European Commission Call for Evidence: Report on the review of the Copyright in the Digital Single Market Directive / Targeted initiative for a better copyright environment for European creativity and innovation

AEPO-ARTIS supporting document

AEPO-ARTIS welcomes the Commission's Call for Evidence, noting that it addresses both the review of the CDSM Directive and the targeted initiative. We see the overlap between these, however we shall address them separately, especially since the review of the CDSM Directive is already underway and we have serious concerns regarding the quality of evidence being gathered in that process

Part one – Review of the CDSM Directive

1.1 Current evidence gathering procedures

AEPO-ARTIS notes that the Call for Evidence **"***aims to collect the information necessary to support the review of the CDSM Directive, and to seek feedback on the challenges linked in particular to the application and enforcement of copyright and related rights in the context of technological developments and potential ways to address them."*

We understand that this means the Commission intends to collect information **in addition** to that which is currently being collected by the researchers it has engaged in the ongoing review process, which we understand will result in the Commission producing the report referred to in article 30 of the CDSM Directive, scheduled to be published around the end of 2026.

AEPO-ARTIS supports this wholeheartedly and considers it to be essential. The current evidence-gathering process places significant reliance upon a survey which contains serious methodological flaws and is not capable of generating the quality of evidence required for a comprehensive and reliable review of the Directive. The questions intended to be completed by performers are far too complex to be understood by the vast majority of them.

The result of this is that in practice there is no way for performers to express their views directly on whether or not the CDSM Directive has benefitted them, and if so to what extent. Performers should be the **primary source of evidence** and currently they are - in reality – excluded from the evidence gathering process.

To remedy this, AEPO-ARTIS and its members hereby formally offer to work together with the Commission to create a simplified questionnaire in a format acceptable to the Commission and

comprehensible to performers and to support the circulation of such a survey via its network of CMOs.

These CMOs succeeded in collecting information from **9542 musicians**, based on a questionnaire developed in collaboration with an independent academic research expert. The expert used this information to produce the report Streams and Dreams (part 2), which constitutes by far the most thorough evidence based publication on the impact of the CDSM Directive on musicians.

Similarly, they succeeded in collecting information from **2382 actors**, which resulted in the publication of the Acting Fairly? report which constitutes by far the most thorough evidence based publication on the impact of the CDSM Directive on actors.

1.2 Main findings regarding the implementation of the CDSM Directive

AEPO-ARTIS refers the Commission to the findings of the two reports referred to above. In brief, the implementation has not led to significant improvement for performers. In particular:

- Article 18 has been ineffectively implemented in the vast majority of Member States. Consequently, the goal of performers receiving appropriate and proportionate remuneration has not been achieved.
- The provisions in articles 19 to 22 failed to take into account the practical reality that performers are fearful of attempting to enforce their rights. They consider this will damage future employment opportunities ("blacklisting") and/or negatively affect existing ongoing contractual relations. Thus, the Directive has failed in its goal of protecting performers, who were recognised as being the weaker contractual party.
- There is clear evidence that lump sum contracts remain the norm. The Directive was designed to change this, and in that regard it has failed.
- Separate to chapter 3, article 17 has failed to benefit the vast majority of performers (the exception being those Member States which introduced additional measures to ensure that remuneration was paid by OCSSPs to CMOs).
- These failings are not irreversible. If article 18 were to be implemented effectively at national level, appropriate and proportionate remuneration could potentially be achieved. However, if Member States continue to delay in doing so, additional legislation at EU level is required.

Part two: Targeted initiative for a better copyright environment for European creativity and innovation

2.1 Challenges relating to AI and the use of performances

The following comments should be considered as a "work in progress", due to the rapid development of GenAI. In addition to the obvious technological (and to an extent) legal developments, what is extremely important to performers are the even more rapid commercial

developments which are largely happening without their consent and may constitute an infringement of performers' related rights.

2.1.1 Control of performances

Generative AI has exposed significant weaknesses in the ability of performers to exercise control over the use of their performances and in particular whether to authorise, prohibit or license a use. This profoundly impacts upon the relationship of performers and the article 4 text and data mining exception, an exception that was adopted before the emergence of generative AI and not designed with such uses in mind.

