

## Texts adopted by Parliament

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Final edition

### Copyright

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[A5-0478/2003](#)

#### **European Parliament resolution on a Community framework for collective management societies in the field of copyright and neighbouring rights (2002/2274(INI))**

*The European Parliament*,

- having regard to the Treaty establishing the European Community, in particular Articles 95 and 151,
- having regard to Articles 17, 22 and 41 of the Charter of Fundamental Rights of the European Union,
- having regard to Article III-181 of the draft Treaty establishing a Constitution for Europe,
- having regard to its resolution of 15 May 2003 on the protection of audio-visual performers<sup>(1)</sup>,
- having regard to the various international agreements in force in this field, namely the Rome Convention of 26 October 1961 for the Protection of performers, producers of phonograms and broadcasting organisations, the Berne Convention of 24 July 1971 for the protection of literary and artistic works, the Geneva Convention of 29 October 1971 for the Protection of producers of phonograms against unauthorised duplication of their phonograms, the WIPO Copyright Treaty of 20 December 1996, the WIPO Performances and phonograms Treaty of 20 December 1996, and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994,
- having regard to the body of EC law (acquis communautaire) in this area, namely Directive 91/250/EEC<sup>(2)</sup> on the legal protection of computer programs; Directive 92/100/EEC<sup>(3)</sup> on rental right and lending right and certain rights related to copyright in the field of intellectual property; Directive 93/83/EEC<sup>(4)</sup> on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission; Directive 93/98/EEC<sup>(5)</sup> on harmonising the term of protection of copyright and certain related rights; Directive 96/9/EC<sup>(6)</sup> on the legal protection of databases; Directive 2001/29/EC<sup>(7)</sup> on the harmonisation of certain aspects of copyright and related rights in the information society; Directive 2001/84/EC<sup>(8)</sup> on the resale right for the benefit of the author of an original work of art,

- having regard to Rule 163 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinion of the Committee on Culture, Youth, Education, the Media and Sport ([A5-0478/2003](#)),

1. Notes that the exercise and management of copyright and neighbouring rights have been discussed at EU level since 1995;

2. Underlines that collective management has been recognised and sanctioned as a valid form of rights management by the EC legislator since 1992; notes that Directive 92/100/EEC expressly gives authors and performers the possibility to entrust the administration of their unwaivable right to receive equitable remuneration for rental to collecting societies representing them; points out that Directive 93/83/EEC provides for mandatory collective management for cable retransmission rights and that Directive 2001/84/EC expressly refers to the possibility for Member States to provide for compulsory or optional collective management of the right for authors of an original work of art to receive royalties; considers that these directives constitute part of the *acquis communautaire*;

3. Notes that the management of copyright and neighbouring rights is, together with the recognised rights themselves and the provisions on their enforcement, the third and indispensable element in the sphere of copyright and neighbouring rights;

4. Draws attention to the fact that some 5-7% of EU gross domestic product is earned by goods and services protected by copyright and neighbouring rights;

5. Notes that Directive 2001/29/EC is a significant step towards the establishment of an internal market for copyright, in which the adjustments made necessary by digitalisation may also lead to adjustment in the area of management, without prejudice to the substance of the rights in question and focusing, in particular, on the protection of neighbouring rights through digital rights management systems;

6. Notes that, in the area of copyright and neighbouring rights, the proper and fair participation of all concerned throughout the chain of exploitation and the rapid, fair and professional acquisition of rights are crucial for financial, as well as cultural, success;

7. Supports the call for any use to be properly rewarded in accordance with the law applicable and the three-step test, more particularly, those deriving from cases for which the law makes provision, thereby creating an entitlement to remuneration (compulsory licence, private copy, library royalties);

8. Notes that, in the area of collective exercise of rights, necessitated, *inter alia* by the enlargement of the European Union, appropriate means are needed and action might need to be taken;

9. Recalls that the technical assistance programmes PHARE and TACIS settled by the EU in the intellectual property area helped and enabled the development of collective management societies in the countries of Central and Eastern Europe and the CIS, and especially, as part of the pre-accession strategy, in the new countries;

10. Points out that in the new Member States, collective management societies are still lacking for some sectors, right-holders and repertoires, that existing societies remain tentative and are encountering difficulties in collecting the remuneration due from their members and that, therefore, the specific assistance support programmes for the collecting societies of these countries, as employed under PHARE and TACIS as part of the pre-accession strategy, should be retained with a view to increasing the circulation of works, enhancing the European heritage and increasing legal certainty; requests that the Commission draw up a proposal accordingly;

