

Kluwer Copyright Blog

The SIAE and Meta tug-of-war: an Italian affair of European relevance

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The removal of SIAE's repertoire from Meta's social networks

"This song is currently unavailable" or "The audio track in your reel is no longer available. You can replace the audio track once, which will also remove any original audio in your reel". These are some of the messages appearing on Instagram or Facebook to users who have synchronized their stories or reels with Italian songs. The limitation on the use of Meta's libraries occurred after the tech behemoth and the Italian copyright collecting society for authors and editors ("Società Italiana degli Autori ed Editori", "SIAE") came to an *impasse* during the renewal of the license agreement for the exploitation of the Italian repertoire.



Image by Gerd Altmann from Pixabay

Even after the liberalization of collective management organizations established under [Directive 2014/26/EU](#) (see blog posts [here](#) and [here](#)), SIAE still represented the vast majority of Italian songwriters (with approximately 90,000 members), except for a small percentage that moved to the UK-based company Soundreef.

The last license agreement between SIAE and Meta expired on 16 December 2022. Since then, Meta has been technically liable for copyright infringement whenever its users upload content reproducing Italian songs, in accordance with the new regime of direct liability as per Art. 17 of

the [CDSM Directive](#) (implemented in Italy through [Art. 102-septies](#) of the Italian Copyright Law). However, SIAE did not file any legal action respecting a non-belligerency arrangement (“accordo di non belligeranza”) that would have allowed the parties to finalize the ongoing negotiation in good faith. Then, quite surprisingly, on 16 March 2023, SIAE issued a [press release](#) stating that Meta unilaterally decided to remove the Italian repertoire from its social network libraries. The implementation of this was perhaps questionable considering some songs under SIAE’s management are still available, while other falling outside it such as Måneskin’s cover ‘Beggin’ are not.

On the one hand, Meta claimed to have proposed a 50% increase in royalties to SIAE compared to those agreed on in the previous contract, and that it had never encountered similar licensing issues in the 150 countries where it has cleared music rights. On the other hand, SIAE highlighted the unique aspect of this negotiation as it is the first case in Europe of a license renewal after the entry into force of the CDSM Directive, and after Zuckerberg’s announcement of a cost-cutting policy in line with the “[Year of Efficiency](#)”. Moreover, SIAE counterargued that it was in no condition to fairly negotiate the economic terms of the license because Meta had refused to share the information about the exploitation of the Italian music repertoire.

The puzzling issue of fair remuneration in the music industry in digital ecosystems

The relevance of this tug-of-war extends beyond the borders of the Mediterranean peninsula. The issue of fair remuneration of music creators through digital channels is becoming increasingly complex worldwide, and especially in Europe.

On the one hand, it is true that among the creative industries that of music pioneered its business models to transform the curse of digitalization and piracy into a commercial opportunity through the implementation of an attractive and affordable legal offer (starting from iTunes and Spotify). On the other hand, it cannot be denied that, except for some famous superstars able to reach millions – if not billions – of streams, most musicians and lyricists complain about the lack of transparency on the exploitation of their works, and the consequent inadequate remuneration.

In fact, the percentage of the increase in music consumption seems to be much higher than the increase in the distribution of the corresponding revenues. It is [estimated](#) that Amazon Music, Deezer, and Spotify correspond to author and editor royalties € 0.004 per stream, with upward peaks of € 0.007 and € 0.012 for the artists listened to on Apple Music and Tidal, and downward peaks touching € 0.001 per stream for the music played on YouTube. The different royalty rate between commercial streaming platforms and UGC services like YouTube also reflects the diverse legal rules and business models.

The issue of adequate and proportionate remuneration is strongly intertwined with that of transparency. Until recently, some platforms had taken advantage of the information asymmetries concerning the exploitation of musical works. Opaque reporting affects the power of authors and performers to justify and quantify their claims given they should be based on the data about the effective consumption of their intellectual creations.

In the present case, it seems that Meta’s unwillingness to share information on the direct and indirect revenues derived from the exploitation of the works managed by SIAE is the main cause of the deadlock.

The solutions envisaged by the CDSM Directive

Many readers of this blog are aware that the CDSM Directive aims *inter alia* at fixing this multi-faceted problem.

