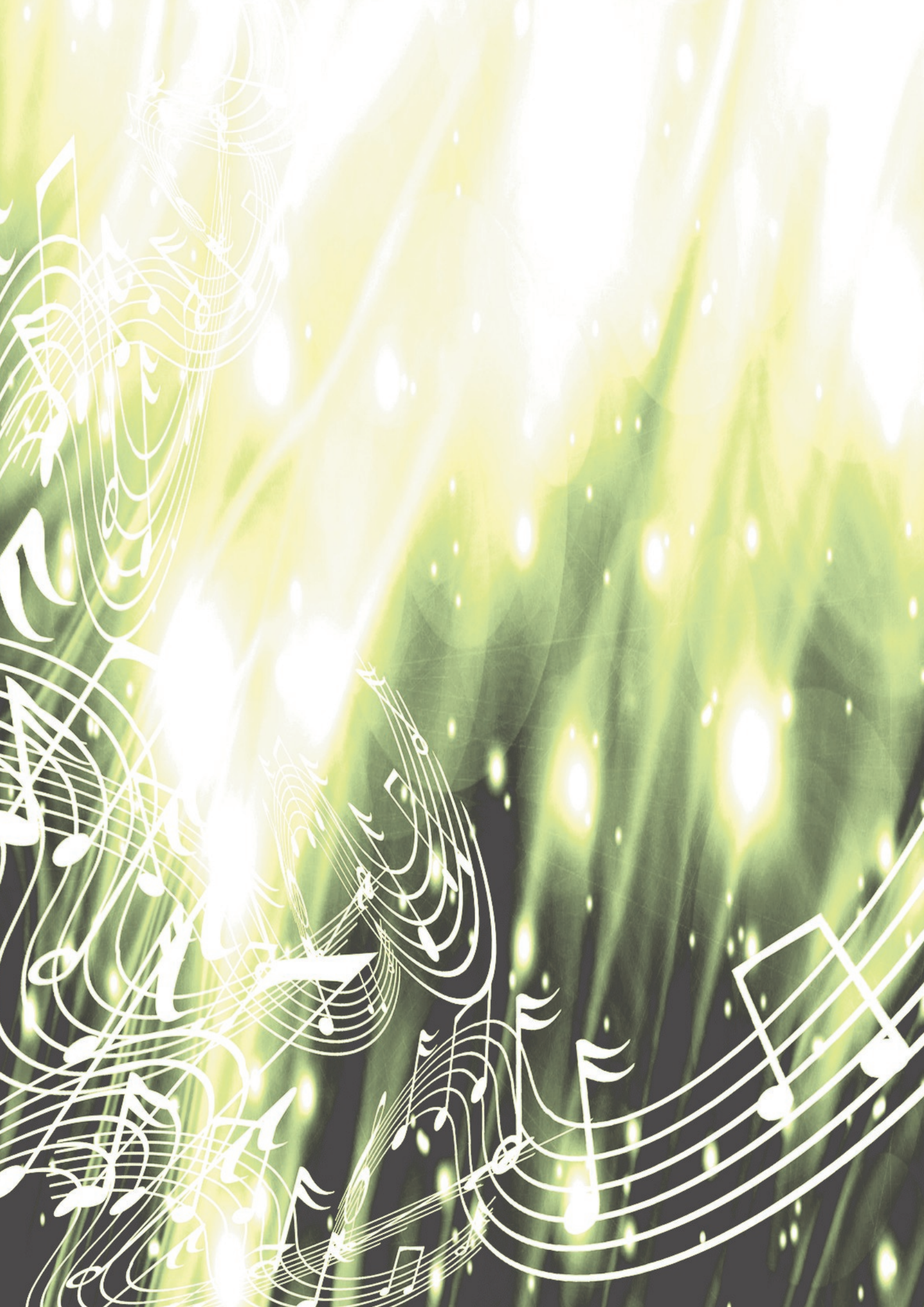




The Truth About Music Licensing in Europe



European consumers today have access to a greater variety of music in different formats and price points than ever before. Online licensing in the music sector far exceeds, in variety and geographic scope that of any other content industry. The single biggest factor limiting the growth of licensed music services is piracy — the easy availability of unlicensed free digital music. More legal services would come to market and develop successfully over a wider range of territories if the unfair competition from piracy was brought under control.

