midem) say progress has been made, even though Sami Valkonen, head of international music licensing at Google, expressed his irritation in Cannes at what he considered was the slow pace of the project.

One sticky issue will be the ownership of data in the database. Will it be open to everyone, will it be "owned" by each stakeholders, or will the ownership stay with authors, as suggested by the CEO of German society Gema Harald Hecker?

Why does it matter?

Simply because data will be the foundation to the 21st Century digital business (see below). Proper identifiers will be the oil in the engine of the licensing machine. And as metadata evangelist FX Nuttall usually says: "If you put crap in, you'll have crap out!" The better the data, the more chances you will have to be remunerated, whether you are a composer, a lyricist, a publisher, a performer, or a label. And it simplifies the job of digital services and collective management organisations in their task to identify rights holders and remunerate them (ever wondered why Google is so interested in the GRD project?). As PRS for Music director of international Karen Buse pointed out, the GRD will allow "speedier and more accurate distribution for our members". For songwriters and composers, it starts at the very basic level of properly registering songs with local authors' societies, but it is also the responsibility of publishers and labels to provide clean data.

6. Shifting the digital business from ownership to access

The recent digital trends are streaming and the cloud, and they are not necessarily exclusive to one another. In 2011, streaming became ubiquitous, thanks to the development of Spotify, at last in the US since midem 2011, Deezer, Rdio, We7, and others. In addition, three major players went “into the cloud”: Apple, Google and Amazon. And Sony launched in 2011 Music Unlimited, which offers unlimited streams and a cloud locker based on the scan-and-match technology.

Scott Bagby, head of strategic partnerships at Rdio, the new digital platform that launched in the US last year and in a few other countries, considers that these new services represent “the next generation in the industry, it is about access. Consumers are changing from a consuming & ownership model to an access model.”

But it will not happen without having to redefine the contractual relationship between rights holders and the platforms. At the panel ‘The Cloud... Is it just a licensing issue?’, moderated by yours truly, Charlie Lexton, head of business affairs/general counsel for indie labels’ Merlin, said that “it was the rights holders’ job to turn cloud services into licensed services”.

Why does it matter?

Simply because, as Bagby said, this is “the next generation” for digital music and both streaming and cloud platforms are likely to become the services of choice for consumers. And eventually the volumes traded by these services will become such that they will generate significant revenues for rights holders. For Richard Conlon, Richard Conlon, senior VP of corporate strategy, communications and new media for US performing rights society BMI, these services represent “a creative opportunity as well as a commercial opportunity: more repertoire is accessible generating more micro payments”. Hence the need for the best metadata (see prior point).

7. Digital revenues are up as more repertoire gets licensed to more platforms

The recent 'Digital Report' unveiled just before midem by international labels' body IFPI showed that global digital revenues were growing, with two main sources of revenues: downloads and streaming. At \$5.2 billion in 2011, they represent 32 % of the global music industry. In the US, digital revenues have exceeded those from physical formats. They are now the primary source of revenues for record companies. And this is apparently a taster for things to come.

Analyst Mark Mulligan pointed out that digital revenues have been growing significantly in 2010 and 2011 and that the trend should continue. The biggest growth was experienced by streaming services such as Spotify (which eventually launched in the US in 2011), Deezer, We7, Rdio and others. The leading digital music services are now present in 58 countries, compared to only 23 at the start of 2011, according to the IFPI.

Another source of satisfaction for the industry is the increase in the number of users opting to subscribe to a music service. The report points out that at the end of 2011 there were 13.4 million subscribers worldwide, a 65% increase year-on-year.

However, one dissenting voice was heard in Cannes, that of U2's manager Paul McGuinness, who contended that Spotify "has yet to become popular with artists because artists don't see the financial benefit of working with Spotify. [But] I see no reason why the basic Spotify model should not be part of the future."

Why does it matter?

Digital has become a significant source of revenues for artists, labels and publishers. For Mulligan, even if volumes are low at the moment, streaming can now represent up to 50% of an artist's digital revenues. And since the pot is growing, revenues to artists will grow too (in theory).

8. Rights societies see rising revenues too...

Speaking of revenues, those from compositions and songs seem to be doing well too. With rights societies were present in masse at midem, which was the event CISAC, the International Confederation of Societies of Authors and Composers, chose to present the latest report on global royalties collections. According to the Paris-based body, gross royalty collections reached a peak in 2010 at €7.545 billion, a 5.5% year-on-year growth. Musical repertoire accounted for 86% of total collections and Europe, as a region, generated 61% of total revenues.