### ***1. Internal market***

11. Points out that the exercise and management of rights is based on the principle of territoriality and international treaties; notes, moreover, that the adjustments which have taken place so far as a result of digitalisation (above all global distribution mechanisms) in the area of rights management are not yet sufficient;

12. Believes that a Community approach in the area of the exercise and management of copyright and neighbouring rights, in particular of effective collective rights management in the internal market, must be pursued while respecting and complying with the principles of copyright and competition law and in accordance with the principles of subsidiarity and proportionality;

13. Asks the Commission to ensure that while collecting societies, to the extent that they are service providers, are encompassed in the forthcoming proposal on the internal market for services, due account should be taken of their functions as trustees and their particular responsibility for cultural and social aspects and society as such;

### ***2. Competition***

14. Notes that the de jure and de facto monopolies which the collecting societies generally enjoy do not in, principle, pose a problem for competition, provided that they do not impose unreasonable restrictions on their members or on access to rights by prospective clients; recognises that that collecting societies carry out tasks in the public interest and in the interest of right-holders and users and, therefore, require a degree of regulation; emphasises the importance of competition law in examining possible abuses of monopoly by collecting societies in individual cases so as to be able successfully to ensure rights management also in the future;

15. Notes, on the other hand, that the increasing vertical concentration of the media is the real challenge in the area of access to and dissemination of works and services protected by copyright or neighbouring rights, as also the exercise and exploitation of such works and services; calls, therefore, on the Commission to monitor the vertical concentration of the media and its effect on the exercise of rights and, where appropriate, to take the necessary measures;

16. Considers that a straightforward, rapid and reliable clarification of rights is in the interest of right-holders, users and consumers of works and performances and that a Community approach should take full account of the specific features of the ownership and exercise of copyright and neighbouring rights in order to avoid both economic and cultural misallocations;

17. Calls, accordingly, for the restriction of competition law to cases of abuse, subject to introduction and supervision of the necessary transparency, so as to safeguard rights management effectively both now and in the future;

### ***3.The information society***

18. Notes that the present discussions surrounding collective claims to remuneration and digital rights management (DRM) systems have implications for the exercise and management of rights; notes further that DRM systems may develop into a useful tool for improved rights management;

19. Recognises that introducing DRM systems may result in an income which is more individually attributable but, for the time being, will not automatically replace collective remuneration for private copying; notes, further, that a large part of the collecting societies' sphere of activity cannot be replaced by DRM systems;

20. Points out, with regard to DRM systems, that they can only be used successfully if the principles of authorship and related rights and inter-operability are the basis for their application, in which, particularly, the equal opportunities of right-holders are upheld, there is a uniform coding standard established and strict compliance with the relevant data protection provisions is ensured;

21. Considers that, as regards the claims to remuneration which must be collected and where a system of authorisations or licences cannot be applied, there is a need for an examination of the market under Directive 2001/29/EC to be performed, in particular, to avoid confusion and unnecessary administrative costs for consumers and to create a fair balance between sectors;

### ***4.Collective management societies***

22. Points out that the protection and collective management of intellectual property rights are important factors in stimulating cultural creativity and influencing the growth of cultural and linguistic diversity;

23. Stresses the importance of finding a balance between the rights and interests of the artists and right-holders, on the one hand, and the need to ensure the optimal dissemination of their work for the benefit of their potential audience, on the other; recognises that, in this regard, collective management societies present a greater advantage in facilitating users' access to the content and circulation of works, for the benefit of the entire chain;

24. Points to the fact that copyright comprises two main sets of rights: economic rights which are the rights of reproduction, communication to the public (including broadcasting), distribution etc., and moral rights which include the author's and performer's right to object to any distortion, mutilation or other modification of their work;

25. Recognises the important role of collective management societies which constitute an indispensable link between creators and users of copyrighted works, on account of the fact that they ensure that artists and right-holders receive payment for the use of their works, since technological developments have led to new forms

of protected works, especially in the multimedia sector, and have increased the possibilities for international exploitation of intellectual property rights; points out, in addition, that individual artists and right-holders find it impossible to face the new difficulties alone;