Much attention has been given recently to claims by online businesses that it is difficult to secure licences in Europe. Whilst rapidly



Plácido Domingo (Credit: John Marshall)

evolving technologies and business models have presented challenges to the existing licensing infrastructure, the music sector is responding to the needs of new online services and consumer demand. Right holders and collective management societies are developing the direct and collective licensing solutions needed to streamline and improve existing systems for pan-European licensing in the digital environment. Music producers, licensing companies and publishers are concerned about the prevalence of claims about licensing that are unfounded or based on misconceptions. This paper is submitted to set out the truth about the many diverse online music services licensed by right holders in Europe and to rebut the most commonly-heard myths.

MYTH 1: “There is a lack of legitimate online music offerings”

On the contrary, there is a great variety of legitimate music offerings online. Consumers in Europe can today enjoy a large number of legal services, making music available in many different ways to suit their taste and lifestyle. Today, there are more than 300 different online services in Europe, offering a digitised catalogue of more than 13 million tracks. The digital business makes up an increasingly significant proportion of the music sector’s total revenues, with 29 per cent of the recorded music sector’s revenues now coming through digital channels.

Although this new business is struggling to flourish in the face of massive piracy, it is already providing a wide range of consumer options. Only a few years ago, downloading was the sole means of accessing music from the internet; today it is complemented by a diverse range of options. Subscription services offer consumers the chance to stream or download tracks and albums for a fixed monthly fee; advertising-supported services offer streaming with no charge; music video services offer premium videos, one of the most popular channels for accessing music; services backed by ISPs are offering music subscriptions bundled into regular broadband payments. These are just a few examples of the new models of “music access” around which all players in the music industry are starting to shape their business.

A paper on the online music market in Europe titled *New Business Models and Consumer Choice* has also been published. It describes in more detail the legitimate online services available in Europe.

MYTH 2: “Improving legal offerings would solve online piracy”



Providing appealing legal alternatives for consumers is undoubtedly a key element in the fight against piracy. However, this alone cannot solve the problem.

A diverse range of legal music services already exists in Europe. These services not only demonstrate the music sector's ability to respond to the changing demands of the consumer; they also show that innovation and enterprise alone are unable to compete with piracy. On the contrary, despite the emergence of many legal routes for consumers to enjoy music, piracy has continued to grow in Europe, a loss for European culture as well as for national exchequers.

Europe's legitimate music business is hobbled by the prevalence of pirate sites. Every legal service that starts up, whatever the business model, must obtain licences and reward artists, producers and creators. This model is unsustainable when facing competition from services that pay no costs and circumvent the normal rules of commercial business.

In the digital era, “free” has proved an irresistible magnet for consumer demand. Surveys from around the world in recent years have confirmed the finding that “it's free” is the main reason why music consumers are drawn to illegal services. In this way piracy undermines the incentive for consumers to pay for music from legitimate services. The problem is not the availability of legitimate channels; it is the unfair environment in which those services have to operate.

Further evidence that legitimate offerings alone, however innovative, cannot compete with illegal free comes directly from the marketplace. The UK is one of Europe's most advanced legitimate digital music market, with more than 70 services available, including a significant presence for music subscription and advertising-supported free-to-consumer options. Yet digital piracy there is rife. A December 2010 consumer survey by Harris Interactive estimated that 76 per cent of music accessed online in the UK is illegal. This illustrates the enormous challenges legitimate businesses throughout Europe face in an environment swamped by piracy.



The conclusion is clear: providing legitimate music services cannot alone solve the problem of digital piracy. At the same time, it is necessary to ensure adequate means to enforce copyright online. Legitimate offerings are already in place, with exciting new ones on the way. The legal environment in which they can thrive, however, needs urgent attention.

MYTH 3: “There is a lack of pan-European or multi-territory licences”

There are numerous multi-territory licences in Europe for music—more than for any other copyright sector.