While the effectiveness of the exception depends upon the ability of rightholders to reserve their rights, performers frequently have no practical means of doing so. They rarely control the location (websites, repositories…) or the asset (metadata or digital files) which makes implementing the reservations near impossible, from the practical and technical point of view.

From the legal perspective, performers' rights applicable to the normal exploitation of their recordings and audiovisual performances are in the majority of cases transferred to producers, broadcasters, streaming services and other intermediaries (hereinafter "producers"). Consequently, there is a lack of legal certainty over whether performers have legal capacity to make use of the reservation in article 4(3) in the event that there has been a **valid** transfer of e.g. the exclusive reproduction right to a producer or other intermediary.

As a result, the effectiveness of the article 4 reservation mechanism is dependent not on the choices of performers but on decisions taken by other parties in the value chain.

These difficulties are closely connected to the wider question of licensing and remuneration addressed below.

2.1.2 Licensing of performances

Commercial licensing agreements relating to the use of copyright/related rights protected content for generative AI purposes are being concluded at a rapid pace, particularly between major record labels and AI music generators such as Suno.

However, performers are generally neither involved in the negotiation of such agreements nor asked to consent to them, despite the fact that their performances form part of the content being licensed.

While performers' exclusive rights may have been transferred to producers via contract, allowing them to authorise or prohibit the traditional exploitation of recordings and audiovisual performances, it cannot automatically be assumed that contract provisions exist that allow exploitation for GenAI purposes, for reasons including the following:

- The vast majority of contracts pre-date the emergence of GenAI and were drafted without such uses in mind.
- Certain Member States' national law provides that provisions in contracts purporting to transfer rights relating to unknown forms of exploitation are invalid and unenforceable.
- Certain Member States' national law provides that contracts which are not in writing are unenforceable. In the music sector 64% of session musicians usually enter into verbal agreements for their recording sessions, and 43.5% have never signed a written contract (see Streams and Dreams - part 2 report). It is also the case that featured artists may not have a written contract; or only one which covers the most basic elements.

In this regard we refer you to the European Parliament study on "Contractual Arrangements Applicable To Creators: Law and Practice of Selected Member States" which explains *inter alia* that:

> **"2.1.3. Determination of the scope of rights transferred**
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> A number of countries have introduced mandatory contractual provisions in their copyright laws to ensure that contracts determine more precisely the exact scope and terms of the rights transferred (including issues such as category of rights, geographical scope, duration, **future works, unknown forms of exploitation**, etc.). Authors can claim the **nullity of a contract** if certain of these mandatory items have not been laid down in it."

Additional questions arise in relation to personality rights, which in many Member States remain with the performer and may not be transferred in the same manner as economic rights. To the extent that GenAI systems are capable of reproducing or imitating a performer's voice, image or other distinctive characteristics, it should not be accepted that licences granted by producers alone provide a sufficient legal basis for all such uses.

A similar argument can be made in relation to moral rights. In many Member States, performers retain moral rights designed to protect their performances against distortion, mutilation or other prejudicial treatment. To the extent that GenAI systems are capable of manipulating or replicating performances in ways that may conflict with such rights, it should not automatically be assumed that licences granted by producers are sufficient to authorise those uses.

While licensing is frequently referred to as a "solution" to the potential harm caused to performers and authors by GenAI, AEPO-ARTIS strongly urges the Commission to analyse the study on "Contractual Arrangements Applicable To Creators: Law and Practice of Selected Member States". Doing so will make clear that the validity and scope of existing licensing arrangements cannot be assumed and require careful examination.

This may be an inconvenient truth insofar as it "complicates" the licensing solution. Nevertheless, the rights of performers and authors must not be ignored, and the infringement of those rights must not be tolerated merely because this complicates the commercial practices of producers.

2.1.3 Remuneration of performers

Licensing is frequently presented as the solution to the use of copyright-protected content for GenAI purposes. However, even if it is assumed that valid licences have been concluded (and AEPO-ARTIS does not consider this to always be the case for the reasons stated above), this does not resolve the separate question of whether performers actually *receive* remuneration from such arrangements.

