



**Submission to the EU consultation on the European Commission Roadmap: Intellectual property action plan**

13 August 2020

AEPO-ARTIS represents 36 European collective management societies for performers from 26 countries in Europe. In total, these organisations represent approximately four hundred thousand performers across the audio and audiovisual sectors.

AEPO-ARTIS welcomes the opportunity to contribute to this Roadmap. In particular, we welcome the acknowledgment by the Commission that IP policies will play an important role in the efforts towards achieving an economic recovery from the Covid-19 crisis. The impact of the crisis on performers throughout the EU cannot be over-stated. Collection by CMOs on behalf of performers has been and will continue to be radically reduced and combined with the loss of opportunities to perform in public, this puts performers in perilous position currently and also for years to come. It is therefore even more important that in the context of EU policy and the EU *acquis communautaire* that provisions are put in place that will have an actual financial benefit for performers.

We would like to comment on section B headed “What does the initiative aim to achieve and how”.

The action plan **“...intends to identify current shortcomings and propose practical measures to improve the quality and consistency of the IP framework.”**

Firstly, we would like to draw attention to two shortcomings with regard to the Directive on Copyright in the DSM.

Most performers are not remunerated when their performances are exploited via streaming and downloading platforms such as iTunes, Spotify, Amazon Prime and Netflix. Their lack of bargaining power means they almost always have no choice but to transfer all of their economic rights in return for a one-off payment and regardless of how successful the audio or audiovisual work created is.

Article 18 of the Directive on Copyright in the DSM sets out that Member States must ensure that performers receive appropriate and proportionate remuneration, including for online exploitation. The Directive states that Member States may rely on different existing or newly-introduced mechanisms to achieve this aim.

However, it is clear that on account of contractual practices and the aforementioned lack of bargaining power, any benefits that might be intended to support performers will not in practice reach them unless they are granted in a guaranteed and unwaivable manner.

Furthermore, the fact that different mechanisms may be used in different Member States will lead to a fragmented approach and a lack of harmonisation.

For these reasons, we would ask the Commission to include in any Communication to follow, a recommendation that Member States implement article 18 **by introducing into their national**

**legislation a right to remuneration for making available on demand for performers paid by online platforms and subject to mandatory collective management.**

Linked to this, is the fact that performers are not explicitly integrated within the framework of article 17 of the Directive on Copyright in the DSM. As is recognised in the Directive, “Online Content-Sharing Service Providers” thrive on contributions from different categories of rightholders. However, the provisions contained in article 17, for example with regard to concluding licensing agreements, do not explicitly refer to performers and therefore, for the reasons explained above, the benefits which may have been intended to reach performers by the introduction of this article will not in practice filter down to them.

Secondly, we note the Commission’s goal **“to improve the quality and consistency of the IP framework.”**

With regard to this we would like to point out the inconsistent and unfair position concerning the rights of performers in the audiovisual sector compared to those in the audio sector. While performers in the audio sector benefit from a term of protection of 70 years (and a number of supplementary measures), the protection granted to performers in the audiovisual sector is restricted to 50 years.

This unfair and unmerited inconsistency should be rectified by way of a legislative initiative granting equal protection for audiovisual performers, and should be identified in the Commission’s ongoing review assessing the need for an extension of the term of protection of performers’ rights in the audiovisual sector.

Finally, we welcome the Commission’s intention to explore ways to: **“promote better licensing and sharing of IP-protected assets”**, particularly with regard to “an efficient use of high quality rights-management metadata in the copyright market”.

At present, crucial data relating to the use of works to which performers have contributed is held by producers in a manner that lacks any transparency. The rules applicable to collective management in EU set up by Directive 2014/26 failed to guarantee an access to this data for collective management purposes. Performers’ CMOs are denied access to the necessary data that would enable them to ensure that remuneration rightly due to performers is in fact collected and distributed accurately and efficiently. We welcome any efforts on the part of the Commission to create an obligation that transparent and timely access to this data is granted to performers’ CMOs.