

COPYRIGHT COLLECTING SOCIETIES,
MONOPOLISTIC POSITIONS AND COMPETITION
IN THE EU SINGLE MARKET*

by

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The paper will discuss the reform of the legal framework in the light of the EU proposal directive on collecting societies. The focus will be specifically devoted to the Italian situation, where, like in Austria, there is a legal monopoly. The basis of this monopoly has been recently discussed and the Italian legislator has liberalized neighboring rights. According to some scholars this would lead to a re-thinking of the legal system and to the liberalization of copyrights too. On the other hand, we will take into account the relations between the CISAC decision and the EU Services Directive. The re-thinking of the de facto or legal monopoly positions will be analyzed by the paper also from an economic perspective, discussing economies of scale in the peculiar perspective of the division of the relevant markets. In fact, the final view is that the overcoming the legal monopoly is likely to lead to partitioning of the markets which will have the result of, on the one hand, promoting the creation of small collecting societies, which will be dedicated to specific sectors, but, on the other hand, it should facilitate the growth of the power of collecting societies already dominant in Europe (e.g. GEMA, PRS).

KEYWORDS

Collecting societies, copyright, EU single market, competition

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1. THE ITALIAN FRAMEWORK ON COLLECTING SOCIETIES: S.I.A.E. AND LEGAL MONOPOLY

The S.I.A.E. (Italian Society of Authors and Editors) was founded in 1882 also from an input of some famous artists like Giuseppe Verdi. From 1921 SIAE obtained by governmental convention, the power of assessment and collection of fees: such fees, in force until 1999, initially related only to plays, were soon extended to other representations (e.g. concerts). Beyond these historical records, more interesting is the profile concerning the legal entity of SIAE. In fact initially SIAE was formed (under articles 2 and 15 of its first statute) as an association under private law, with a sort of mutual mold, disciplined by the companies' rules of the Italian Civil Code of 1865.

With the adoption of law no. 633 of 1941 (Italian copyright law), and the transformation from SIAE to EIDA, it was formally recognized as a public law body, confirming the decisions of the Supreme Court which, already in the thirties, had stated that SIAE was a public juridical person, which pursues superindividual purposes and it is subject to a public control.

Therefore SIAE generally works as a monopolistic (or exclusivist) society, that manages only copyrights thanks to a legal exclusive. In fact, other activities or secondary proprietary rights (like fair compensation for private copying), are managed by IMAIE, the other Italian CCS¹.

The Italian system is ruled by paragraph 180 of the Italian copyright law², which specifies that SIAE must work in a situation of substantial monopoly, justified by law referring to a "general and public interest exigence". This circumstance has been widely denied by the jurisprudence of European Justice Court, first with BRT versus SABAM sentence, where it was denied that CCSs functions can be ascribed to the notion of "general economic interest's service"³.

¹ MAIE (Mutualistic Institute of Artist, Interpreters and Performers), was founded in 1977 on the initiative of the three main trade unions (CGIL, CISL and UIL), in order to facilitate the recognition of the rights of performers and users and to obtain the distribution of fair compensation related to the reuse or reproduction of works interpreted in any way (radio, television, public buildings, etc.).

² «The right to act as an intermediary in any manner whether by direct or indirect intervention, mediation, agency or representation, or by assignment of the exercise of the rights of performance, recitation, broadcasting, including communication to the public by satellite, and mechanical and cinematographic reproduction of protected works, shall belong exclusively to the S.I.A.E.».

³ ECJ, Case 127/73 *BRT v. SABAM*, [1974], ECR 313.

Italian copyright law also prescribes that users may generally choose to accept the intermediation made by SIAE or, in alternative, manage by themselves their copyrights.

Actually Italian CCS have the power to influence authors that is those who are in a monopolistic position: in a recent sentence, the Italian Constitutional Court said that SIAE manages authors' rights «in conditions of substantial monopoly, as to give the power to influence the users and the market that it is own as monopolist. This qualification of the phenomenon, moreover, is consistent with the notion of monopoly elaborated from the modern doctrine, which defines it «as the exclusive of offering goods and services that are not easily replaceable by the average user»⁴.