Firstly, Art. 18 of the Directive requires online content-sharing service providers (“OCSSPs”) to ensure that authors and performers receive appropriate and proportionate remuneration (see [here](#)). This provision should be read in conjunction with the debated Art. 17 and the less controversial Art. 19 of the Directive. Indeed, even if Chapter 3 of the Directive was not designed for exploitation of works in OCSSPs it seems reasonable to believe that the rules herein contained should also apply in that context.

Art. 17 introduces direct liability for copyright infringement for OCSSPs arising from their users’ uploads (see [here](#) and [here](#)). In particular, Art. 17 imposes on OCSSPs the duty to make their best efforts to (i) obtain an authorization from the rightsholders for the exploitation of their works, (ii) ensure the unavailability of protected works for which the rightsholders provide the relevant and necessary information, and (iii) act expeditiously to disable access to the notified works and prevent their future uploads. The non-compliance with only one of these conditions leads to liability.

Art. 19 entitles authors and editors to the right to receive, at least once a year, up-to-date, relevant and comprehensive information on the exploitation of their works, especially concerning the modes of exploitation, all revenues generated and remuneration due. Compliance with the disclosure requirement is essential for the correct quantification of the royalties due to rightsholders, who are often not equipped with adequate tools to monitor the use of their works.

It is easy to infer that one of the cornerstones of the CDSM Directive is to ensure that the economic opportunities generated by digital markets are more fairly distributed between content producers and (online) content distributors ([here](#)). Although the European legislator’s intention is to be welcomed, there are some issues when it comes to application of the provisions in the context of OCSSP covered by Article 17, as witnessed by the recent tug-of-war between SIAE and Meta.

Food (or music) for thought

The disagreement between Meta (an OCSSP) and SIAE (a collecting society) highlights the growing importance of datasets to the proper quantification of copyright royalties. Despite paternalistic legislation aimed at addressing the problem of lack of transparency, it appears in some cases that information asymmetries persist, and the dominant positions of certain platforms exacerbate their bargaining power.

The case of SIAE vs. Meta is emblematic because it sums up the CDSM Directive trifecta of transparency obligations, bargaining power asymmetries, and fair remuneration of music creators. This is a significant test of how the mechanisms put in place by the Directive actually work.

It would not be surprising if other collecting societies in Europe were to follow SIAE’s lead on the expiry of their license agreements with OCSSPs. In fact, during the [public hearing](#) held in the

Italian Parliament on 30 March 2023, SIAE's President emphasized that other European collecting societies showed full support and expressed similar concerns.

Moreover, Meta's probable dominant position in the market for social networks may draw the attention of the Italian Antitrust and Consumers Authority to assess whether Meta's conduct towards SIAE could be considered an exclusionary abuse of dominance, in view of the [dispute between French press editors and Google](#). It is interesting that on 4 April 2023, the Authority [launched an investigation](#) into Meta for possible abuse of economic dependence, prohibited by Art. 9 of the [Law no. 192/1998](#). "Meta could have abused its bargaining power by compelling SIAE to accept an inadequate economic offer without providing information to support it. [...] Meta's arbitrary interruption of the negotiations breaches the principles of transparency, fairness and good faith", the measure reads. Also, the Authority started a precautionary proceeding against Meta for the disclosure of the information sought by SIAE and for restoration of SIAE's music repertoire.

Apart from the economic damage, there is also a cultural aspect because there is a risk that people lose the habit of listening to the Italian repertoire on some of the most popular platforms. In the end, they would have no choice other than to synchronize their content to foreign songs.

Therefore, it is hoped that the two parties will soon return to the negotiating table to discuss in good faith the fair price of the Italian music repertoire.

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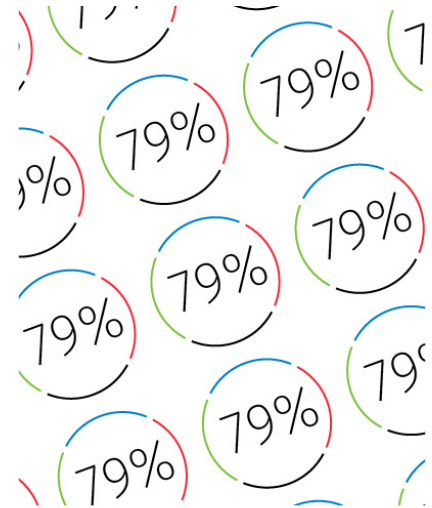
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