A Modern Pandora's Box

Music, the Internet, and the Dilemma of Clearing Public Performance Rights

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In Greek mythology, Pandora was the name given to the world's first woman. Molded from earth at Zeus' instruction, each of the gods contributed to her completion. She played a pivotal role in the ancient accounts by opening a jar and releasing all the evils of mankind—greed, vanity, slander, envy—upon the world.

Her name (which translates literally as "all-gifted") was recently appropriated by a Bay Area startup. In 2000, Pandora—the modern online version—began what it called the "Music Genome Project." Employing a team of musicians, the company undertook to decode the details of each song from the canon of popular recorded music, using a matrix of distinct musical attributes.

The company intended to combine this database with a powerful search and recommendation algorithm. The hoped-for result, once made available to the public via the Internet, was the ability to offer a streaming music service customized to the end-user's personal preferences. Over time, Pandora's technology would create a playlist of music more and more likely to please the listener. The company's tagline said it all: "Music you'll love—and nothing else."

In 2005, Pandora launched its online radio service (found at www.pandora.com) to great fanfare. The reviews were largely positive, and the service soon boasted millions of registered users.

But like its ancient namesake, the launch of this service unleashed upon the company another set of evils. These evils arose from the competing interests embodied in copyright law as it pertains to clearance of the performance right in and to the songs carried on Pandora's service. The issue resulted in the company's restricting its online music service, which in turn came to dominate the press attention the company received—no doubt inhibiting others from streaming music on the Internet.[1]

As it turned out, Pandora failed to contend with a question essential to the service it wished to provide its customers: When an online music provider located in the United States streams a musical composition and a customer receives that stream in another country (e.g., Canada or nations within the EU), is the provider required to obtain a public performance license from a collective rights management organization within each country in which a customer might access the stream?

The short answer is yes. This article explains why. Part I sets out the copyright law principle at work and how it applies in general. Part II illustrates how this principle applies in particular to online music providers in two jurisdictions, and what an online music provider must do to satisfy those two jurisdictions' laws respecting the public performance of music. Part III reviews where the interests in this issue lie as well as industry responses—actual and prospective—to the relatively new reality of unlimited transnational communication of entertainment content via the Internet.

I. COPYRIGHT LAW'S PRINCIPLE OF TERRITORIALITY AND ITS APPLICATION

A bedrock principle of copyright law is that it is territorial. This means that a country's copyright laws apply only within the geographic territory of that nation.[2]

As a result, any case for copyright infringement begins with an analysis of where the infringement took place; this inquiry informs what jurisdiction's law applies to the allegedly unlawful act. For some of the exclusive rights deriving from copyright protection, this analysis remains relatively simple. For example, the unauthorized reproduction of a work of music generally takes place for these purposes where the bootleg pressing plant is located.[3]

But for the unauthorized online performance (or, as some jurisdictions term it, "transmission") of a work of music, the issue is not as clear-cut. Broadcast technology has for many years permitted transnational performance of music—think of the proximity of Detroit to Toronto.[4]

Using the rules of the forum in which the case subsists (and putting aside jurisdictional and venue questions), the legal inquiry has historically sought to "localize" the infringement—that is, to determine in which country the infringement of the performance right occurred and, therefore, which country's law applies in the first instance. (This should resonate with those readers who have dealt with complex choice-of-law rules.) Jurisdictions generally apply one of three tests to do so.

Under the "country of origin" (or "host–server") test, the applicable law is the law of the country from which the allegedly infringing communication originated. For example, EU law states that satellite transmissions are deemed to occur solely in the country from which a signal is "introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth."[5]

Under the "country of destination" test, the applicable law is the law of the country in which the allegedly infringing communication is viewed, heard, or otherwise accessed. For example, EU law—which adopted the country-of-origin test in its Satellite Directive—applied the country-of-destination test with regard to simulcasting over the Internet of radio and television signals containing musical sound recordings.[6]

Finally, under the fact-intensive "significant relationship" inquiry, the applicable law is the law of the country that has "a real and substantial connection" to the transmission or communication in question.[7]