The existing contractual framework was not designed to distribute revenues arising from GenAI. The vast majority of performers' contracts pre-date the emergence of such technologies and contain no provisions governing remuneration for AI-related uses. As a result, even where revenues are generated through licensing, there is no clear mechanism ensuring that performers participate appropriately in the economic value derived from the use of their performances.

For those performers who are entitled to receive royalties (mainly musicians who are featured artists), the issue of imbalanced contracts is well known. While articles 19-22 of the CDSM Directive were designed to remedy this, they have largely been unsuccessful, due in particular to a reluctance to enforce their rights for fear of blacklisting and/or damaging contractual relationships. While in theory transparency, contract adjustment and ADR could address this issue, the reality is that for most performers this is not an option that is practically and commercially viable.

The position is worse for non-featured artists and actors. Their performances are being exploited without consent and at least in the case of one major record label, it has been stated that there is no intention to remunerate them in any way.

For these reasons, licensing agreements between producers and GenAI service providers alone, will not deliver appropriate and proportionate remuneration to performers.

A solution which would facilitate licensing and ensure performers are remunerated would be the introduction of an unwaivable right to remuneration, subject to compulsory collective management. Such a mechanism would provide legal certainty for users, ensure that licensing revenues are shared fairly with performers and avoid the practical difficulties associated with attempting to renegotiate millions of existing contractual arrangements that were never intended to address generative AI.

Furthermore we support the introduction of a mechanism providing for immediate, fair and proportionate remuneration for past uses of copyright-protected works by providers of GenAI models and services (as proposed in the European Parliament resolution of 10 March 2026 on copyright and generative artificial intelligence – opportunities and challenges).

2.1.4 Access to information and transparency

The exercise of any right depends upon access to information. Without transparency, performers cannot determine whether their performances have been used for AI training, whether they have been used in any output generated, whether any rights reservation has been respected, whether licences have been concluded, or whether remuneration is due.

A similar lack of transparency exists in relation to licensing agreements. Despite the existence of article 19, performers generally have no information regarding which licences have been concluded, the terms on which they were granted, or whether any remuneration has been paid. As a result, performers are frequently unable to verify whether they are receiving an appropriate share of the economic value generated by the use of their performances.

Current transparency measures are insufficient to address these concerns. Even where information is provided, it is often aggregated and incapable of identifying the individual performances that have been used.

Furthermore, it is unrealistic to consider that this could be done on a case-by-case basis with individual performers demanding sight of the requisite information. The optimal solution would be for CMOs to be provided with that information, process it on behalf of their members and thereafter inform them accordingly. This could be complemented by a mechanism whereby a failure by AI providers or deployers of AI models and systems to provide complete transparency would give rise to a rebuttable presumption that copyright/related rights protected work or other protected subject matter had been used (as proposed in the European Parliament resolution of 10 March 2026 on copyright and generative artificial intelligence – opportunities and challenges).

2.1.5 AI-generated impersonations

Generative AI systems are increasingly capable of reproducing or imitating a performer's voice, appearance, mannerisms and other distinctive characteristics. This raises concerns which extend beyond the traditional scope of copyright and related rights.

The level of protection currently available to performers varies significantly between Member States and may depend upon a complex combination of personality rights, privacy rights and moral rights. As a result, performers lack effective and harmonised protection against unauthorised AI-generated impersonations.

AEPO-ARTIS considers that performers should have the right to control the commercial use of AI-generated reproductions or imitations of their identity and performance characteristics and to obtain appropriate remedies where such uses occur without authorisation.

2.2 Single equitable remuneration following the RAAP judgment and issues of international reciprocity

AEPO-ARTIS considers that this is a complex issue (with the debate limited to Article 8.2 of the Rental Directive) which warrants careful and thorough consideration, taking into account the specificities of the 27 Member States. In this regard, AEPO-ARTIS welcomes the European Commission's confirmation, set out in the "Consultation strategy" section of the Call for Evidence, that "the views of all affected stakeholders will be taken into account, in order to ensure a comprehensive assessment of the impact of possible policy measures."

2.3 Online piracy

While online piracy is not the primary issue facing most performers today, it nevertheless contributes to the erosion of the economic value of performances and should be addressed through effective enforcement measures. This is particularly relevant in relation to the unauthorised transmission of live cultural events, including concerts and festivals, where piracy may directly undermine legitimate exploitation and the revenues generated by legitimate transmissions.

