

The GILA System for Global Internet Licensing
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Part I: General

A. Definitions

- (a) *global*: applying everywhere on Earth where a copyright law is in force.
- (b) *territorial*: applying only in a certain territory or certain territories.
- (c) *making available on demand*: making protected material available to the public by wire or wireless means in such a way that members of the public may access such material from a place and at a time individually chosen by them.
- (d) *Internet right*: the right to make material available on demand on the Internet, including the right to reproduce such material in the course of such making available.²

B. Global and Territorial Licensing

1. General principles

It is suggested that the following principles should apply to global and territorial licensing of protected material:

- (a) freedom of choice for rightholders
- (b) licensing flexibility
- (c) licensing feasibility
- (d) transparency
- (e) simplicity.

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² Making available on demand may also take place on "intranet" and other services not available to the general public. This paper, however, is concerned with the Internet, though similar licensing principles may apply to the use of protected material made available on demand on more limited services.

2. Licensing

(a) General

A single rightholder may represent the Internet rights in an item throughout the world, but there may be different rightholders or rightholder representatives (including collecting societies) as regards each item and as to each right, both as to subject matter and territories.

In this respect, cross-border licensing covering the European Union but not the rest of the world falls short of what is needed by the licensee seeking to legitimate on a global basis the making available on demand of an item protected by copyright or related rights.³

(b) Necessity for global licences

To ensure the effective recognition of copyright and related rights on the Internet and to avoid situations where persons needing licences become frustrated and proceed without global coverage, a central licensing facility is, it is suggested, imperative.

The provision of a central Internet right licensing agency will give the means for accommodating the problems arising from the diversity of licensing categories. In Part II, the establishment of such an agency is proposed, together with an outline of its operation.

Part II: The GILA System

A. General

The establishment of the GILA System for the global licensing of the use of protected material on the Internet is proposed as outlined below.

It is suggested that the impetus for establishment and implementation of the GILA System should come from established collecting societies, such societies having long experience in meeting and solving the challenges of international administration of copyright and related rights.

1. Establishment of Global Internet Licensing Agency (GILA)

³ On collective cross-border management of copyright and related rights for legitimate online music services, see European Commission Recommendation (2005) 737/EC, 18 May 2005, adopted 18 October 2005, Commission Staff Working Document (C(2005)3764 final, 7 July 2005), and Committee on Legal Affairs Report on Recommendation (2005)737/EC, 5 March 2007. See also commentary by L. Guibault, and S. van Gompel, in D. Gervais, (ed.) *Collective management of copyright and related rights*, Kluwer 2006: also available at <http://www.ivir.nl> *sub nom.* "Collective management in the European Union". See also European Parliament Resolution, 13 March 2007, in response to the 2005 Commission Recommendation, and Commission Communication on Creative Content Online in the Single Market, 3 January 2008, COM(2007)836 final, comment by T. O'Shea [2008] Ent. L.R. 83, 84.

The Global Internet Licensing Agency (GILA) is established through the GILA Agreement, containing provisions summarised below. The parties to the GILA Agreement are the collecting societies which are recognised by their respective governments.

GILA has the following functions:

- (i) to license the Internet right on a global basis;
- (ii) to provide links to licensing facilities offered on a territorial basis by rightholder representatives;
- (iii) generally to promote the maintenance and recognition of copyright and related rights on the Internet.

GILA only issues licences covering global Internet rights, territorially limited licences being issued by rightholders or rightholder representatives.⁴

2. Rightholder mandates

Rightholders of Internet rights may choose in respect of the items in which they have such rights

- (i) to administer the rights themselves by licensing users directly, or
- (ii) to have the rights administered by a party other than a collecting society, or
- (iii) to have the rights administered through (1) GILA, or (2) a collecting society signatory to the GILA Agreement, or (3) a collecting society not signatory to the GILA Agreement.

GILA will accept from the rightholder or a rightholder representative a global mandate to exercise the Internet right in the item concerned. Where (as in the case of a sound recording) the constituent parts of an item (e.g. work, performance and recording) have different rightholders, such rightholders may nominate one person to represent their Internet rights (the “unitary mandate” concept). If all rightholders involved in the material contained in an item do not (directly or through a representative) provide GILA with the necessary mandate, the GILA licence will not be available for that item. Exercise of Internet rights on a territorial basis is carried out by the respective rightholder or rightholder representative.

In a particular country or particular countries, an item (or a constituent of an item) for which a Global Internet Licence is sought may not be protected by copyright or related rights. The GILA Licence as issued will state that it does not purport to grant any licence (1) in respect of the use of any material in which no copyright, related right or other relevant right exists in the country where use of such material is made or proposed to be made, or (2) in respect of any material which is not in the GILA repertoire or (3) in respect of any use not covered by the Licence.

⁴ When rights are established in extraterritorial areas, including locations in Space, the structure of recognition of extraterritorial rights and the functions of the Space Copyright Bureau as proposed by the author would come into play: see J.A.L. Sterling “Space copyright law: the new dimension” 54 Jour. Copr. Soc’y 348 (2007).