The rules regarding localization remain a work in progress in this country. In the Ninth Circuit, courts generally follow

the country-of-destination test for broadcasts.[8] In the Second Circuit, however, a public performance or display includes "each step in the process by which a protected work wends its way to its audience."[9] Under this test, a performance or display might conceivably be localized in more than one jurisdiction for infringement purposes.[10]

While case law is scant, the safe bet under U.S. law is to allow for multiple locations for online communications—at the very least, both where the communication originates (i.e., uploading content onto and streaming content from the server) and where the communication results in a performance (i.e., receiving the content); if either occurs within the United States, then U.S. law may apply in a case for copyright infringement.[11]

PANDORA HAD 4.8 MILLION UNIQUE U.S. VISITORS TO ITS WEB SITE, AND 56 MILLION MINUTES OF ONLINE ENGAGEMENT BY USERS, DURING THE MONTHS OF JUNE AND JULY 2008.

II. OPERATING AN ONLINE MUSIC SERVICE WITHIN THE BOUNDS OF COPYRIGHT LAW

An online music provider's potential liability for unauthorized streaming of musical compositions from the United States into another country is determined in the first instance in accordance with which test the recipient country applies.[12] The examples of Canada and the EU illustrate how these principles apply to online music providers seeking to operate in the two jurisdictions without violating local copyright laws.

A. Canada

Canada applies Canadian copyright law to Internet transmissions that have a "real and substantial connection" to Canada:

> A real and substantial connection to Canada is sufficient to support the application of our Copyright Act to international Internet transmission in a way that will accord with international comity and be consistent with the objectives of order and fairness. In terms of the Internet, relevant connecting factors would include the situs of the content provider, the host server, the intermediaries and the end user. The weight to be given to any particular factor will vary with the circumstances and the nature of the dispute.[13]

The collective rights management organization ("CRMO") with jurisdiction over the public performance of musical compositions within Canada is the Society of Composers, Authors, and Music Publishers of Canada ("SOCAN"). SOCAN is the only copyright collective for the public performance of musical works in Canada; virtually all Canadian songwriters, composers, and publishers are SOCAN members.[14]

In addition, SOCAN licenses the public performance, within Canada, of songs written by non-SOCAN members through reciprocal representation agreements with non-Canadian CRMOs such as ASCAP and BMI.[15] Unlike ASCAP and BMI, SOCAN requires its members to sign exclusive contracts; these contracts renew automatically every two years unless the member serves a notice of termination within a certain timeframe.[16]

A recently issued statement of the Copyright Board of Canada specifies the royalties that an online music provider must pay to SOCAN for streaming musical compositions into Canada.[17] According to that statement, a provider of online musical streams must pay SOCAN a monthly royalty computed by multiplying 6.8 percent of monthly subscription revenue by the number of plays of musical compositions requiring a SOCAN license, and then dividing the resulting total by the number of plays of all musical compositions (SOCAN and non-SOCAN) during the month.[18]

Overdue payments must be increased by a specified multiplier, depending upon the year (from 1996 to 2007) in which the fee was originally due.[19] A provider of online musical streams into Canada also must satisfy reporting requirements and allow its books and records to be audited by SOCAN.[20] The foregoing is intended to remain in effect until the Copyright Board of Canada certifies a new tariff.[21]

B. The European Union

While not entirely settled (Google, for one, has argued against), the countries of the EU lean toward the country-of-destination principle: "According to this principle, which appears to reflect the current legal situation in copyright law, the act of communication to the public of a copyright protected work takes place not only in the country of origin (emission-State) but also in all the States where the signals can be received (reception-States)."[22]

Various courts of EU member nations have applied country-of-destination principles in adjudicating copyright disputes, sometimes expressly rejecting the point-of-origin principle. "[I]t would make no sense if intellectual property rights in the [European Economic Area] could be avoided merely by setting up a website outside the E.E.A. crafted to sell within it."[23]

In most EU countries, a single CRMO licenses all public performances of musical compositions that occur within that country.[24] Nationals of a country are usually required by law or CRMO rules to become a member of their country's CRMO.[25] Furthermore, each country's CRMO tracks performances within its country and collects and distributes payments to songwriters in other countries through a series of "reciprocal representation agreements."[26] Consequently, each EU country's CRMO for public performance royalties is usually a monopoly as to all songwriters who are citizens of that country and as to all noncitizen songwriters whose works are performed within that country.

