



Association of
European
Performers'
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Comments of the AEPO on the draft European Parliament legislative resolution on the proposal for a directive on measures and procedures to ensure the enforcement of intellectual property rights (COM (2003) 46 – C5-0055/2003 – 2003/0024 (COD))

The Association of European Performers' Organisations (AEPO) represents organisations in charge of the collective management of performers' rights in Europe and unites 21 collecting societies.

The AEPO welcomes the proposal for a directive the aim of which is to ensure the enforcement of intellectual property rights.

The AEPO wants to point out that the 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 legislative resolution on the proposal for a Directive on measures and procedures to ensure the enforcement of intellectual property rights supports rather than damages the interests of the European performers.**

We will limit our comments to two important provisions for the performers.

The proposed provision concerning the persons entitled to apply (article 5)

In the text proposed by the Commission, “*rights management or professional defence bodies, wherever they represent intellectual property right holders or other persons authorized to use these rights*” are conferred “*an entitlement to seek for the application of the measures and procedures referred to in the directive, including the authority to initiate legal proceedings for the defence of those rights or of the collective or individual interests for which they are responsible*” (Article 5, 2 of the proposal for a directive).

In a subsequent paragraph, it is specified that “*such entitlement shall be accorded to any properly constituted rights management body or professional defence body, regardless of the Member State in which it is established.*”

The Commission justifies this entitlement by the fact that such organisations often carry out monitoring and survey work on behalf of their members. An extension of powers vested in these organisations involved in the fight against counterfeiting and piracy will enable them to institute legal proceedings in the defence of the collective interest for which they are responsible.

Although rights licensing and royalty distribution are the main functions of collecting societies, their role in enforcing/protecting their members’ rights from infringement has become increasingly important. It is practically impossible for right owners to control infringement of their works. That is why rights are vested in collecting societies. It is therefore crucial to facilitate the ability of collecting societies to enforce these rights.

This right for collecting societies and professional defence bodies to initiate legal proceedings without being expressly authorized by the right holders they represent is of utmost importance for these organisations.

In most European countries, the societies have the right to take part in court proceedings to defend the rights for which they are statutorily responsible.

However, the text proposed in the draft legislative resolution of the European Parliament limits this right by adding the condition that such bodies must have been authorized to do so by the persons concerned. The justification put forward is that right management or professional defence bodies or associations of rightholders which are not explicitly authorized by the relevant rightholders of intellectual property rights to take action should not be entitled to initiate proceedings.

The AEPO is strongly opposed to this amendment as it would imply for collecting societies to submit the individual authorizations of the rightholders that they represent

each time that they go to court which is impractical in the case where they collect by law also for non members (like, for example, in the case they collect the equitable remuneration for the broadcasting and the communication to the public of phonograms published for commercial purposes (Article 8, 2 of the Rental and Lending Directive) or in the case they exercise the cable retransmission right under Article 9 of the Cable and Satellite directive).

The right of professional bodies to take legal action to defend the collective interests for which they are responsible must be maintained in the directive.

The amended version should therefore be modified omitting the words "*in so far as such bodies have been authorised to do so by the persons concerned in the first part of paragraph 2 of article 5*" and include the notion of collective interests.

The proposed provision concerning the presumption of copyright tenure (Article 6)

The AEPO welcomes the inclusion of a rebuttable presumption of existence and ownership of copyright and the proposal in the draft legislative resolution to extend this presumption in the benefit of the holders of neighbouring rights.

However, the AEPO believes that the reference to the Berne Convention in paragraph 1 of Article 6 is problematic as the Berne Convention applies only to the protection of literary and artistic works and does not concern any other object protected by neighbouring rights. Reference to the Berne Convention should therefore be omitted.

Moreover, a new provision should be added regarding to the presumption of the existence and ownership of a neighbouring right in favour of performers (Article 6 paragraph 2 of the text proposed by the parliament). This provision should provide that the Member States shall lay down the obligation for phonogram and videogram producers to mention on the documents (sleeve, booklet, ..) that accompany the phonogram or the videogram that they produce or on the phonogram itself or in the credits of the videogram, the name of the performers who have participated to the performance fixed in the phonogram or videogram. Otherwise, the benefit of the presumption will not be ensured in favour of performers.

Finally, Article 6 paragraph 3 seems problematic in the sense that it seems to accept that the presumption of ownership or existence of copyright and neighbouring rights can be rebutted by a simple written statement concerning the existence and ownership of the copyright and neighbouring rights in question.

If this were the case, the utility of the presumption will then be reduced to nothing.

AEPO therefore suggests suppressing this third paragraph in its entirety.