2.4 Scientific research

As the issues relating to scientific research and access to research outputs fall largely outside AEPO-ARTIS's area of expertise and representation, we do not comment on those aspects of the Call for Evidence.

Part three: The Need for Legislative Action

3.1 New challenges and already existing challenges

AEPO-ARTIS welcomes the Commission's decision to explore a targeted initiative for a better copyright environment for European creativity and innovation. The existing legal framework is not adequately equipped to address the challenges arising from new forms of exploitation of performances in the context of GenAI. For these reasons, AEPO-ARTIS considers that legislative action at EU level is necessary to address the AI related issues identified in this submission.

However, it is also clear that chapter three of the CDSM Directive has not achieved the goal of appropriate and proportionate remuneration for performers when their performances are exploited via traditional means. With regard to traditional means of exploitation, additional legislation at EU level would not be necessary if all Member States implemented article 18 effectively, by introducing additional mechanisms which ensure performers receive appropriate and proportionate remuneration.

In the report of the Commission to follow the ongoing review of the CDSM Directive, we would urge the Commission to explicitly state that those Member States that have not already introduced a mechanism that ensures appropriate and proportionate remuneration is paid must do so without delay. Where implementation continues to fall short of the requirements of Article 18, the Commission should use appropriate enforcement measures to ensure compliance with Union law.

In addition, we have not identified a reference within the Call for Evidence addressing the disparity between the protection of performers in the audio and audiovisual sectors. In policy discussions to date on the impact of GenAI, much attention has been given to the *music* sector. It is essential that in

these discussions, as well as throughout the entire acquis communautaire, there is no discrimination between the rights of performers in the audio and audiovisual sectors. This ought to be a fundamental principle in all legislation, both new and already existing.

3.2 Policy-making based on reliable evidence

On several occasions, research commissioned by the European Commission has produced insufficient, unreliable and methodologically flawed results regarding the positions of performers and other stakeholders.

For example, the "Study on contractual practices affecting the transfer of copyright and related rights and the ability of creators and producers to exploit their rights" acknowledged that it had collected a "low number of contributions to the survey from music performers (a total of 39, out of which **only eight answered the entire questionnaire, having transferred rights)**."

Such participation levels make it difficult to draw meaningful conclusions regarding the experiences of performers.

By way of comparison, Streams and Dreams (part 2) commissioned by IAO, based upon a survey circulated with the assistance of AEPO-ARTIS members and written by an independent researcher with expertise in this field received **9542** responses from musicians. Similarly, AEPO-ARTIS published its Acting Fairly? report which received **2382** responses**,** again based upon a survey circulated with the assistance of AEPO-ARTIS members.

AEPO-ARTIS is concerned that the ongoing review of the CDSM Directive is fundamentally flawed. The survey currently being used to collect information from performers contains significant methodological weaknesses and is excessively complex. It is unrealistic to consider that it can capture the experiences of performers accurately. Furthermore, without any apparent reason, CMOs are not given the possibility to comment on the impact of articles 19-22.

For the purposes of transparency, we would ask the Commission to acknowledge that its research so far has not received sufficient input from performers themselves and without that, evidence based policy-making is impossible.

3.3 Consultation strategy

AEPO-ARTIS welcomes the Call for Evidence and the Commission's commitment to evidence-based policy-making. However, we urge the Commission to exercise particular care when developing consultation exercises.

Prior to launching consultations and commissioning research, the Commission should engage with relevant stakeholders to ensure that the proposed topics and questions are understandable, relevant and capable of generating meaningful evidence in practice. Similarly, researchers should consult representative organisations and other stakeholders when developing questionnaires and

evidence-gathering methodologies, in order to ensure that the relevant respondents are able to participate effectively.

Given the significant financial resources devoted to commissioned studies and consultation exercises, the Commission should ensure that the researchers they engage possess not only expertise in research methodology, but also a sufficient understanding of the sector. Consideration should be given to appointing independent academics to either conduct research themselves where possible, or at least play an integral and ongoing role in any research project to ensure it stays focussed on the right elements.