Public performance accounted for the largest part of total revenues (73%) at €5.5 billion (up 7.5%), with revenues from the recording industry coming second with 23.4% of total collection. Digital revenues only represent 1.7% of global collections.

For the organisation's new Director General Olivier Hinnewinkel these results show "that collective management is the solution for today and tomorrow, generating wealth for creators while withstanding economic changes and supporting digital music markets."

Why does it matter?

Because rights societies represent songwriters, composers and publishers collectively and negotiate on their behalf with all sorts of users of music, they play a key role in the eco-system. Hence British composer Simon Darlow's invitation to songwriters to "register your songs with a collection society as a first priority."

9. ...but their is under scrutiny and pressure in Europe

It's the final countdown for Europe's new legislation on collective licensing. A process that has started a few years back should find its epilogue when a new Directive on collective management will be presented by the European Commission this spring. The announcement was made at midem by Kerstin Jorna, the deputy head of cabinet of European Commissioner for Internal Market Michel Barnier at the European Commission in Brussels.

Jorna was one of the speakers at the session 'Lost Property: The Future of Collective Rights Management in the EU' presented by German authors' society Gema at midem on January 30.

The Commission has been willing for long to establish rules that would facilitate cross-borders licensing and fluidify the market. "We want to create a digital single market for the benefit of all," said Jorna, who added that the Commission aims to provide stakeholders with framework and a level playing field. "Want to have clarity on multi-territorial licensing," she said.

The process will be long and complicated with lots of politics between the Commission, national governments and all the stakeholders from creators to digital services, mobile phone operators, ISPs, etc). The CEO of GEMA Harald Hecker welcome the process initiated by the Commission, but reminded Jorna that "collecting societies need the legal framework for two reasons: we have to create a level playing field for fair competition – in the EU you have 27 rules for societies and we need harmonisation of these rules. Without these rules there is no fair competition. And we need legal certainty. As of today, there is no cooperation with societies because we don't know what we can do and what we cannot do."

Why does it matter?

First, as reminded by Hecker, societies in Europe need to know what is their legal framework so that they can make decisions knowing what they can do and what they cannot do. Second, it will create a framework by which in theory repertoire will be easier to license for cross-borders usages. And last, because – as reminded by Alfons Karabuda, executive chairman of Europe's association of composers and songwriters ECSA, "collective management societies are the ones that can treat repertoire equally". And Karabuda added, paraphrasing one of the Rolling Stones' 60s hit, "Time and cross-borders licensing is on my side."

10. Creativity and copyright remain the foundations of the music industry

Amid all the discussions about the future of digital music, the impact of new mobile Apps, the development of the cloud, the rise of subscription streaming services, the existence of new streams of revenues for artists, it was interesting to note that all this new economy would not exist if there were not creations from artists. And these artists have relied for a couple of centuries on copyright or 'droit d'auteurs' to ensure that their rights were protected and the use of their works would generate some remuneration.

There is a debate at the moment in Europe and in the US about the level of protection that can be applied to copyright, and policy-makers have to find a fine balance between the aspirations of consumers and the rights of creators and that of the industries that have been built around these creations.

There are many interested parties that would welcome a weaker level of copyright protection and as Peter Hanser-Strecker, CEO of Germany's Schott Music, noted in Cannes, "Protection of copyright is as strong as the weakest member."

Why does it matter?

Because the whole point nowadays is to figure out if it is possible to continue to have a sustainable ecosystem around creative industries that can operate with one currency, copyright, and one business principle, licensing. It is the combination of the two that makes the system work, for those who want to be in the system, of course.

About the author

Emmanuel Legrand is a London-based freelance journalist, blogger (<http://legrandnetwork.blogspot.com/>) and a media consultant, specialising in the entertainment business and on cultural trends.

Over the years, he has interviewed artists such as Peter Gabriel, Billy Bragg, Charles Aznavour, David Gilmour, Brian Eno, Daniel Lanois, Feargal Sharkey, Salif Keita, Manu Chao, among others, as well as filmmakers (Alfonso Cuarón, Wim Wenders, Ken Russell...), industry leaders (Universal Music Group's Lucian Grainge, Google's David Drummond), and a handful of politicians.

He is the conference coordinator for the World Copyright Summit, organised by CISAC (the International Confederation of Societies of Authors and Composers). The next event will take place in Washington, DC in June 2013.

From 2007 to 2009, he was the editor of Impact, a quarterly magazine for the music publishing community. He was until March 2006 global editor of US trade publication Billboard. From January 1997 to July 2003 he was editor in chief of Billboard's sister publication Music & Media, the leading weekly pan-European trade magazine covering the music, radio and new media industries.

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