While there are improvements that can be, and are, being made to facilitate such licences, where services are not available on a multi-territory basis, this is typically the choice not of the rights holders but of the licensees. Even when licences are available or granted on a pan-European basis, most services choose to operate in only a limited number of territories for commercial and practical reasons. Services need the time and financing to roll out country by country, targeting their offerings to markets with local partners, advertisers and repertoire. The return on investment in smaller markets is a particular concern as the commercial justification for launching services in economically marginal markets is undermined by online piracy.

The absence of certain services from some markets in Europe is not the result of the structure of legal rights, or of reluctance to license on the part of right holders. Major users themselves have asserted a need for flexibility in determining the geographic scope of their services. Google has stated that “unilateral decisions not to offer services to all consumers in the EU, even where rights are available, can be justified under certain circumstances”. Similarly, the European Broadcast Union (EBU) insists on the need to maintain contractual freedom in this area.

MYTH 4: “Copyright territoriality is an impediment to multi-territorial licenses”

Copyright territoriality in itself does not prevent or impede multi-territorial licensing. Under existing law, rights holders can already determine the scope of the licences they grant. For their own repertoire, they can (and do) grant licences of local, national, pan-European or worldwide scope. Rights holders have every interest in doing so — the success of their business depends on it.

The introduction of an EU-wide copyright would not solve any problems with licensing. Those licensees who have decided not to operate in some countries in the EU despite the availability of licences to cover those territories would still make the same decisions. It could also introduce uncertainty with regards to existing contractual arrangements and mandates, and cause practical difficulties in determining the ownership of rights and the scope of authorised uses.



MYTH 5: “Consumers cannot access services offered outside their country of residence”

Most consumers in the EU can now access the vast majority of music repertoire online. To the extent that there is any issue, it concerns only a tiny fraction of the market, as most consumers are primarily interested in local services with local repertoire.

The degree of access from outside a consumer’s country of residence is generally determined by the services, not the right holders. Services tend to limit access to their services to one country or region for a variety of their own business reasons. This is true not only for services providing music or other entertainment content, but for all online services including travel, goods, etc.

In any event, the establishment of local or localised versions of services in particular territories may be a good alternative to the homogenous services of multinational entities.

MYTH 6: “The problem is that right holders are clinging to antiquated business models or licensing practices”

The music sector has undergone tremendous change over the past few years. Music right holders are not clinging to the business models of the past, but rather enabling new ones for the future.

The music industry has changed more radically than virtually any other industry in Europe in the last decade. It has comprehensively adapted its business model to respond to changing technology. The sector has seen extensive innovation and experimentation in an environment made extremely challenging by digital piracy, uncertain investment conditions, and huge revenue and job losses. From an infrastructure point of view, work is being done, including in the sphere of collective licensing, to increase the efficiency of single market solutions. Initiatives are already underway to ensure that where the existing infrastructure has evolved to service national licensees, new solutions are being developed to meet the requirements and opportunities of the single market. A major example is the Global Repertoire Database project which is intended to provide a multi-territory data resource to enable more efficient and effective licensing and royalties allocation.



Alongside these changes, the core mission of the music industry should not be forgotten – it is to discover, develop, nurture and promote talent. Music companies, publishers, authors’ societies and other rights holders are creators, producers, promoters and investors in music talent. This is not an “antiquated business model” – it is the fundamental nature of the music sector. It is also the driving force of a hugely important contributor of economic activity and employment, with its total activity valued at nearly €100 billion globally in 2010.

Though many of the roles played within the music sector are changing, its success, economically and culturally, remains intrinsically dependent on the value of music and the enforcement of intellectual property rights. These are at least as important to the health of creative industries in the digital as in the analogue world. The overriding challenge the music industry faces today is to be able to effectively enforce intellectual property rights online in the face of overwhelming levels of piracy.

ICMP

ICMP is the world trade association representing the interests of the music publishing community internationally. ICMP members are music publisher associations from Europe, North and South America, the Middle East, Africa and Asia-Pacific.

www.icmp-ciem.org

IFPI

IFPI is the trade association representing the recording industry worldwide, with a membership comprising some 1400 record companies in 65 countries and affiliated industry associations in 46 countries.