To operate legally, therefore, a provider of online streams of musical compositions into Europe is required to negotiate and obtain a license from the CRMO *of each country in which the stream is available*. "[A]uthors' rights for online use currently need to be cleared on a territory-by-territory basis."[27]

As of today, this method of exploitation mostly requires that users obtain a license from the local society *in each country where their transmissions are accessible via the Internet*, entailing complicated procedures and significant costs.[28]

III. WHOSE INTERESTS AND WHAT RESPONSES

Here, then, is the dilemma: Every country has its own laws regarding which CRMOs have jurisdiction, exclusive or nonexclusive, over which public performances of which musical compositions. Many CRMOs are monopolies and so exercise extraordinary power within their respective territories. In addition, the CRMOs tend to zealously protect their jurisdiction from attempts by online service providers or other businesses to license performance rights directly from composers or music publishers—so the potential for working around the problem by going directly to the underlying rights-holders appears to be limited.

A further problem arises in connection with the different treatment countries give to an online music stream (as opposed to a download) for clearance purposes. In the United States, a download (or "digital delivery") of recorded music implicates the reproduction right, while an online stream of recorded music implicates the public performance right (and in the case of certain digital audio transmissions, that right is in both the sound recording and the underlying musical composition or song).[29] In other countries, however, the underlying right does not necessarily parse out in the same manner: In the UK, for instance, copyright law provides for a unitary right of electronic communication that applies to both download and stream; "the right is distinguished from public performance by the fact that the public is not present at the place where the communication originates."[30]

The foregoing has conspired with the established legal regime to create the current territory-by-territory system for the licensing of performance rights for online streaming of music. On the one hand, the interest against adopting a universal host–server test is compelling—witness the apparent online infringement of rights originating from countries like Russia and China.[31] On the other hand, the reach of the Internet—and with it the increasingly central application it plays via enabling software technology as a distribution platform for entertainment content like music—renders obsolete legal notions like territoriality and localization, at least as applied to copyright clearance issues like the ones discussed here.

A leading commentator in the field of international copyright law has proposed that any infringing act be localized in a given country only if the transaction including that act is "incoming" relative to that country.[32] According to this commentator, this rule follows from the interests motivating relevant international treaties, "effectively the Berne/TRIPs regime in the field of copyright."[33] The proposal begs the question, however, where the management of online public performance rights are at stake—since "incoming" in the context of the online streaming of music would mean multiple jurisdictions applying each of their respective laws—a result the commentator appears to acknowledge.[34]

This unwieldy situation—the obvious inefficiencies it creates together with the impoverishing of the online marketplace for music—is something online music providers are increasingly up in arms over. (The wrath of other online content providers is lurking just around the corner.) The EU Commission, for one, has been aware of this concern for some time: As it noted in its October 2005 Impact Assessment, "Online music content providers see the current requirement of territory-by-territory management for most forms of copyright and related rights as an impediment to the roll-out of new legitimate cross-border online music services and consider it an inefficient way to secure multi-repertoire licences."[35]

The EU Commission identified the territory-by-territory licensing requirement as one reason why western Europe's 2004 online music market was € 27.2 million, while the United States' was € 207 million—almost eight times higher.[36] The EU Commission also referenced estimates of the increased transaction costs due to Europe's lack of communitywide public performance and mechanical licenses:

> Maintaining the status quo comes at a considerable cost to online music providers. EDiMA, the organisation representing online music providers, estimates that the direct cost of negotiating one single licence at € 9.500 (which comprises 20 internal man hours, external legal advice and travel expenses). On the assumption that mechanical rights and public performance rights in most Member States can be cleared with one society, the overall cost of the requisite licences per Member State would amount to 25 × € 9.500 = € 237.500. On the basis that a profit of € 0.10 can be achieved per download, the online music provider would have to sell 2.37 million downloads merely to recover the cost associated with obtaining the requisite communication to the public and mechanical reproduction licenses.[37]

On October 18, 2005, the EU Commission issued a formal recommendation that member nations amend their laws to allow authors to select the CRMO of their choice and to allow CRMOs to issue Europe-wide licenses.[38] The EU Commission requested public comments on the recommendation, and comments closed on July 1, 2007.[39]

On July 2, 2008, the EU Commission released a report summarizing its ongoing monitoring of the recommendation.[40] The report groups and summarizes responses received during the call for comments phase and identifies a number of EU-wide licensing initiatives since the recommendation was issued.

