



6 June 2008

Recommendation concerning the application of the country of destination principle:

- 1) Article IV of the standard agreement for reciprocal representation provides for the application of the principle of the country of destination in case of exports of sound carriers, except when such exports concern less than one hundred copies per country, per catalogue number and for each accounting period, in which case the terms and conditions of the country of origin apply.
- 2) It appears that there have been some difficulties in applying such principle for sounds recordings which do not fall under the definitions covered by the BIEM/IFPI Standard Contract (or the relevant local agreement in so far as such agreement implements this) or AP1/AP2 agreements.
- 3) Therefore, in order to solve the difficulties encountered, the BIEM Management Committee recommends that the following be applied where these sound recordings referred to in (2) above are concerned:
 - a) When the sound recordings contain only works of the licensing society's own repertoire (i.e. works owned by the society and works owned directly by its members), this Recommendation does not apply. For the avoidance of doubt, nothing in this Recommendation applies to or affects the terms and conditions which a licensing society applies to its own repertoire and the distribution of royalties relating to that repertoire which is a matter for it alone.
 - b) When the sound recordings contain not only the works of the licensing Society and such sound recordings are to be totally or principally marketed in another country than that in which the license is obtained, the licensing Society in the country of origin applies to the producer the terms and conditions applicable in the country of destination.
 - c) When the licensing Society is not aware of the content of the terms and conditions in the country of destination, it will request from the Society in the country of destination that these terms and conditions be made available to it within 10 (ten) working days. A copy of these terms and conditions will furthermore be sent by the Society in the country of destination to the Secretariat General of BIEM for publication on the BIEM website for future reference.
 - i) When provided with these terms and conditions of the country of destination, the licensing Society in the country of origin shall apply these.

However, in the event the licensing Society in the country of origin is unable to apply these terms and conditions, either for legal or for practical reasons, it shall seek approval for the grant of the license from the Society in the country where the sound recordings are to be effectively marketed (country of destination). The Society in the country of destination, as the representative of the BIEM repertoire in its territory, is considered authorized to give such approval for the use of all repertoires, to the exception of the repertoire of the Society in the country of origin.

- ii) In the event the terms and conditions applicable in the country of destination have not been made available by the Society in the country of destination within the 10 (ten) working day deadline referred to above, the licensing Society in the country of origin may apply the terms and conditions which are published in its own territory, whatever the reason for the absence of answer from the Society in the country of destination

In the situations referred to in points 3.b) and 3.c), the distribution of the royalties to right holders will take place in the territory of destination. The concerned societies shall agree on a split of the commission for the licensing documentation and audit, on the one hand, and distribution, on the other hand.