In a more specific analysis, the Italian situation is like a “perfect (or absolute) monopoly”, where the national law denies other societies to give identical services⁵.

In perfect monopoly a subject owns 100% of the market share and can not have competitors, due to intervention by the State which prohibits an indirect competition.

In fact in Italian systems (like in Austria) national law prohibits the provision of an identical service and there are no alternatives. Paragraph 180 of Italian copyright law saves intermediation activity only for SIAE: the paradox is that rightholders may, theoretically, directly collect the incomes from the exploitation of their works but this does not change the real asset.

Perfect monopoly or - to be more precise - absolute monopoly has, therefore, a prerequisite for State intervention. The State limits the intervention of other parties and does not allow competitive services.

2. OTHER EUROPEAN COUNTRIES: NATURAL MONOPOLIES

Differently from Italy, in several European countries there are “natural monopolies”, based on the fact that law does not deny the access of other competitors, but the access in this market was equally very difficult, due to the creation of economies of scales or to the high fixed costs.

Therefore, in the actual context, CCSs approach to create natural monopolies, because they determine a reduction of transactive costs that deny the access of new competitors in the market.

⁴ Corte Costituzionale, n. 241/1990, *Foro italiano*, 1990, I, c. 2401.

⁵ GOYDER, D.G. (2003), *EC Competition Law*, 4th ed., Oxford Univ. Press, 9.

In the case of copyright, however, two singularities must be taken into consideration.

First of all, that is a subject with a big transfrontier aim, while offering similar services for the entire European Union, it allows every single CCS to operate outside their own national context. In fact, every CCS has a sufficient expertise to offer equivalent and coincident performance with the other competitors. Therefore, the possible fall of legal monopolies would allow entities who are already operating elsewhere, to expand its operation area, circumventing the matter of initial fixed costs⁶.

The second aspect concerns the unclear nature of intermediation societies. It is known that the main benefits of competition are represented by offering better goods or services (most technologically advanced) and reducing their cost (and, prices). In the case of CCs, beneficiaries of this type of competition are two distinct categories of subjects. On one hand, the rightholders, who are not necessarily members of CCs. Market liberalization would determine, first, a reduction of registration fees and also of costs connected to other ancillary services held by monopolists.

On the other hand, we must also consider “user’s benefits”, or – in other words – benefits of an individual «*who is carrying out acts subject to the authorisation of rightholders, the remuneration of rightholders or the payment of compensation to rightholders and who is not acting in the capacity of a consumer*»⁷.

In this case, the competition between different intermediation societies allows lower costs and market diversification. An aspect often neglected is related to the type of exploitation of works. With reference to the music industry, e.g., copyrighted works may be considered central elements (from a commercial perspective), but at the same time accessory (as in the case of *muzzak*⁸).

⁶ RICCIO, G.M. (2012), *Copyright collecting societies e regole di concorrenza. Un’indagine comparatistica*, Torino, Giappichelli editore, 57.

⁷ Art. 3, par. 1, i), of the Proposal for a “Directive of the European Parliament and of the Council” on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market, (COM(2012) 372 final). It is, to be more explicit, radios, televisions, pubs, clubs that use under a license the works that belongs to the CCS’s repertoire.

⁸ Elevator music (also known as Muzzak, piped music, weather music or lift music) refers to instrumental arrangements of popular music designed for playing in shopping malls, grocery stores, department stores, telephone systems (while the caller is on hold), cruise ships, airports, business offices, and elevators. The term is also frequently applied as a generic term for any form of easy listening, smooth jazz, or middle of the road music, or to the type of recordings commonly heard on “beautiful music” radio stations (from Wikipedia).

Generally, CCSs issue all-inclusive licenses, like “license packages”: it is clear, however, that users could be interested in acquiring different repertoires that are cheaper (and also with less commercial appeal). Is evident that consumers do not go to a particular shop to buy *muzzak*, but are driven by other factors⁹.