3. Licensing procedure

(a) General

The GILA Database will be freely accessible online. A search facility will be available to ascertain every item for which a GILA Global Internet Licence (GIL) is available, and the terms of such licence. Where applicable in accordance with the GILA System, links will be provided to the rightholder or rightholder representatives offering territorially linked licences.

(b) Global Internet Licences: activity coverage

The following activities are among those covered by GILA licences in respect of mandated items, according to the choice of the rightholder.

1. Streaming only, free of charge, no further transmission
2. Streaming only, free of charge, further transmission subject to conditions including respect for attribution and integrity rights
3. Streaming only, with payment, no further transmission
4. Streaming only, with payment, further transmission subject to conditions including respect for attribution and integrity rights
5. Downloading only, free of charge, no further transmission
6. Downloading only, free of charge, further transmission subject to conditions including respect for attribution and integrity rights
7. Downloading only, with payment, no further transmission
8. Downloading only, with payment, further transmission subject to conditions including respect for attribution and integrity rights
9. Combined streaming and downloading, free of charge, no further transmission
10. Combined streaming and downloading, free of charge, further transmission subject to conditions including respect for attribution and integrity rights
11. Combined streaming and downloading, with payment, no further transmission
12. Combined streaming and downloading, with payment, further transmission subject to conditions including respect for attribution and integrity rights

(c) Territorial licences

Territorial licences are of the categories made available by rightholders or rightholder representatives, limited to certain territories.

(d) Tariffs

Where payment for a GILA Global Licence is required by the rightholder, the tariff is fixed by the rightholder. Tariffs for Territorial Internet Licences are applied in accordance with the rules of the respective rightholders or rightholder representatives. Different tariffs (for instance in respect of downloading) may, according to rightholder decision, apply in different territories.

(e) GILA Database

The GILA Database is divided into six categories, giving in respect of protected material details of authors, titles, performers, sound recording and film producers, broadcasters etc. as respectively applicable, as follows:

- (i) Literary works (according to their several categories, and including computer programs)
- (ii) Artistic works (according their several categories)
- (iii) Sound recordings
- (iv) Films
- (v) Broadcasts
- (vi) Other categories

4. Supervision

Government or legislative authorities of the countries or region in which the respective GILA collecting societies are located agree a system of supervision of GILA activities.

5. Enforcement

Infringement through non-observation of licence conditions or through use without the necessary licence will, where this can be effected, be subject to action (or facilitation of action) by the rightholder representative in the respective territory, or by GILA where the infringement takes place in a territory where no rightholder representative is available to take the requisite action.

6. GILA and Creative Commons Licences: the differences

- (a) Term: under the GILA Global Internet Licence the rightholder can set a term. Under Creative Commons the licence once given is not retractable.
- (b) Enforcement: when the terms of a GILA Global Internet Licence are breached, legal action may be taken on behalf of the rightholder by

GILA or the respective rightholder representative (see 5 above). Creative Commons has no co-ordinated enforcement procedure.⁵

7. Competition principles: conformity of GILA System

Care will be taken, in so far as circumstances permit, to ensure ongoing conformity of the GILA System to competition principles, as applying nationally, regionally and internationally, including but not limited to those considered in the European Community context in the Commission Decision in the IFPI *Simulcasting* case (Case No.COMP/C2/38.014 (30 April 2003)), the Commission's Statement of Objections (re Santiago Agreement), Press Release IP/04/586 of 3 May 2004, and Commission Recommendation (2005) 737/EC, 18 May 2005, adopted 18 October 2005.

B. The GILA System in practice

Operation of the GILA System

The fundamental principle of the GILA System is that (subject to legislative exceptions) all use of protected material on the Internet should be licensed by or on behalf of the respective rightholders, whether or not such licensing involves payment.

The GILA Identification Number (GIN)

A core feature of the GILA System is the allocation of a GILA Identification Number (GIN) to each item in respect of which GILA has received authorisation to issue GILA licences for global Internet use of that item. Thus in the case of a sound recording of a protected performance of a protected work, a GIN will be allocated to that particular recording. The GIN will be established in collaboration with the record producer concerned, who may co-ordinate the GIN with an existing identification number, and who will incorporate the GIN in the recording so that any reproduction or making available on demand will be traceable.

Database entry

The respective rightowners (or their representatives) of the Internet rights in the work, the performance and the sound recording will have authorised GILA to grant global licences for the making available on demand of the work, the performance (as incorporated in the particular recording) and the associated reproduction. The GILA Identification Number of the recording will be entered in the GILA Database, together with the details of the recording licence conditions pertaining to the making available on demand of that recording (use conditions concerning streaming or downloading, applicable payments per territory etc.).

⁵ See Creative Commons Specimen Licence, clauses 2.1 (worldwide, royalty free, non-exclusive licence for duration of copyright in work) and 7.2 (Creative Commons Corporation will not investigate the claims of any Licensor or user of the licence): text reproduced in A. Sparrow, *Music distribution and the Internet*, Gower Publishing Ltd., 2006.

Case examples

In each of the following Case examples, the file concerned contains a sound recording of a performance of a musical work, and in each case it is assumed that the musical work in the sound recording, the recorded performance of the work and the sound recording are protected by copyright or related rights in the country concerned.

