

Give Croatia artists a digital future by implementing **article 18** of the Copyright Directive!

15/09/2021

Dear Member of the Croatian Parliament,

AEPO-ARTIS is a non-profit making organisation that represents 36 European performers' collective management organisations from 26 different countries, including the Croatian organisation HUZIP. The number of performers, from the audio and audiovisual sector, represented by our 36 member organisations can be estimated at between **650,000 and 700,000**.

We write you because we are concerned about the current Croatian proposal to implement the 2019 Copyright directive.

In July, Croatia was one of the 23 countries against which the **European Commission** started an infringement procedure for not having already implemented this Copyright directive completely. Although we are without a doubt in favour of a transposition without further delay, we would like to point out that above all this directive offers Member States an **historic opportunity to make a difference for the musicians and actors who are the face of our common culture**. We are therefore first and foremost in favour of thoughtful transposition of the directive, a transposition that strengthens their position towards new global and digital players.

Last Friday, the Culture Committee of the **European Parliament** published its official Opinion on the European Intellectual Property Action Plan in which it **shares this concern**. The opinion makes a clear reference to the importance of implementing the Directive without any further delay, but that this should be done "*properly*" and "*in a manner which reflects the agreement struck by the co-legislators*".

And for the European Parliament **article 18**, which introduces a general principle of the right to appropriate and proportionate remuneration, is a vital part of an implementation done *properly*. The opinion explicitly refers to the finding that performers "*continue to be pressured into unfavourable contracts, often giving up the rights to their intellectual property without receiving appropriate and proportionate remuneration for their creative work*". And this especially within the online landscape.

For **on-demand and streaming platforms** of music and film, 2020 has been a fantastic year. And 2021 will be the next. One does not hear their shareholders complain. However, their suppliers do! For **musicians** and **actors**, the digital environment of on-demand and streaming is still the place where they are least protected. And they notice that in their income.

This is in stark contrast to their presence on these platforms. The cultural sector is one of the hardest hit sectors worldwide. While our actors' and musicians' beloved stages were closed, their music and films were consulted online en masse. If we come through this crisis with a sound mind, it will in large part due to their (virtual) support.

The AEPO-ARTIS members collect and distribute remunerations for the use of the performances of our actors and musicians. However, **in the digital environment our options are limited**. Throughout Europe, and also in Croatia, performers are faced with the buyout of their rights on the basis of contracts that give them little in return. Digital exploitation rights can be bought out more easily than their physical counterpart. Technology seems to be bringing us closer to our idols, but this is just a digital appearance.

We applaud the fact the **current Croatian proposal** takes an initiative that aims at creating a healthier digital environment for Croatian and other European performers and that you are giving collective management organisations a central role to play. These organisations are a natural partner to the many artists they represent as they not only operate on a non-profit basis, but - and most importantly - are founded and owned by those same artists.

Allegations that this proposal would put the sustainability of the music and audiovisual industry at risk, hamper innovation, prevent future investments or even be a violation of the EU Copyright directive are false and unfounded. What all studies conducted in recent years on the streaming business have in common is that the **current system is not working** and that the biggest victims are the individual artists. And the solutions proposed all come down to the same thing: **a remuneration right for online exploitations**.

A recent **WIPO-study on music streaming** highlighted that: *"It seems that the policy goals and principles of equitable remuneration are best fulfilled by a streaming remuneration [that] is not waivable by the performer and it is collected and distributed by performers' CMOs."*

Even in the **United Kingdom**, that is no longer obliged to implement the Copyright directive, the Parliament has conducted an in-depth study into the business behind streaming in which it recommends *"that the Government legislate so that performers enjoy the right to equitable remuneration for streaming income"* and points out that *"the right to equitable remuneration is a simple yet effective solution to the problems caused by poor remuneration from music streaming."*

We would therefore urge you to **go further than the current proposal**. Grab this historical chance and introduce a generally applicable **remuneration right for any exploitation based on the right of making available**. And this for **commercial streaming platforms** (such as Spotify, Netflix, Deezer or Amazon Prime), as well as **user generated online content-sharing service providers** (such as Facebook, Youtube, Tiktok or Twitch).

More and more member states are moving in this direction. Belgium, Germany, France, Italy and Hungary have specific systems that guarantee that performers receive royalties for the exploitation of their works through their CMOs. In **Spain**, artists (including Croatian artists) enjoy a general **unwaivable right to equitable remuneration for the making available** of their performances by on-demand and streaming services, which is subject to **mandatory collective licensing**. This right arises from the transfer of the exclusive right to record companies or audiovisual producers. It guarantees an **appropriate and proportionate** remuneration and that no matter how good or bad the contract with the producer is. Despite the fact that this system has been in existence for years, no signals have yet come from Spain that predict the end of Spanish culture. On the contrary, the Spanish music and audiovisual sector is stronger than ever, thanks to a system that takes all stakeholders into account.

Artists across Europe are asking to be able to mandate their CMOs to collect remunerations for the online use of their performances. Article 18, however, needs to be implemented in a manner that enables them to do so.

Give Croatian artists a digital future by implementing article 18 of the Copyright Directive with the same dedication and passion they make your culture! Give performers an unwaivable remuneration right on all online exploitations!

Ioan KAES
General-Secretary

A handwritten signature in black ink, appearing to read 'Ioan KAES', with a stylized flourish above it.