The current trend seems to push straight for the repeal of existing monopolies and for the enlargement of the workability beyond traditional national limits. It is an approach more easily adequate in those systems - such as England - where there are no legislative limits to market opening and also to a system moving to competition, at least in oligopolistic terms.

3. CENTRALIZED AND MONOPOLISTIC COPYRIGHT MANAGEMENT IN A LAW AND ECONOMICS PERSPECTIVE

From a Law and Economics perspective we can recognize some “classical” issues adduced to justify the subsistence of monopolistic positions (legal or natural) in CCSs system:

- a) Collecting societies guarantee economical efficiency due to a centralized copyright management¹⁰. On the other hand, individual management may be difficult or non-economical sustainable. Without these bodies individual management and intermediation would in fact be impossible (or not economically advantageous) for authors. At the same time, complications may be hit on attempting to obtain individual licenses. CCs ensure that "centralized" subjects - acting in the name and on behalf of authors and other rightholders - can have the direct contractual relationship (and, therefore, benefit schemes) with those who exploit the works.
- b) Another aspect is represented by the wide range of rights recognized by the legislation on copyright and the connected problem of managing with potential users a unified and comprehensive coverage of various rights. The situation is even more complex considering that authors' individual rights are independent from each other (and, therefore, in theory capable of separate and free acts of disposition) and that required licenses may

⁹ Very interesting is the experience of English society SoundReef, also very active in Italy following the CISAC decision, which offers licensing costs significantly lower than those proposed by SIAE and SCF.

¹⁰ HANDKE, C. – TOWSE, R. (2007), Economics of Copyright Collecting Societies, 38 *Int. Rev. of Intell. Prop. and Competition Law*, 937.

change according to the type of transmission or distribution used, and also depending on the considered geographic market. Likewise, individual negotiation between rightholders and users would be inefficient especially for works not widely distributed, where transaction costs generally outweigh the potential economic benefits¹¹.

c) Another important aspect is that CCSs work only in one nation or in a well defined territorial context, where competition is not allowed. In fact, when there is no “*ex lege*” monopoly, any CCSs born after the first one tend to place oneself in other areas, avoiding any form of competition (and also high transaction costs), preferring to specialize in different – often “*niche*” - protected rights areas (like in the English system).

d) Monopoly also avoids risks connected to copyright management that involves both rightholders and users¹². Without collective management in fact they have to face risk linked to two main information asymmetries. First of all the market’s lack of knowledge and the elasticity of demand, intended as the variation in demand from the users of a product (in this case, of a protected work) in case of percentage variation of the product’s price¹³. The second asymmetry is represented by parties’ knowledge (e.g. the users), and the bargaining power, which penalizes rightholders compared to bodies such as radios, televisions, record labels, whose market position has strengthened over time. Finally, the last is the relative risk of non-payment of royalties and the individual inability to monitor efficiently their works (e.g. infringements).

The greatest risk for users is also going through individual negotiation with authors. It is evident that they tend to overestimate their position and commercial value of their work, due to the lack of market knowledge in which they work¹⁴. A final advantage of collective and monopolistic

¹¹ HOLLANDER, A. (1984), Market Structure and Performance in Intellectual Property: The Case of Copyright Collectives, 2 *Intern. J. of Industrial Organization*, 199.

¹² PÉREZ GÓMEZ TÉTREL, A.M. (2007), Efficient Allocation of Risk as an Economic Function of Collecting Societies, *Society for Economic Research on Copyright Issues. Annual Congress*, Berlin, 12 and 13 July 2007, 3; KATZ, A. (2005), The Potential Demise of Another Natural Monopoly: Rethinking the Collective Administration of Performing Rights, in *Journal of Competition Law & Economics*, 541.

¹³ WALRAS, L. (1926), *Elements d’économie politique pure ou Théorie de la richesse sociale*, Lousanne.

management, is the competence to simply identify rightholders, avoiding risk of entering in agreements with wrong persons.

