

## **P6\_TA(2007)0064**

### **Cross-border collective copyright management**

#### **European Parliament resolution of 13 March 2007 on the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC) (2006/2008(INI))**

*The European Parliament,*

- having regard to Commission Recommendation 2005/737 of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services<sup>1</sup> (hereinafter “the Recommendation”),
- having regard to the Treaty establishing the European Community, in particular Articles 95 and 151 thereof,
- having regard to Articles II-77 and II-82 of the Charter of Fundamental Rights of the European Union,
- having regard to Article III-181 of the Treaty establishing a Constitution for Europe,
- having regard to the international agreements in force which apply to music rights, namely the Rome Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty of 20 December 1996, the WIPO Performances and Phonograms Treaty of 20 December 1996 and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994,
- having regard to the body of EC law (“acquis communautaire”) in the area of copyright and related rights which applies to music rights, namely Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and certain rights related to copyright in the field of intellectual property<sup>2</sup>, Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission<sup>3</sup>, Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights<sup>4</sup> and Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society<sup>5</sup>,
- having regard to the Commission's Green Paper on copyright and related rights in the Information Society (COM(1995)0382),

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<sup>1</sup> OJ L 276, 21.10.2005, p. 54.

<sup>2</sup> OJ L 376, 27.12.2006, p. 28.

<sup>3</sup> OJ L 248, 6.10.1993, p. 15.

<sup>4</sup> OJ L 372, 27.12.2006, p. 12.

<sup>5</sup> OJ L 167, 22.6.2001, p. 10.

- having regard to its resolution of 15 May 2003 on the protection of audio-visual performers<sup>1</sup>,
  - having regard to its resolution of 15 January 2004 on a Community framework for collective management societies in the field of copyright and neighbouring rights<sup>2</sup>,
  - having regard to the Commission's Communication of 16 April 2004 on the Management of Copyright and Related Rights in the Internal Market (COM(2004)0261),
  - having regard to its resolution of 5 July 2006 on implementing the Community Lisbon Programme: more research and innovation - investing for growth and employment: A common approach<sup>3</sup>,
  - having regard to its resolution of 6 July 2006 on freedom of expression on the Internet<sup>4</sup>,
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Culture and Education (A6-0053/2007),
- A. whereas the Commission failed to undertake a broad and thorough consultation process with interested parties and with Parliament before adopting the Recommendation; whereas all categories of right-holders must be consulted on any future regulatory activities in this area so as to ensure a fair and balanced representation of interests,
- B. whereas the Commission's omission to involve Parliament formally is unacceptable, particularly in view of Parliament's above-mentioned resolution of 15 January 2004, given that the Recommendation clearly goes further than merely interpreting or supplementing existing rules,
- C. whereas it is unacceptable that a “soft law” approach was chosen without prior consultation and without the formal involvement of Parliament and the Council, thereby circumventing the democratic process, especially as the initiative taken has already influenced decisions in the market to the potential detriment of competition and cultural diversity,
- D. whereas the Recommendation seeks merely to regulate the online sale of music recordings, but could – owing to its imprecise wording – also be applied to other online services (e.g. broadcasting services) containing music recordings; whereas the resulting lack of clarity as to the applicability of differing licensing systems leads to legal uncertainty and entails disadvantages, particularly for online broadcasting services,
- E. whereas there is a risk that right-holders complying with the recommendation in respect of their interactive online rights would deprive local collective rights managers (CRMs) of other rights (e.g. those relating to broadcasting), thus preventing users of those rights from acquiring user rights for a diversified repertoire from one and the same CRM,

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<sup>1</sup> OJ C 67 E, 17.3.2004, p. 293.

<sup>2</sup> OJ C 92 E, 16.4.2004, p. 425.

<sup>3</sup> *Texts Adopted*, P6\_TA(2006)0301.

<sup>4</sup> *Texts Adopted*, P6\_TA(2006)0324.