BUT LIKE ITS ANCIENT NAMESAKE, THE LAUNCH OF THIS SERVICE UNLEASHED UPON THE COMPANY ANOTHER SET OF EVILS.

The call for comments covered a variety of issues; these included licensing, transparency and governance, and management of online rights. According to the report, while the majority of the CRMOs "appear[ed] to be" against legislation in the areas of transparency and governance, many favored legislation covering the issue of licensing.[41] On the other hand, music publishers were unanimously opposed to any legislation addressing any of the covered issues.[42]

Nevertheless, many music publishers have already taken action on their own. EMI Music Publishing and the CRMOs of Germany (GEMA) and the UK (MCPS-PRS) established a joint venture, CELAS, a "one-stop shop" allowing purchase of a pan-European license as of January 1, 2007. Through CELAS, mechanical and/or public performance licenses may be obtained for 41 European countries for selected musical compositions representing the repertoires of EMI Music Publishing, GEMA, or MCPS-PRS.[43]

Last year, Warner/Chappell announced the launch of a similar service called P.E.D.L. (Pan-European Digital Licensing).[44] The report notes that Warner/Chappell enlisted the participation of the CRMOs for Germany, the UK, and Sweden (GEMA, MCPS-PRS Alliance, and STIM, respectively), who will now all be authorized to offer EU-wide digital licenses covering the publisher's Anglo-American repertoire. According to the report, Warner/Chappell has granted "non-exclusive rights in its catalogue to those CRMOs which comply with a set of common standards intended to ensure efficient and transparent management of rights."[45]

The report also notes that Universal Music Publishing Group ("UMPG") has signed an agreement with SACEM, the CRMO for France, covering online and mobile uses.[46] SACEM will administer EU-wide licenses covering UMPG's repertoire as well as the repertoire of SACEM published by UMPG.[47]

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Do the recent moves of the major music publishers suggest that there are either legal or practical solutions to the dilemma posed by this brave and relatively new world of unlimited transnational performance? One possible source for such a solution is found buried in a footnote of the report. There, the report explains, the CRMOs of eight EU countries in the Baltic/Nordic region currently grant cross-border licenses for performance rights in music; users choose which society they wish to get the license from and pay a tariff based on the tariff of the country of destination.[48]

This system works through a revision in the law proposed in the 1970s following the cooperative participation by the CRMOs of Finland, Norway, Sweden, Denmark, and Iceland.[49] By operation of that revision, each CRMO's repertoire is extended not only to all domestic rights-holders of works in the same category (for example, performance of music), but also to all relevant foreign rights-holders.[50]

The CRMOs already have in place the foundation upon which to build an extended collective licensing solution like the Nordic model. This foundation consists of the existing reciprocal representation agreements by and among the CRMOs together with bilateral and multilateral treaties (like Berne/TRIPs, as well as the so-called Internet treaties concluded in 1996 under the auspices of the World Intellectual Property Organization) by and among the countries with an interest in this issue. Some of these reciprocal representation agreements already aim at offering users clearance on a worldwide basis of protected music for use on the Internet, while providing a mechanism to ensure proper distribution of license fees to songwriters and music publishers.[51]

Increased cooperation by the interested parties toward reaching an extended collective licensing solution also may be driven by developments in database and information management technology. Many CRMOs (and music publishers) have already developed robust systems for delivery of information on the licensing of works and content, the monitoring of uses, and the collection and distribution of remuneration within the online environment—witness the databases freely available to the public from ASCAP's and BMI's Web sites, for example. Ultimately, these parties must be convinced to leverage and develop their technology assets—in combination with improved copyright management systems—together with one another and their users to empower music service providers like Pandora to employ the Internet as the fully integrated, efficient worldwide distribution platform that it promises to be.