For these reasons it seems difficult to overcome the dogma of a centralized collective management.

On the other hand, the most outstanding inefficiencies that come out from the analysis of monopolistic positions - like in the Italian system - concern the role of management and administration costs of CCSs.

This is a remarkable profile, which should be not only a starting point in any study on the topic, but also a good test practical conclusions.

The incomes that companies distribute to their members may be summarized in general with the following formula:

$$\mathbf{R} = \mathbf{P} - \mathbf{C} - \mathbf{F}$$

where **R** is the total value of the proceeds collected from the exploitation of repertoire's works, **P** is the total amount distributed to CCS' members, **C** are the costs, **F** the funds distributed for cultural and social activities.

In this formula we must consider two more aspects: their membership size (indicated by **M**) - which is a variable that can impact both positively and negatively with R, depending on the actual capacity of these subjects to generate income - and the number of employees of the collecting societies (indicated by **E**)¹⁵

Furthermore, it should be noted that M (in a general sense, but also understood as individual members' bargaining power) is a variable with direct impact on C.

It has recently been demonstrated (in relation to the French model), that in big CCS models the control done by members over administrative management is more complex.

On the contrary in small CCSs there is a greater social participation, reflected also in terms of cost containment. Similarly, the presence of strong market power members, determines the most efficient solutions for those who manage CCSs, which drift towards more efficient and cost-effective solutions¹⁶. The costs of collective management must be considered not only

¹⁴ GREFFE, X. (2002), *Arts and Artists from an Economic Perspective*, Paris, p. 99, who describes artist as «isolated persons (in relation with the market), know really bad the possibilities of the enhanced value in the future of their works».

¹⁵ See ROCHELANDET, F. (2003), *Are Copyright Collecting Societies Efficient Organisation? An Evaluation of Collective Administration of Copyright in Europe*, in *The Economics of Copyright. Developments in Research and Analysis*, W.J. Gordon – R. Watt (eds.), Cheltenham, UK – Northampton, MA, USA, 182.

¹⁶ See ROCHELANDET, F. (2001), *La mise en oeuvre collective des droits d'auteur: une évaluation*, in *Réseaux*, n. 110, 93.

in a theoretical way, but mainly in practice¹⁷. For example, with reference to the Italian experience, surely it should be stated that the monopoly is not an efficient solution for collecting societies. In fact, the SIAE was administered, over the years, according to a logic of mere political division (or family interests), without taking into any account the need to pursue minimum standards of administrative safety¹⁸.

4. INEFFICIENCIES AND SOLUTIONS

The Law and Economics literature has proposed three solutions to solve potential monopolies inefficiencies in copyright and connected rights management market:

- a) **Legislative control.** Through the first model, it is possible to check royalties paid to rightholders, which can be fixed by law or subject to a next judicial review in order to assess any abuses in the distribution of collected proceeds. Examples for this model can be found: *a)* in the contract obligations (e.g. obligation to register all rightholders who make a request, like in SIAE. model); *b)* setting obligation to guarantee equal treatment to all members; *c)* users' licences supervision made by higher authorities, in order to prevent any abuse (e.g. Intellectual Property Office and Copyright Tribunal control on the licenses issued by British CCSs).
- b) **Bilateral Monopoly.** The bilateral monopoly is achieved when one CCS counterpart is represented by another CCS or by any other body which manages copyright collectively. This is what happened in Italy, with IMAIE - the body that represents the actors and performers - and SIAE, or the same situation occurred in the past in United Kingdom with the links between BBC and PRS. In these cases, CCS' strength is balanced by the bargaining power of the other party, who is able to strive for profit and utility maximization (also for its members), radically reducing the problem of asymmetric information. Another example are, of the agreements concluded at the international level by individual collecting societies belonging to CISAC or BIEM, theoretical in a position of equality between

¹⁷ PATRY, W. (2012), *How to fix Copyright*, Oxford University press, 181: «Collecting societies can exercise disproportionate leverage against smaller licences; they can be administratively inefficient and sometimes even corrupt; they can favour national right holders over foreign ones; they can retain royalties for a long time in order to "float" interest payments; and they can make very bad investments».