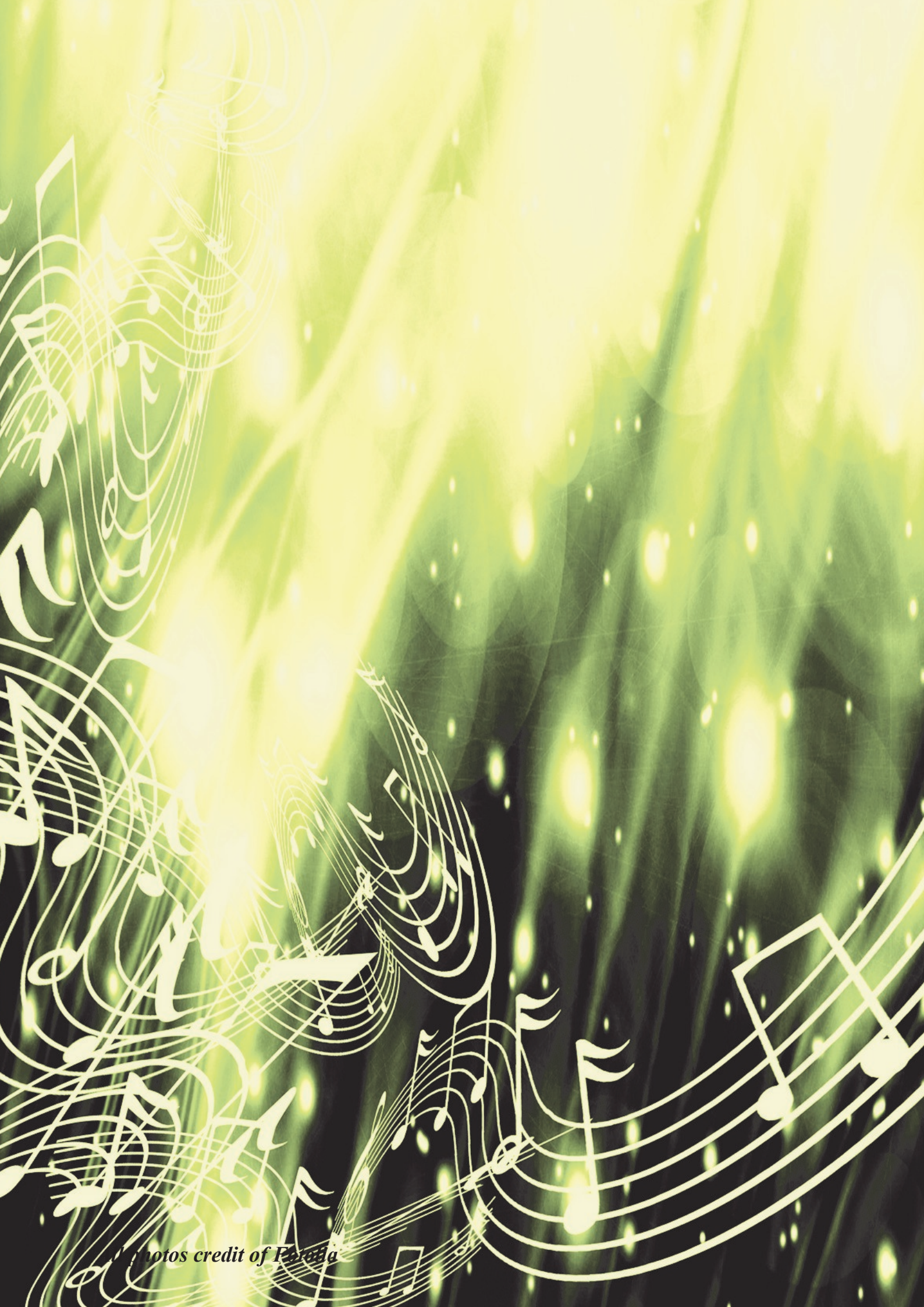
www.ifpi.org

GESAC

The European Grouping of Societies of Authors and Composers (GESAC) represents 34 of the main copyright collective management societies (authors' societies) in the European Union, Norway and Switzerland, administering the rights and remuneration of almost 700,000 authors, composers and writers in a variety of sectors (music, audiovisual, literary, visual and graphic arts) as well as music publishers.

www.gesac.org

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