- F. whereas it is unacceptable that the Commission should be intending to adopt a recommendation on the current system of fair compensation for private copying, as referred to in Article 5(2)(b) of Directive 2001/29/EC, thereby once again circumventing the democratic process applicable to the regulation of copyright and related rights,
- G. whereas it is important to avoid the possible threats and to strike a reasonable balance between the rights and interests of the various stakeholders,
- H. whereas music is not a commodity and collective rights managers are mainly non-profit-making organisations, and whereas introducing a system based on controlled competition serves the interests of all right-holders and of promoting cultural diversity and creativity,
- I. whereas national CRMs should continue to play an important role in providing support for the promotion of new and minority right-holders, cultural diversity, creativity and local repertoires, which presupposes that national CRMs should retain the right to charge cultural deductions,
- J. whereas the existing network of national CRMs plays an important role in providing financial support for the promotion of new and minority European repertoire and whereas this should not be lost,
- K. whereas greater, but controlled, competition in the collective management of copyright and related rights in the online music sector can be beneficial to all parties and underpin cultural diversity, provided that it is fair and transparent and that competition concerns only the quality and cost of provision of the service in question without affecting the value of the rights,
- L. whereas there is concern about the potentially negative effects of some provisions of the Recommendation on local repertoires and on cultural diversity given the potential risk of favouring a concentration of rights in the bigger CRMs, and whereas the impact of any initiative for the introduction of competition between rights managers in attracting the most profitable right-holders must be examined and weighed against the adverse effects of such an approach on smaller right-holders, small and medium-sized CRMs and cultural diversity,
- M. whereas the ability of right-holders and users to choose a CRM regardless of the Member State in which they are located must:
- be accompanied by appropriate measures to safeguard and promote the diversity of cultural expression, notably by offering users, via one and the same collecting society, large diversified repertoires, including local and niche repertoires and in particular the world repertoire for broadcasters' services,
  - ensure that all right-holders, irrespective of their nationality or residence, or the business model, receive a fair share of royalties as directly and equitably as possible, as well as full democratic rights to participate in governance issues in the CRMs concerned,
  - not allow the most profitable right-holders to strengthen their dominance to the detriment of lower-earning right-holders, or to the detriment of right-holders who publish their works under free and open content licences,

– not undermine the equitable treatment of all right-holders,

and whereas the emergence of new technologies has enriched society by providing new ways to consume and distribute musical works and other subject-matter online and whereas, therefore, a situation needs to be created in which the interests of all parties concerned, including the end-user, are reflected and taken into consideration,

- N. whereas the existing system of reciprocal agreements and the reciprocal collection of royalties should be preserved so that competition is introduced on the basis of the efficiency and quality of the services that CRMs can offer and the percentage share represented by administrative costs, and users which are engaged in the online sale of music recordings are licensed on the basis of the tariff applicable in the country where the act of copyright consumption by the individual user will take place, and whereas Member States, in full coherence with the rules for cross-border broadcasting set out in the Satellite and Cable Directive 93/83/EEC, should create legal certainty for providers of online services other than the online sale of music and should enable such other users to apply for the necessary legal consents and duly pay equitable royalties to all categories of right-holders on fair, reasonable and non-discriminatory terms,
- O. whereas the system of reciprocal representation agreements should be maintained, as it enables all commercial and individual users without discrimination to have equal access to the world repertoire, ensures better protection for the right-holders, guarantees real cultural diversity and stimulates fair competition in the internal market,
- P. whereas CRMs should be free to provide commercial users based anywhere in the EU with pan-European and multi-repertoire licences for cross-border and online uses and use in mobile telephony and other digital networks where they are in a position appropriately to administer the exploitation of the rights licensed, and whereas such multi-territorial licenses should be granted on fairly negotiated conditions without discrimination between users, ensuring interoperability between different technological platforms so that CRM licensing practices do not result in competitive distortions among different users of rights and different non-interoperable technological transmission means,
- Q. whereas the existence of one-stop shops where commercial users may obtain a licence concerning the world repertoire for the territories they need, in combination with a high degree of protection for right-holders by avoiding forum-shopping (users seeking out the CRM that provides the cheapest licences), should be at the centre of the close cooperation between CRMs; whereas, in order to maintain a one-stop-shop, the existing system of reciprocal collection of royalties should be preserved, in combination with a high degree of protection for right-holders, so as to avoid downward pressure on revenues, whilst also ensuring that undesirable exclusive mandates inimical to fair competition may not be granted,
- R. whereas, especially with regard to possible abuses of monopolies, there is a need for better governance of some CRMs through improved solidarity, transparency, non-discrimination, fair and balanced representation of each category of right-holders and accountability rules combined with appropriate control mechanisms in Member States; whereas CRMs should provide their services on the basis of the three key principles of efficiency, fairness and transparency,
- S. whereas, whenever rights are managed collectively, equitable and effective dispute-