¹⁸ For example, only in 2008 S.I.A.E. lost 40 million euros in investments in Lehman Brothers.

them: there are no agreements negotiated between individual companies, but also understanding imposed by the bodies which they belong to, that determine the problem of uncompetition restrictive agreements between CCSs or a strong supervision carried out by international bodies.

c) **Price Discrimination.** Some scholars suggest to implement price discrimination with the purpose to mitigate monopoly negative effects. Some indicators are commonly adopted by the European CCSs (mainly referred to clubs), like licensing costs parameterized on room size or on the turnout. Price discrimination has another variant. Users of protected works are maybe different interest carriers: some economists argue the need for market-sharing mechanism using a pay-per-use basis, taking into account the capacity assets and interest of potential users, dividing them into different categories. Another solution would be separated marketing of “repertoires packages”, instead of a single license which covers all the CCSs’ repertoire (e.g. licenses designed for individual authors or dedicated to a clear musical genre). Carrying out a competitive logic will open the market door to new players, offering different repertoires (with artists often less known than those protected by big CCSs) and cheaper licensing costs. Finally the absence of monopoly should also enable consumers to benefit indirectly of the decrease in copyrighted works prices.

5. THE CISAC ANTITRUST DECISION

On 16th July 2008, the European Commission issued a decision in the CISAC case¹⁹, concerning the conditions of management and licensing of authors’ public performance rights of musical works by collecting societies. It was addressed to the authors’ collecting societies established in the EEA which are members of the International Confederation of Societies of Authors and Composers (“CISAC”).

CISAC is a non-governmental, non-profit making organisation registered under French law and has legal personality, it represents 219 member societies in 115 countries. One of the major objectives of CISAC is to

¹⁹ European Commission, 16.07.2008, Case COMP/C2/38.698 – CISAC. See e.g. ANDRIES, A. – JULIEN-MALVY, B. (2008), *The CISAC decision – creating competition between collecting societies for music rights*, in *Competition policy newsletter*, 3, 53.

promote reciprocal representation among collecting societies by means of model contracts.

The investigations carried out by the Commission has focused mainly on the structure and terms of the standard contract used by CISAC as a "model" to put in place "reciprocal representation agreements" between the member societies.

The system of "reciprocal representation agreements" allows each collecting society, through a global mutual cooperation network, to collect at the same time royalties due as a result of exploitation of the rights in its own country, not only for its own members, but also for the authors and publishers abroad who are members of other CCSs with which it has concluded bilateral representation agreements.

The CISAC model contract was approved for the first time at the CISAC general assembly in 1936.

It serves as a non-mandatory model for reciprocal representation agreements between CISAC members, especially for the licensing of public performance rights.

Collective management of copyright covers different activities corresponding to many different relevant product markets which were all affected by the CISAC model contract²⁰:

- a) the provision of copyright administration services to rightholders;
- b) the provision of copyright administration services to other collecting societies;
- c) The licensing of public performance rights for satellite, cable and internet transmissions to commercial users.

Each collecting society in the EEA had signed a reciprocal representation agreement based on the CISAC model contract with all other EEA CISAC members, creating in this way a "web system" that allows each CCS to license not only the repertoire of their own members but also the repertoire of all associated collecting societies (this complete repertoire is hereinafter referred to as the "world repertoire" even though some collecting societies would occasionally not participate in the system).

Specifically, the Commission focused on certain restrictions contained in the CISAC model contract:

²⁰ See the EU Commission Decisions *Sony/BMG*, 19.07.2004 (Case no. M.3333) and *Seagram/Polygram*, 21.11.1998 (Case no. IV/M.1219).

- a) membership restrictions contained in the reciprocal representation agreements which prevent competition between EEA CISAC members for the provision of their services to authors (“membership clauses”)²¹;
- b) territorial restrictions which prevent competition between EEA CISAC members for the licensing of performing rights to commercial users; the territorial restrictions take the form of express exclusivities in the reciprocal representation agreements and a concerted practice on the territorial delineation of the scope of the licence (“territorial clauses”)²².