26. Calls on the Commission, when examining the issue of collective management societies, to take due account of the cultural dimension of the collective management of rights, since the rights of artists and right-holders are protected by national legislation, by the Berne Convention, the TRIPS and the WIPO treaties and by several EU Directives; whereas collective management societies are governed at national level in conformity with the existing national, European and international regulations, and the rules regulating collective management societies vary from one EU Member State to another because of historical, legal, economic and, above all, cultural diversity;

27. Points out that the practice of certain collective management societies (chiefly in the field of music) to use distribution rules to promote non-commercial but culturally important works contributes to the development of culture and cultural diversity; recognises in addition, the cultural and social activity of collective management societies, which thus also become vehicles of public authority;

28. Signals that future European Directives from the Commission on the regulation of television, radio, communication, transmission and telecommunications in the digital area must recognise and include provisions of ownership and protection based on the principles of the author's rights; considers that the EU would thus enhance European art and culture, strengthen the confidence of artists, including writers, musicians and film makers who would be able to create new work with the assurance that it will be properly protected from piracy and ensure moral rights and financial incentives;

29. Points out that the lack of procedural facilities for collective management societies and the absence of rapid dispute settlement mechanisms result in an ineffective protection of creators and increased management costs; stresses that in view of the nature and role the management societies, they must be managed and controlled by the right-holders;

30. Stresses that collective management societies are the most significant option for the efficient protection of the copyright of the artist and must operate according to the principles of transparency, democracy and the participation of creators; stresses that the institution of reasonable levies as compensation for free reproduction for personal use constitutes the only means of ensuring equitable remuneration for creators and users' easy access to intellectual property works and cannot be replaced by DRM systems;

31. Greets initiatives such as ISAN (International Standard Audiovisual Number), recognised by the UN organisation ISO (International Organisation for Standardisation), which is able to use software to identify the time and place an audiovisual work is used, and is generally in favour of promoting international cooperation in this sector;

32. Points out that one important criterion, but not the only one, for the representation of right-holders in the management and control bodies of collective

management societies must be the financial value of the rights which each right-holder contributes to the collective management society; considers that the freedom of creators to decide for themselves which rights they wish to confer on collective management societies, and which rights they wish to manage individually, must also be safeguarded by legislation;

33. Proposes that the potential offered by new technologies and distribution networks with regard to the exercise of copyright and neighbouring rights be used in a creative way;

34. Considers it imperative that, where they perform public functions from a position of monopoly, collective management societies in the field of copyright and neighbouring rights are appropriately regulated, in order to ensure the transparency required under competition law;

35. Notes that the various laws and provisions, and the statutes and practices, of collecting societies differ too widely, owing to the fact that every country has its own traditions and specific historical, legal, cultural and economic characteristics;

36. Underlines the freedom of the right-holders to opt for individual or collective management in accordance with the applicable legislative and contractual provisions; points out, in this connection, that considerations as to appropriateness may also have a bearing;

37. Notes that, in relation to their organisation, collective management societies have adopted very different approaches as between one category of right-holder and another, one sector and another, and one country and another; notes that the main and crucial issue for the exercise of rights in the internal market is that these societies fulfil their function of trustees;

38. Calls for the creation of common tools and of comparable parameters and the coordination of collective management societies' areas of activity, to improve cooperation between societies and take the development of the information society into account;

39. Notes that internal democratic structures of collective management societies are fundamental for legitimising their activity and for them to operate effectively; calls, therefore, for the establishment of minimum standards for organisational structures, transparency, accounting and legal remedies;

40. Calls for all those entitled to exercise rights to be able to send representatives of their choice with voting rights to members' meetings, and believes that such right-holders should be taken into consideration when members of management bodies are being appointed;

41. Calls for the participation, on the basis of equal entitlement, of all the various member groups and – in view of the vertical concentration of the media – for particular attention to be paid when appointing members to management bodies; this must, however, be fully compatible with the establishment of internal operating and management standards in management societies which apply other reasonable criteria (number of works or interpretations, amount of revenue, etc.) for

participation in such bodies, the final result being a principle of identical treatment in identical circumstances;

42. Calls for an end to conflicts of interest (when right-holders and users are the same person) in the operation of collecting societies;