settlement mechanisms should be introduced in the Member States to ensure that right-holders and users have access to a means of settling disputes, without prejudice to everyone's right to judicial review, and whereas, consequently, equitable, impartial and effective dispute-settlement mechanisms based on clear and relevant criteria should be introduced in the Member States for all stakeholders,

- T. whereas the Commission should make a thorough impact assessment, based on correct and complete data, of the development and implementation of agreements and arrangements to enhance possible results and to assess the risks of multi-territory and multi-repertoire licensing for online services, taking full account of the cultural, economic and social dimension,
  - U. whereas there is a need for common tools and comparable parameters and the coordination of CRMs' areas of activity so as to improve cooperation between CRMs and take the development of the information society into account,
  - V. whereas any effort made to stimulate competition in the internal market and promote the international distribution of European musical works, regardless of which CRM manages the copyright, is welcome, bearing in mind that every repertoire, regardless of whether or not it is widely known, should be treated equally,
  - W. whereas, whilst the Recommendation is intended to cover only the online sale of music recordings, its broad wording also covers other online services (such as broadcasters' services) which happen to include music from such recordings but which would suffer from the legal uncertainty that the Recommendation creates as to which licensing regime would apply to such services, and whereas the technological solutions to be applied to the internal market must make for openness and interoperability in forms serving to protect consumers as well as right-holders,
  - X. whereas greater competition in the collective management of copyright and related rights in the music industry can, if fair and transparent and in the right circumstances, safeguard the position of authors in Europe (including local authors and minority repertoire) and underpin cultural diversity in Europe,
  - Y. whereas the Commission should assess suitable initiatives to ensure continued broad public access to repertoires, including smaller or local ones, in compliance with the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, given the particularity of the digital era but also taking into account the direct and indirect impacts this will have on the overall position of authors and cultural diversity,
1. Invites the Commission to make it clear that the 2005 Recommendation applies exclusively to online sales of music recordings, and to present as soon as possible – after consulting closely with interested parties – a proposal for a flexible framework directive to be adopted by Parliament and the Council in codecision with a view to regulating the collective management of copyright and related rights as regards cross-border online music services, while taking account of the specificity of the digital era and safeguarding European cultural diversity, small stakeholders and local repertoires, on the basis of the principle of equal treatment;
  2. Emphasises that the basis of the Commission's consultation of interested parties should be

as broadly based as possible, while including in its discussion all other options, not merely those set out in the Recommendation and in the Commission's Staff Working Document of 7 July 2005 entitled "Study on a Community initiative on the cross-border collective management of copyright";

3. Understands and supports the provisions concerning the existing possibility for right-holders to choose a collective rights manager, to determine the entrusted online rights and their territorial scope and the right to withdraw the rights from the CRM or to transfer them to another CRM, and stresses the importance of taking into consideration the efficiency of cooperation between CRMs in order also to preserve the interests of smaller and local right-holders and thus to safeguard cultural diversity;
4. Considers also that the interests of authors and therefore of cultural diversity in Europe will be best served by the introduction of a fair and transparent competitive system that avoids downward pressure on authors' revenues;
5. Calls on the Member States and CRMs to ensure fair representation of all categories of the right-holders in CRMs and thus their balanced participation in the internal decision-making process;
6. Stresses that the proposed directive should not in any way undermine the competitiveness of the underlying creative businesses, the effectiveness of the services provided by CRMs or the competitiveness of user businesses – in particular small right-holders and users – and should:
  - guarantee right-holders a high degree of protection and equal treatment,
  - ensure, as part of the European legal framework or "*acquis communautaire*" with regard to intellectual property rights, that legal provisions have a real, significant and adequate impact on the effective protection of all categories of right-holders, which should be subject to regular assessment and, where necessary, to review,
  - be based on solidarity and an adequate, equitable balance between right-holders within CRMs,
  - emphasise the use of alternative dispute resolution, in order to give all the parties involved the possibility of avoiding protracted and expensive legal procedures while ensuring fair treatment for owners and users,
  - provide for democratic, transparent and accountable governance in CRMs, inter alia by establishing minimum standards for organisational structures, transparency, representation, copyright distribution rules, accounting and legal remedies,
  - ensure comprehensive transparency in CRMs, particularly as regards the calculation base for tariffs, administrative costs and supply structure and, where necessary to that end, lay down rules for the regulation and supervision of CRMs,
  - promote creativity and cultural diversity,
  - allow only fair and controlled competition, without territorial restrictions, but with the necessary and suitable qualitative criteria for the collective management of