The Commission also noted that the presence of “limiting clauses” in all the reciprocal agreements, was not the result of normal competitive conditions. In fact, these clauses were based on the CISAC model contract, limiting all the CCSs to uniformly define the relevant territory as the domestic territory of the respective collecting society. Therefore, says the Commission, these clauses «cannot simply be explained by autonomous behaviour prompted by market forces», but constituted a concerted practice for these reasons:

- a) the practice of the 24 EEA CISAC members cannot be justified by legislative provisions;
- b) the “Sydney Agreement”, raised by my members in 1987, is not an appropriate answer to the objections;
- c) the practice cannot be said to be the outcome of individual market reaction²³.

²¹ Article 11(II), CISAC model contract (provided until June 2004): “While this contract is in force neither of the contracting Societies may, without the consent of the other, accept as a member any member of the other society or any natural person, firm or company having the nationality of one of the countries in which the other Society operates.”

²² Article 1(I), CISAC model contract (provided until May 1996): “By virtue of the present contract, the SODIX confers on the SODAY the exclusive right, in the territories in which the latter Society operates (as they are defined and delimited in Article 6(1) hereafter), to grant the necessary authorisations for all public performances (as defined in paragraph III of this Article) of musical works, with or without lyrics, which are protected under the terms of national laws, bilateral treaties and multilateral international conventions relating to the author’s right (copyright, intellectual property, etc...) now in existence or which may come into existence and enter into effect while the present contract is in force. The exclusive right referred to in the preceding paragraph is conferred insofar as the public performance right in the works concerned has been, or shall be, during the period when the present contract is in force, assigned, transferred or granted by whatever means, for the purpose of its administration, to the SODIX by its members, in accordance with its Articles of Association and Rules the said works collectively constituting “the repertoire of the SODIX”.

«*The uniform territorial delineation*», said also the Commission, «*has the effect of indirectly granting exclusivity insofar as it standardises the reciprocal representation between the EEA CISAC members*».

The Commission concluded that this concerted practice restricts competition within the meaning of Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement, «*since it prevents EEA CISAC members from choosing collecting societies, other than the domestic one, for the licensing of their repertoires abroad*». However, on April 12, the General Court has annulled the first instance decision in respect of the finding of the concerted practice (i.e. the cartel created among the collecting societies), as long as the Commission has not provided a sufficient evidence to support its position.

6. THE EU DIRECTIVE DRAFT

In this frame the EU directive draft, licensed by the European Commission on July, gives some important aims:

- a) wider frontiers and permit to other CCS to establish in other European countries;
- b) give Authors freedom of choosing which CCS offers more advantageous conditions and also negotiating works packets, without the duty of negotiating with the CCS who works in your own territory;
- c) harmony and uniformity in governance, requirements and guarantees. Duty of transparency in the relationships with users and authors;
- d) growth of a multi-territorial licensing system (especially for on-line networks);
- e) obligatoriness of a controlling Authority (only for private and public big CCSs);
- f) fair and diligent profits management;

²³ «It cannot be assumed that the parallel behaviour is the outcome of individual market action. Every collecting society needs to have a reciprocal representation agreement with every other collecting society if it wants to gather all available repertoires and offer a multi-repertoire licence. However, this equal exchange of repertoires should not prevent collecting societies from granting their rights to more than one collecting society for the same territory. GEMA could, for example, have a reciprocal representation agreement with SACEM and with SABAM in order to get in exchange the French, as well as the Belgian rights, for exploitation in Germany. This would not prevent GEMA from granting the German rights for the combined territories of Belgium and France to both collecting societies thereby allowing for competition between them».

g) duties of transparency and financial statement²⁴.

It is indisputable that there will be an un-statalization (????) of CCSs, who, abandoned the national borders, are projected to a global market (or at least European).

