

Position Paper

UEAPME¹ position on a proposal for a Directive of the European Parliament and the Council on collective managements of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market

1. Introduction

UEAPME welcomes the consultation on a proposal for a Directive of the European Parliament and the Council on collective managements of copyright and the possibility to provide its opinion at this early stage. Both improving transparency for collecting societies and facilitating multi-territorial licensing rights in musical works are important aspects to improve the better functioning of the internal market, especially in a market in which hardly any competition is taking place in many Member States. UEAPME always calls for more transparency and information as this leads to more predictability, better acceptance and a reduction of disputes.

Apart from the specific comments mentioned below, UEAPME is in general concerned that the dispute resolution procedures, complaint procedures and control mechanism are not detailed enough and might thus create problems for the application of this directive in various Member States. Furthermore, it is important to reduce vague and ambiguous language and replace it with more concrete wordings. On top of focusing on the rights of the rights holders it is also important to pay attention to the users and to strike a balance between these two groups of interests.

2. Specific Comments on the draft Code

2.1 Article 5: rights of rights holders

Article 5 mentions "rights" and "categories of rights". It needs to be clarified what is meant by "categories of rights" and therefore this should be precisely defined.

2.2 Article 6: membership rules of collecting society

It is not clear what is meant by "participating of its members". It needs to be clarified whether this only means voting rights or even more participation of the members? Furthermore, UEAPME agrees that it is important that collecting societies shall keep updated records of members. These records should include the author and which works he/she transferred to the collecting society in question. Publishing such information on the homepage would be an additional step to increase transparency.

2.3 Article 8: supervisory function

"Fair and balanced representing ..." is quite vague, it would be helpful if the criteria for representation could be

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¹ UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is <u>55820581197-35</u>.



defined in more detail. In addition, UEAPME welcomes the introduction of a control mechanism in form of a supervisory function but suggest to define it more clearly, otherwise the supervisory function will only have limited powers to control the collecting society.

2.4 Article 9: obligation of the person who effectively manages the collecting society

The establishing of an internal control mechanism is very important. UEAPME calls for clarifying the control mechanism to ensure that all Member States are obliged to create effective ones. In addition, the term "conflict of interest" is too vague. It would be helpful to add examples to specify which situations are considered a conflict of interest, otherwise the interpretation of said definition will vary very much in each Member State but also in the respective collecting societies themselves. A clear definition would also improve legal certainty and avoid potential complaints and disputes.

2.5 Article 12: distribution of the amounts due to the right holders

The obligation of the collection societies to put aside all amounts which cannot be distributed to right holders for five years seems to clash with the respective prescription periods of national laws. If it is decided that this provision will be kept, the relation between this provision and the prescription periods need to be clarified.

2.6 Articles 13 and 14: management of rights on behalf of other collecting societies

UEAPME recommends including in these articles the obligation to reciprocity contracts with other collecting societies both on national and European level. This is in particular important if right holders can split their rights and/ or repertoire as envisaged in Article 5 of this draft Directive.

2.7 Article 15: Licensing

The licensing terms need to be more specified, as basing them on "objective criteria" is too vague. As mentioned above "economic value" of a right is difficult to access especially in Member States with only one collecting society there is no free market to determine the economic value of such right.

2.8 Articles 16 f.f: transparency and reporting

UEAPME welcomes the rules on transparency and reporting as an improvement of the better functioning of collecting societies. Nowadays, right holders complain that the calculation of their revenues is not always transparent or understandable.

In addition it is also important to increase the information for the users. The following information should be provided to the users:

- directory of names of the rights holders,
- a directory of the titles,
- a directory of the reciprocity contracts with the other collecting societies,
- contracts concluded with the collecting societies and other user organisations,
- licencing rules of the collecting society (both as according to the law and internally issued.

This information should also be available for potential future users, e.g. by posting it on the website.

2.9 Article 18: information provided

UEAPME welcomes the information requirements in Article 18. However, we suggest that standard licensing contracts and tariffs should not only be made available upon request but should be put online for information for potential users.

2.10 Articles 21 -33: Multi-territorial licensing

According to the current draft, collecting societies are not obliged to offer multi territorial licensing. This could lead to the fact that collecting societies in their reciprocity contracts do not grant each other the rights for multi territorial licensing. Therefore it is important that the Directive explicitly prohibits limitation for territorial



restrictions regarding the licensing.

2.11 Article 25: Section 4

UEAPME welcomes that the collecting society shall invoice the online music provider without delay after the actual use of the online rights in that musical work is reported. However, to avoid vague terms, we suggest to introduce a time limit for invoicing, anything between 30-60 days.

2.12 Article 34 f.f.: enforcement measures

The independent and impartial dispute body and its procedures must be defined in more details. UEAPME would welcome if the existence of such dispute body would not only be optional but compulsory in each Member State. Further, right holders and users need more detailed rules on how to forward their complaints

3. Conclusion

In conclusion, UEAPME welcomes this initiative as a support tool for SMEs if implemented in a practical way taking the "Think Small First" principle into account.

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