THE REACH OF THE INTERNET RENDERS OBSOLETE LEGAL NOTIONS LIKE TERRITORIALITY AND LOCALIZATION, AT LEAST AS APPLIED TO COPYRIGHT CLEARANCE ISSUES LIKE THE ONES DISCUSSED HERE.

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The common wisdom is that, once opened, what escaped from the jar later known as Pandora's box could not be replaced; the genie could not be put back in the bottle. The ancient texts, however, suggest that one item did not escape Pandora's box and remained imprisoned there—hope. Whether that is a comfort or a bane only the ensuing years will tell as the interested parties, the law, and the world's governments struggle to come to terms with the challenge posed by these issues.

In the meantime, Pandora the online music service continues to survive, perhaps to thrive.[52] According to comScore, Pandora had 4.8 million unique U.S. visitors to its Web site, and 56 million minutes of online engagement by users, during the months of June and July 2008.[53] But Pandora's online terms of use state that the service is still not operational outside the United States. Hope springs eternal. ❖

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1. *See, e.g.*, Doreen Carvajal, *Music Radio on the Internet Faces Thorny Royalty Issues*, N.Y. Times, May 14, 2007.

2. 3 Nimmer on Copyright § 17.05, at 17–39 (1991) ("The applicable law is the copyright law of the state in which the infringement occurred, not that of the state of which the author is a national or in which the work was

first published."); Goldstein on Copyright § 16.0, at 16:1–16:2 (2d ed. 1998) ("Copyright protection is territorial. The rights granted by the United States Copyright Act extend no farther than the nation's borders.").

3. *See*, *e.g.*, U.S. v. Minor, 756 F.2d 731, 733 (9th Cir. 1985) (venue for criminal prosecution for song copyright infringement involving bootleg sound recordings in California where pressing plant was located, even though individual directing operation and receiving bootleg material were located in another state), *judgment vacated*, 474 U.S. 991 (1985).

4. One leading commentator suggests that there is "little analogy" between broadcasts and Internet transmissions for these purposes. Paul Edward Geller, *International Copyright: An Introduction* § 3[1][b][ii][A] at INT-61, in International Copyright Law and Practice (Paul Edward Geller & Melville B. Nimmer eds., 2006) (filed through Sept. 2007).

5. EU Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission [hereinafter Satellite Directive], 1993 O.J. L 248/15, art. 1, § 2(b).

6. EU Commission Decision of 8 October 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement [hereinafter Simulcasting Decision], 2003 O.J. L 107/58.

7. Soc'y of Composers, Authors & Music Publishers of Canada v. Canadian Ass'n of Internet Providers, [2004] 2 S.C.R. 427, ¶ 60, 2004 SCC 45, ¶ 60.

8. Allarcom Pay Television Ltd. v. Gen. Instr. Corp., 69 F.3d 381, 387 (9th Cir. 1995) (where unauthorized unscrambling of satellite transmissions originated in the United States but were only received and viewed in Canada, U.S. copyright laws did not apply because the potential infringement was only "completed" in Canada); Los Angeles News Serv. v. Conus Commc'ns Co., 969 F. Supp. 579, 583 (C.D. Cal. 1997) (agreeing that "the location where the broadcast is received and viewed is determinative of whether United States copyright laws apply" and ruling that a broadcast from Canada into the United States constitutes a "display" within the United States). Cf. Los Angeles News Serv. v. Reuters Television Int'l, 942 F. Supp. 1265, 1269–71 (C.D. Cal. 1996), *aff'd in part*, *rev'd in part*, 149 F.3d 987, 991–93 (9th Cir. 1998), *cert. denied*, 525 U.S. 1141 (1999).

9. Nat'l Football League v. Primetime 24 Joint Venture, 211 F.3d 10, 13 (2d Cir. 2000) (criticizing decision in *Allarcom* case; applying U.S. law to broadcasts originating in the United States but only received in Canada).

10. The U.S. Supreme Court declined to review this apparent split of authority. Nat'l Football League v. Primetime 24 Joint Venture, 532 U.S. 941 (2001) (petition for cert. denied).

