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Comments of the AEPO on the draft resolution on a Community framework for collecting societies in the field of copyright and neighbouring rights (2002/2274 (INI))

Committee on Legal Affairs and the Internal Market

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The Association of European Performers' Organisations (AEPO) represents organisations in charge of the collective management of performers' rights in Europe and includes 22 collecting societies.

The European Parliament will vote on the draft resolution on a Community framework for collecting societies in the field of copyright and neighbouring rights (2002/2274 (INI)) at its plenary session of 12 to 15 January 2004 in Strasbourg.

Musicians, singers, actors and dancers are vital to the success of the growing European entertainment industry. They are also the stakeholders most vulnerable to exploitation. **Parliamentarians must ensure that the European Parliament resolution on a Community framework for collecting societies in the field of copyright and neighbouring rights supports rather than damages the interests of the European performers.**

We restrict our comments to key elements of the draft resolution.

With regard to the title of the report and the draft resolution, the AEPO observes:

that the title of the report and draft resolution which has always been “*Report on a Community framework for collecting management societies in the field of copyright and neighbouring rights, and on the Commission report to the Council, the European Parliament and the Economic and Social Committee on the question of authorship of cinematographic or audiovisual works in the Community*” has in its final version been modified in “*Report on a Community framework for collecting societies for authors’ rights*”.

This modification appears somewhat unfortunate as it gives the impression that the report and the draft resolution deal only with a Community framework for collecting societies for authors’ rights whereas they also treat about collecting societies for neighbouring rights as well as about the question of authorship of cinematographic or audiovisual works.

AEPO therefore suggest the original title be maintained.

With regard to Paragraph 5 of the draft resolution, the AEPO proposes:

to add the words “*neighbouring rights*” and to delete the words “*and focusing in particular on the protection of neighbouring rights through digital rights management systems*” at the end of Paragraph 5.

This paragraph would then have the following wording:

*“Notes that Directive 2001/29/EC is a significant step towards the establishment of an internal market for copyright and **neighbouring rights**, 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.”*

Performers are, beside producers and broadcasters, one of the three categories of neighbouring rightholders.

Performers are not associated to the conception and the implementation of digital rights management systems. Although such digital rights management systems are a valuable tool for the management of rights, these systems can only refer to collective management of rights which concern all rightholders, authors, performers, producers and broadcasters.

With regard to Paragraph 33, the AEPO proposes a slightly modified wording:

Paragraph 33: 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, to a reasonable extent, the financial value of the rights which each right-holder contributes to the collective management society, and 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.”

In general, the collection revenues of performers greatly vary from one year to another and are irregular. Make the representation of the performers in the management and control bodies of their collective management societies depend on the financial value of the rights that they each collect does therefore not correspond to their reality. In most of the performers' collecting organisations, each performer benefits from one vote.

With regard to Paragraph 45, the AEPO proposes to suppress it.

Apparently paragraph 45 refers to the situation where collecting societies collect monies from both national and international repertoires but do not distribute remuneration to all the performers concerned.

Non discrimination is a general principle of operation of collecting societies.

The situation alluded to in paragraph 45 can be the result of the application of national legislation and international treaties in regard to copyright and neighbouring rights which determine which works, performances and recordings are protected and which are not.

This situation is therefore independent from the will and policy of collecting societies and the call for an end to the apparent preference given to national repertoire goes for this reason beyond the subject of the present resolution.

With regard to Paragraph 46 calling for “B agreements” to be discontinued, the AEPO would like to make the following comment:

The possibility of concluding type A agreements is linked to the proper identification of rightholders. Such identification is only possible if users have the obligation to communicate the information on the works or protected recordings that have generated remuneration to be distributed.

Such information is indeed essential to distribute notably to performers, who are often many to have participated to sound or audiovisual recordings.

This element must be reminded in the text proposed.

Consequently, a sentence should be added in paragraph 46, which could be worded as follows:

« Calls for “B agreements” to be discontinued. Consequently, communication from the users on the identification of the used repertoire should be made compulsory.

However, such “B agreements” should be possible for a transitional period in the case where such communication from the users does not satisfactorily identify the beneficiaries of the rights generated by the used repertoire ».