The comparison with potential competitors should encourage better management practices or the adoption of more advanced technological standards.

Speaking about the critical aspects of the Directive draft, we can recognize some issues like:

- a) failure to introduce new form of negotiation, in the light of preventing negative effects linked to the subscription of contracts in set form;
- b) the proposal widens correctly the duties of information but it doesn't provide for a general right of withdrawal.

From a different perspective there will be the risk of a passage from a mutual and solidarity copyright management conception to a mercantilist vision. The question is in terms of dualistic opposition between solidarity and efficiency. On one hand, there would be the need to protect the weakest rightholders, those who are less able to broadcast their works, and, on the other hand there is the need to offer more profitable and "economically efficient" services.

7. CONCLUDING REMARKS

In the debate between solidaristic instances²⁵ and free market criteria probably a third way exists represented by private freedom tempered by a superior, public law, supervision²⁶.

In fact, the market opening process may increase majors' commercial power, that could manage bigger and enormous musical repertoires, increasing also their own contractual power, passing from a "collecting societies monopoly" to a "major right owners monopoly".

²⁴ For example as suggested from some scholars, requiring ISO-standards also for rights management systems. PATRY, W. (2012), *How to fix Copyright*, 183.

²⁵ See WALLIS, R. – BADEN-FULLER, C. – KRETSCHMER, K. – KLIMIS, G.M. (1999), *Contested Collective Administration of Intellectual Property Rights in Music: The challenge to the principles of Reciprocity and Solidarity*, in 14 *European Journal of Communication*, 5 and MACMILLAN, F. (2006), *Cultural Diversity in an Era of Corporate Dominance: A Clash of Rights?*, DIME Conference on Intellectual Property Rights for Business and Society Birkbeck, University of London, 15-16 September 2006, 8.

²⁶ FALCE, V. (2012), *Gestione dei diritti, disintermediazione e Collecting Societies. La modernizzazione del diritto d'autore*, AIDA, Milano, Giuffrè editore.

The other risk is connected to the possibility that the gap between small and big CCSs could become greater.

Under the terms of competition, there is a further risk. The large CCSs, especially English ones, may impose exclusive contracts to individual users, in order to let them use only their own repertoires. Finally, the market globalization encourages and facilitates the creation of dominant market positions, reducing fixed costs associated with establishment and management of any branch offices, and allowing also from remote the pursuit of certain activities.

On the other hand, following the experience of some European countries (like United Kingdom), liberalization does not necessarily determine the erasing of small CCSs by the bigger ones. On the contrary, the competition between various CCSs develops technical specialization or, in copyright market case, probably a specialization in specific work sectors, often neglected by big operators (because considered not profitable²⁷).

The Directive, breaking down national boundaries and opening the market, may be also prejudicial to medium-sized companies, in which management inefficiencies are more widespread. The opposite result should induce CCSs to have to deal with the logic of competition, improving their administration and reducing costs.

Finally, another important aspect is connected to the possibility that the liberalization could be circumvented at the national level when it is object of transposition by the member states, for example imposing certain law standards for CCSs.

Coming back to the Italian frame for example, recently the Government has made public the draft on "Minimal requirements necessary for a correct development of secondary rights connected to copyright intermediaries market".

Reading the text of the proposal we can recognize positive elements (like the provision of a minimum number of employees, as in the Portuguese experience) but, on the other hand, the choice of imposing a minimum financial estate, that could penalize new operators who are trying to access in the market, is rather perplexing. Following this example, the risk also for the other European countries, will be to follow an "incomplete" liberalization,

²⁷ On the contrary Other scholars argue that «the numbers and the duties of societies must be dramatically reduced per country, with no more than one per right, per type of work, and preferably with one per type of work». PATRY, W. (2012), *How to fix Copyright*, 182.

“changing” the already existing legal frames, with a formal (and not substantial) transposition²⁸.

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²⁸ RICCIO, G.M. (2012), Copyright collecting societies e regole di concorrenza. Un’indagine comparatistica, 240 - 241.

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