copyright and the preservation of the value of the rights,

- avoid downward pressure on royalty levels by ensuring that users are licensed on the basis of the tariff applicable in the country where the consumption of the copyrighted work (the so-called “country of destination”) will take place, and help to achieve an appropriate level of royalties for the right-holders,
- preserve CRMs’ cultural and social role while ensuring that they administer right-holder funds and provide services to rights users and right-holders in such a way as to ensure as far as possible that they are protected,
- for the purposes of efficiency, promote exchanges of information and lay down an obligation for commercial users and producers to display to CRMs, on a free access basis, such complete and accurate information as is necessary to enable them to identify right-holders and properly administer their rights,
- provide users with a high degree of legal certainty and preserve the availability of the global repertoire through licences available from any CRM within the EU and through interoperable technological platforms,
- take into account the interests of users and of the market, and in particular ensure that small and medium-sized users have adequate legal protection and, in the event of disputes, that effective and inexpensive dispute-settlement mechanisms are in place which do not burden users with unreasonable legal costs,
- foster right-holders' ability to develop a new generation of collective licensing models for music across the EU for online uses more adapted to the online environment, on the basis of reciprocal agreements and reciprocal collection of royalties while ensuring that right-holders do not abuse their position so as to prevent one-stop-shop world-repertoire collective licensing,
- capitalise on market applications of open, interoperable technological measures and platforms capable of protecting right-holders, allowing consumers to make normal use of legitimate content which they have legally acquired, and developing new commercial models in the information society,
- adequately satisfy the future needs of a streamlined online market without posing any threat to fair competition and cultural diversity, or to the value of music,
- take account of the different forms of legitimate online music services and lay down specific rules to foster their development;
- guarantee the efficiency and coherence of licensing systems (e.g. by enabling broadcasters to acquire rights in accordance with the copyright legislation of the Member State in which the programme in question originates) and simplify the extension of existing collective agreements so as to include interactive online distribution of existing content (e.g. podcasting),
- avoid the over-centralisation of market powers and repertoires by ensuring that exclusive mandates may not be granted to a single or a very few CRMs by major right-holders, thereby guaranteeing that the global repertoire remains available to all

CRMs for the granting of licences to users,

- allow users to obtain pan-European licences from any CRM covering the global repertoire,
- preserve the system of reciprocal collection of royalties by CRMs for their members,
- introduce competition on the basis of the efficiency and quality of services that CRMs can offer and not on the basis of the level of remuneration provided to right-holders;

7. Considers, furthermore, that in order to ensure the full and complete functioning of the system of reciprocity to the benefit of all right-holders, it is crucial to prohibit any form of exclusive mandate between major right-holders and CRMs for the direct collection of royalties in all Member States, as this would lead to the rapid extinction of national CRMs and undermine the position of minority repertoires and cultural diversity in Europe;
8. Supports the idea that a CRM should be free to provide commercial users based anywhere in the European Union with pan-European and multi-repertoire licences for online uses (including mobile telephony uses), on fair and individually negotiated terms and without discrimination between users; calls on the Commission to conduct an assessment of the impact of a global licence for online services and its effects on the economic and social situation of authors;
9. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.