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Collective rights management reform

Time for a fair remuneration of artists

Collective rights management is key for artists. However, in many cases the way it is organised and implemented at national or European level raises important issues: transparency, governance, fair remuneration and sharing of the resources, licensing practices, to name but a few. Too many artists do not benefit from this system and are ignored by its management.



Collecting societies would have no purpose without artists; how then to improve the situation and make sure that they serve the artists best? How to ensure that regulatory changes of collective management of rights in the EU market put the interest of a majority of artists at their heart? How to generalise good practices developed in some EU countries and learn from recent new collective initiatives developed by artists to manage their rights and revenues? These are some of the questions that underlay the debates during the Greens/EFA hearing yesterday. Collective rights management will soon be on the agenda of the Parliament when the European Commission sends its proposal for a directive. Attendance to the conference shows that there is a strong interest in this issue. This is not surprising: problems with collective rights management have been pointed out for years without any progress being made. Members of our group asked repeatedly that the Commission reforms this system. Since 2005, there have been proposals from the European Parliament (EP) on collecting societies. A question was tabled by the JURI committee recently in Plenary session on 13th February, 2012, asking the Commission when the legislative proposal on collective rights management would be launched. We currently expect the proposal from the Commission to be sent to the Parliament in June 2012. Besides shocking scandals in several European countries involving collecting societies lie structural malfunctioning, common to many societies, that impact many artists and contribute to discredit the copyright system. The Internet and digitisation generate

new challenges. However, problems of collective rights management are not new. For a decade, in France, an independent commission has published annually a fully detailed report documenting the lack of transparency, the incoherence and malfunctioning of the collective rights management system. Despite clear recommendations very little progress has been made over the years. In France, as in other countries, most of the biggest players do not seem to acknowledge this situation or show the will to improve their system. There is an urgent need to reform collecting societies with the aim of making them more democratic and therefore accountable to members and more transparent in their operations. Efforts to develop a single market offer opportunities to promote changes. The Commission bears responsibility for introducing clear propositions of regulation and obligations without favouring least common denominators or inadequate practices from the bigger players (SACEM, GEMA, PRS) in dominant positions. For the Greens/EFA, it is essential for the experience of the smaller stakeholders to be taken into account and to make sure that not only the biggest ones can survive in the context of the European market. Small collecting societies provide interesting examples. Several were mentioned during the hearing, including in Denmark and Norway. In Denmark, the board of KODA, for instance, is full of artists and seems to be working well in supporting them. Many topics and recommendations were raised during the hearing. Everybody agrees that an improved legal framework is needed. Licensing methods to allow a single digital market are one issue, but there is also a basic need to focus on the operations of collecting societies and ensure that they manage rights more efficiently. The de facto monopoly position of collecting societies is a problem for many actors. Many participants believe that a genuine system of competition for regulation has a role to play to prevent monopolies or oligopolies. Several speakers stated that collecting societies have to be regulated and support the view that minimum standards of behaviour are set up. Measures such as an income ceiling on executives of collecting societies and the banishment of bonuses should be taken. The level of costs of operations of collecting societies and financial transparency should be set by law. Non-transparency clauses should be banished and collecting societies should be obliged by law to publish online costs of operations. Right now, up to 50% of the money collected is engulfed by fees by the collecting societies. Digital I.T. systems do exist, but the fees charged are considerable and the collecting societies are unclear as to how they manage these IT systems. The way the distribution of the money is performed is a problem. The fact that new technologies permit the measurement of usage of content could be used to better distribute money. The directive should set minimum standards in fees for artists and they should have some enforceable rights vis-à-vis collecting societies. Setting an arbitration body at EU level could be an option. As one of the speakers noted, in Canada, the possibility of arbitration between authors and collecting societies has increased trust. Meanwhile, EU case law can help to indentify where minimum standards should be created. In some cases, collecting societies have forced musicians to give up their copyright to them. Authors sometime feel that producers fail to promote their work. In the movie industry, the author should have more control on the buying and selling of the film. Too many times the producer insists on the bundling of rights so that he can sell a movie, but if the producers fails in his task, the author is stranded. Artists need to be in a better negotiating position when dealing with collecting societies and signing contracts. More generally, artists should be put at the centre of the collective rights management systems. All these aspects will be discussed in depth in the coming months. The Green/EFA group will soon publish a position paper on the issue of reform of collective rights management.

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