11. Cf. Twentieth Century Fox Film Corp. v. iCraveTV, 2000 WL 255989, at *3 (W.D. Pa. 2000) ("Subject matter jurisdiction exists because, although the streaming of the plaintiffs' programming originated in Canada, acts of infringement were committed within the United States when United States citizens received and viewed defendants' streaming of the copyrighted materials. These constitute, at a minimum, public performances in the United States.").

12. In this country, a federal judge in New York recently decided the matter of an appropriate and reasonable license fee for the online streaming of song repertoire by Internet service providers AOL and Yahoo! in a case that's been pending for several years. *See* U.S. v. ASCAP, Civil Action No. 41-1395 (WCC), Opinion and Order (S.D.N.Y. Apr. 30, 2008).

13. Soc'y of Composers, Authors & Music Publishers of Canada v. Canadian Ass'n of Internet Providers, [2004] 2 S.C.R. 427, ¶¶ 60–61, 2004 SCC 45, ¶ 60.

14. *Music Copyright Royalties in Canada*, Canada Heritage (2005), *available at* http://www.patrimoinecanadien.gc.ca/pc-ch/sujets-subjects/arts-culture/sonore-sound/music_industry/5_e.cfm.

15. *See*, *e.g.*, Collecting Foreign Royalties, http://www.ascap.com/about/collecting.html; BMI's Involvement in the International Marketplace, http://www.bmi.com/international.

16. Soc'y of Composers, Authors & Music Publishers of Canada v. Canadian Ass'n of Broadcasters, 1999 CanLII 7720, ¶ 7 (F.C.A.). *See also* How Membership Works, http://www.socan.ca/jsp/en/musiccreators/how_it_ works.jsp. Pursuant to an antitrust consent decree, member agreements with both ASCAP and BMI grant nonexclusive rights only to those two collection societies.

17. Statement of Royalties to Be Collected by SOCAN for the Communication to the Public by Telecommunication, in Canada, of Musical or Dramatico-Musical Works, issued November 24, 2007 [hereinafter Tariff 22].

18. *Id.* § A(3)(1).

19. *Id.* § A(5)(a).

20. *Id.* §§ A(4)(2), A(4)(5), A(4)(6), A(6).

21. *Id.*, Introductory Note.

22. Simulcasting Decision, *supra* note 6, & 21. *See also* Berne Convention for the Protection of Literary and Artistic Works, article 11 bis(2) ("It shall be a matter for legislation in the countries of the Union to determine the conditions under which the [performance] rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed."). For a statement of Google's position in the matter, see Amicus Brief of Google Inc., et al. in Support of Defendant's Motion for Summary Judgment, filed in *Explorologist Ltd. v. Sapient*, Case No. 2:07-CV-01848-LP (E.D. Pa.), dated Jan. 11, 2008.

23. KK Sony Computer Entm't v. Pacific Game Tech. (Holding) Ltd. [2006] EWHC 2509, & 27 (Ch.) (holding that sale of PlayStation consoles by Hong Kong company targeting UK purchasers was subject to UK trademark and copyright laws). *See also* LG Hamburg, 308 O 449/03, 35 I.I.C. 478 (2003) (holding that German copyright law applied when photographic thumbnails uploaded from the United States could be accessed in Germany). A discussion of the exact copyright laws employed by each of the 30 countries in the EEA and the tariff or fee each applies for online streaming of music is beyond the scope of this article.

24. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: The Management of Copyright and Related Rights in the Internal Market, COM(2004) 261, dated April 16, 2004 [hereinafter EU Communication], § 3.1.1, at 14.

25. *Id.*

26. *Id.* § 3.1.2, at 14.

27. EU Impact Assessment Reforming Cross-Border Collective Management of Copyright and Related Rights for Legitimate Online Music Services [hereinafter Impact Assessment], Oct. 11, 2005, at 5.

28. Patrick Boiron, *The Simulcast Decision: Toward a Competitive Environment for Collective Administration Societies*, Intern'l Ass'n of Entm't Law., at 2.