43. Recognises that reciprocal agreements between collective management societies have been explicitly recognised as admissible by case-law, provided that they are not contrary to provisions laid down in competition law; also recognises that while the establishment of an efficient national one-stop shop is wholly desirable, where unequal rights exist between the constituent right-holders, the equitable operation of a one-stop shop facility is put in jeopardy; considers that, in such circumstances, the separate right-holding groups should be able to negotiate the licensing and administer the collection and distribution of the revenue accruing from the exploitation of their rights separately;

44. Calls for an end to the preferential treatment given to national repertoires over non-qualified recordings, without prejudice to the international treaties applicable, and in particular the aforementioned Rome Convention and the Berne Convention ;

45. Calls for the so-called "B agreements" to be discontinued;

46. Starts from the premise that cultural and social activities, and tasks in the public interest, are justified in so far as they are democratically legitimised in the society and/or laid down by law and provided that they benefit all member groups equitably; considers, in this connection, that all member groups must be equally represented;

47. Notes, with regard to the control mechanisms of collective management societies that, firstly, there are major structural differences and, secondly, that the efficiency of such controls differs greatly between Member States;

48. Calls for efficient, independent, regular, transparent and expert control mechanisms in all Member States, which take into account all the legal, social, financial and cultural aspects;

49. Calls for comparable and compatible arbitration mechanisms throughout the EU, access to which is affordable to small users and small authors, for disputes between right-holders and collective management societies, between one collecting society and another, and between collective management societies and users;

50. Also calls for efforts to seek an appropriate procedure for the cross-border settlement of conflicting decisions in Member States;

51. Wishes to see a graduated requirement for collective management societies to provide information, both internally and externally; calls, therefore, for the publication on the internet, as well as in other forms, of tariffs, distribution keys, annual accounts and information on reciprocal agreements;

52. Considers it necessary to establish, in the event of a Community approach, a framework for minimum standards for the calculation of tariffs, thereby contributing to introducing the transparency required in accordance with competition law;

53. Calls for the listing of appropriate management costs, comprehensible to those entitled to benefit;

54. Calls for uniform coding standards for works, to simplify the exercise of rights and improve the efficiency of controls, and for inter-operability in the market, including that between collective management societies; notes that collective management societies are participating in international fora in order to promote the development of common, inter-operable and secure standards;

55. Supports the desire for EU promotion to implement uniform coding standards;

56. Calls for the efficient exchange of information between collective management societies, and, as regards data confidentiality standards, for clear provision to be made for collective management societies to enjoy access to each other's economic data and, furthermore, to seek audits with a view to ensuring that reciprocal representation agreements are properly applied and enhancing transparency in their management;

57. Supports the call for the central pooling of the necessary information about the substantive competence of collecting societies, namely, the right-holders represented by them and the rights granted by the latter with regard to management negotiations, and their competence *ratione materiae*, i.e. the works and other related protected goods; takes the view that this will constitute a further contribution to transparency, legal certainty and practical access to management;

58. Calls for a legally-binding requirement on the licence-holder to provide relevant information on use;

59. Calls for the Member States and the Commission to adopt more stringent rules on compliance and supervision of national law on copyright and neighbouring rights, above all in those individual cases in which the corresponding remuneration for the use of the protected works and services is not paid;

60. Calls on the Commission to monitor implementation of the *acquis* on authorship law and check that its application complies with Community law;

61. Urges the Commission to examine, three years following the adoption of this resolution, whether the desired harmonisation, democratisation and transparency in relation to the management of copyright and neighbouring rights by collective management societies has been achieved and, if not, to take additional measures;

62. Calls for a binding definition of the subject matter protected, taking into account new audiovisual media and products, provided that they constitute an original, creative effort;

63. Calls, following the example of the MEDIA + programme, for a regulated term for reversion of rights (three years), in particular in the field of television, in order to strengthen independent producers and improve the movement of European works;

64. Instructs its President to forward this resolution to the Council, the Commission and the Member States.

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[\(1\)](#) P5\_TA(2003)0221.

[\(2\)](#) OJ L 122, 17.5.1991, p. 42.

[\(3\)](#) OJ L 346, 27.11.1992, p. 61.

[\(4\)](#) OJ L 248, 6.10.1993, p. 15.

[\(5\)](#) OJ L 290, 24.11.1993, p. 9.

[\(6\)](#) OJ L 77, 27.3.1996, p. 20.

[\(7\)](#) OJ L 6, 10.1.2002, p. 70.

[\(8\)](#) OJ L 272, 13.10.2001, p. 32.