



Contribution to the European Commission consultation on the Digital Services Act package

8 September 2020

The digital world delivers many opportunities to performers to reach their audiences. However, it is crucial that the EU strives to create the right environment in order for all performers to harness the full potential of the digital single market.

AEPO-ARTIS therefore welcomes the European Commission's assertion that Europe needs a modernised regulatory framework *"to better ensure that everyone across Europe is protected online as they are offline"*.

"It requires that every citizen, every employee, every business person has a fair chance, wherever they live, to reap the benefits of our increasingly digitised society". ... "The Commission wants a European society powered by digital solutions that are strongly rooted in our common values..."¹.

Europe must bring about this better digital future for everyone.

However, today, 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.

Thus performers are still not protected online as they are offline. This can no longer be acceptable and is in contradiction with the above stated aim of the European Commission.

The last few years, the EU updated the EU Copyright framework and to adjust it to the requirements of the digital single market.

However, despite these efforts, there are two key shortcomings with regard to the Directive.

Article 18 of the Directive on Copyright in the digital single market 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 independently from contracts.

¹ (p.1) European Commission Communication https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_3.pdf

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.**

Moreover, as recognised in the very same Directive, Online Content-Sharing Service Providers thrive on contributions from different categories of rightholders. However, the provisions contained in article 17 will not automatically benefit all those it was meant to reach as in practice remuneration is unlikely to filter down to performers.

AEPO-ARTIS believes that collective management combined with a specific remuneration claim for performers (implemented via article 18, as per the above) in relation to article 17 is the right way forward in guaranteeing that the *raison d'être* of this article is reflected in its practical operation.

If such collectively managed remuneration right is not granted to performers for the right of making available on demand in the framework of the implementation of article 18, their exclusive right regarding exploitation from “online content-sharing service providers” in the context of article 17 should be subject to compulsory collective management. Such collective licensing would also give them a guarantee of being remunerated for these mass uses of their performances on the Internet, together with other categories of rightholders.

The European Commission plays an important role in the implementation process. We sincerely hope that the European Commission will push for the above points in order to guarantee performers are protected online as they are offline.