29. U.S. v. ASCAP, 485 F. Supp. 2d 438, 442 et seq. (S.D.N.Y. 2007). *See also* 17 U.S.C. §§ 106(6) & 114 (scope of exclusive rights in sound recordings). The principal collection society handling the licensing and collecting for the (limited) public performance right in sound recordings in the United States is SoundExchange, which holds itself out as an independent nonprofit designated by the U.S. Copyright Office to collect and distribute digital performance royalties for featured recording artists and sound recording copyright owners (i.e., record labels). More on SoundExchange can be found at its Web site, http://www.soundexchange.com.

30. Lionel Bently, *United Kingdom* § 8[1][b][v], at UK-113, in International Copyright Law and Practice (Paul Edward Geller & Melville B. Nimmer eds., 2006) (filed through Sept. 2007).

31. *See*, *e.g.*, Alex Veiga, *Record Labels Sue Web Site Operator*, Wash. Post, Dec. 20, 2006 (reporting on lawsuit brought against allofmp3.com). The saga of the music industry's enforcement efforts against that particular online service provides an interesting case study underscoring the limitations copyright holders face in the current legal regime with respect to transnational distribution of entertainment content via the Internet. *See Wikipedia* entry for allofmp3.com (last visited Aug. 28, 2008). Under intense political pressure, the site was ultimately closed down. But a Russian court acquitted the owner of the service of all charges stemming from a copyright infringement prosecution and early proceedings in a related civil case appeared to favor the service. In May 2008, the record labels (via the Recording Industry Association of America) declared victory and voluntarily dismissed their U.S. lawsuit. In the meantime, two sister sites have emerged to take allofmp3.com's place.

32. Geller, *supra* note 4, § 3[1][b][ii][A] at INT-61.

33. *Id.* at INT-59.

34. *Id.* § 3[1][b][ii][B] at INT-75.

35. Impact Assessment, *supra* note 27, at 5.

36. *EU Study on a Community Initiative on the Cross-Border Collective Management of Copyright*, released July 7, 2005, at 6.

37. Impact Assessment, *supra* note 27, at 31.

38. Commission Recommendation of 18 May [sic] 2005 on collective cross-border management of copyright and related rights for legitimate online music services [hereinafter Recommendation], 2005 O.J. L 276/54, at & 3.

39. Call for Comments, Jan. 17, 2007, *avail-*

able at http://ec.europa.eu/internal_market/copyright/docs/management/monitoring_en.pdf.

40. Monitoring of the 2005 Music Online Recommendation, July 2, 2008 [hereinafter Report], *available at* http://ec.europa.eu/internal_market/copyright/management/ management_en.htm#report.

41. *Id.* at 4.

42. *Id*.

43. *See* CELAS, http://www.celas.eu.

44. Susan Butler, *More One-Stop Shops*, Billboard Magazine, Feb. 3, 2007, http://www.billboard.com.

45. Report, *supra* note 40, at 6.

46. *Id*.

47. *Id*.

48. *Id.* at 6 & n.2.

49. Henry Olsson, The Ministry for Justice/Stockholm, *The Extended Collective Licence As Applied in the Nordic Countries*, Kopinor 25th Anniversary International Symposium (May 20, 2005), *available at* http://www.kopinor.org/opphavsrett/artikler_og_foredrag/kopinor_25_ar/kopinor_25th_anniversary_international_symposium.

50. Daniel J. Gervais, Application of an Extended Collective Licensing Regime in Canada [electronic resource]: Principles and Issues Related to Implementation (2003), *available at* http://www.canadianheritage.gc.ca/progs/ac-ca/progs/pda-cpb/pubs/regime/tdm_e.cfm.

51. World Intellectual Property Organization, Collective Management of Copyright and Related Rights, at 14, *available at* http://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_ge_08/wipo_smes_ge_08_topic02.doc.

52. Or perhaps not. *See* "Giant of Internet Radio Nears Its 'Last Stand'" Wash. Post, Aug. 16, 2008.

53. *Last FM Needs More Than a Redesign to Catch Up to Imeem*, TechCrunch, Aug. 15, 2008, *available at* http://www.techcrunch.com.