Case I: File hosting

A file uploader uploads a file to a host website, a link provider provides links to the host, permitting streaming or downloading of the file from the host, and an accessor, through the link, receives the file from the host.⁶

Case II: File sharing with central index of available files

A software provider provides a file sharing program, with which is associated a central index, a file provider makes a file available on the system and, through the central index, a file receiver obtains streaming or downloading of the file from the file provider.⁷

Case III: File sharing with no central index of available files

A software provider provides a file sharing program by means of which users of the program can locate the desired file and receive streaming or downloading of the file from a file provider who makes the file available through the program. No central index is involved.

In Case I the term “accessor” is used to describe the person to whom the file is downloaded, whereas in Cases II and III the term “file receiver” is used to describe this person, in order to mark the difference between the user who merely accesses a site for the purpose of downloading, and the person in Cases II and III who is participating in the file sharing operation.

Case I embraces both initiated hosting and “user generated content” systems. File sharing systems with central index as described in Case II have largely been superseded by systems without central file index, but the legal issues they present are still relevant. Case III embraces file sharing systems found in the Kazaa and similar systems, and in BitTorrent systems.

Licence applications

The coverage of GILA Licences as regards recordings includes eight licensee categories, namely: uploader, host, link provider, accessor, software provider, file provider, central index provider, file receiver.

⁶ The term “link provider” is used in this paper to delineate the particular type of service provider involved.

⁷ The central index is dynamic, in the sense that it reflects the titles etc. (but not the file itself) of files available from system users who are on line at the moment of access by the file seeker.

Persons whose activities fall into more than one of these categories (for instance, persons both providing and receiving files) will require and can receive a GILA licence covering all relevant categories of activity.

Payment terms will depend on the persons and activities involved.

Licence applications in the cases of the persons involved in Cases I, II and III will proceed as follows:

Case I – File Hosting

(a) File uploader

File uploader A. wishes to upload items in the GILA repertoire to a host website for making available online. A. accesses GILA Database, gives details of intended use, receives and accepts licence conditions, receives GILA Licence.

(b) Host

Host applies to GILA for a licence to copy for making available on demand and for making available on demand of items in the GILA repertoire, receives and accepts licence conditions, receives GILA Licence.

(c) Link Provider

The link provider applies to GILA for a licence to provide links to hosts hosting GILA repertoire, receives and accepts licence conditions, receives GILA Licence.

(d) Accessor

The accessor goes to Host site, clicks on desired item, is shown conditions for streaming or download or both (as the case may be), accepts conditions, pays relevant fee if required, then receives GILA Licence and streaming or downloading of the desired recording.

Case II – File sharing with central index

(a) Software Provider

The software provider applies to GILA for a licence to provide software for the purpose of file sharing items in the GILA repertoire, receives and accepts licence conditions, receives GILA Licence.

(b) File Provider

The file provider applies to GILA for a licence permitting the file provider to copy for the purpose of and to make available on demand items in the GILA repertoire, receives and accepts licence conditions, receives GILA Licence.

(c) Central Index Provider

The Central Index Provider applies to GILA for a licence to maintain the central index of GILA items included in the index, receives and accepts conditions, receives GILA Licence.

(d) File Receiver

The file receiver enters request in the file sharing system for receipt of file of desired item. In response to that request, the file receiver receives an application for licence to stream or download the item, accepts licence conditions, pays relevant fee if required, receives GILA Licence and stream or download of the desired recording.

Case III – File sharing with no central index(a) Software Provider

The software provider applies to GILA for a licence to provide software for the purpose of file sharing items in the GILA repertoire, receives and accepts licence conditions, receives GILA Licence.

(b) File Provider

The file provider applies to GILA for a licence permitting the file provider to copy for making available on demand and to make available on demand items in the GILA repertoire, receives and accepts licence conditions, receives GILA Licence.

(c) File Receiver

The file receiver enters request in the file sharing system for receipt of file of desired item. In response to that request, the file receiver receives an application for licence to stream or download the item, accepts licence conditions, pays relevant fee if required, receives GILA Licence and stream or download of the desired recording.

GILA distributes the payments it receives from the respective licensees to the rightholders or rightholder representatives involved, in accordance with the conditions of mandate for the item concerned.

Note

Because items in the GILA system have the incorporated GILA Identification Number, persons engaged in or associated with file hosting or file sharing involving GILA items will (unless otherwise covered) need a GILA licence to legitimate their activities. Technological protection measures will be aimed at ensuring that GILA items are not used in hosting or file sharing or other Internet transmission systems without the necessary GILA licence. Use of such items without the relevant GILA licence will involve civil or criminal liability, as applicable, for circumvention of such measures, or removal or alteration of rights management information, or for unauthorised use of the items, or for some or all of these breaches.

Part III: Conclusion

Copyright must move forward with the times and develop administration procedures based on a non-territorial concept commensurate with the non-territorial nature of communication through the Internet. Such concept involves, it is submitted, the establishment of centralised licensing procedures on a global basis, so that the user can obtain a global licence, thus affording effective recognition of rights in the global context.

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