

President of the European Commission
Mrs Ursula von der Leyen
Rue de la Loi 200
1049 Brussels
Belgium



Brussels, 23 January 2020

Dear President von der Leyen,

Please allow us to congratulate you and welcome your appointment as President of the European Commission on behalf of AEPO-ARTIS, FIA, FIM and IAO - together representing over 500,000 professional musicians, singers, actors, dancers and other performing artists.

Performers are at the very heart of the cultural and creative content sector, a sector of vital financial importance to Europe's economy. Strengthening their protection and enabling them to envisage professional careers should therefore be a key priority for the European Commission during its term. We respectfully wish to draw your attention to the following points, which would greatly contribute to achieving that goal:

1. Implementation of the Copyright Directive and the remuneration of performers

With the approval of the Directive on Copyright in the Digital Single Market, the EU institutions have taken an encouraging first step in the right direction, by driving market change, enhancing transparency in the contractual relationship and creating a mechanism for pairing the remuneration initially agreed, when disproportionately low, with subsequent revenues.

Most importantly, the Directive also establishes that the remuneration of performers must be proportionate to actual revenues generated by all forms of exploitation.

This principle is extremely important since today most performers are not fairly remunerated when their performances are exploited, including via streaming and downloading platforms such as iTunes, Spotify, Amazon Prime and Netflix. With little individual bargaining power, they often have no choice but to transfer all their exclusive economic rights, in return for inadequate payments that are hardly ever proportionate to how successful the exploitation of their work is in the end.

To this end, the Directive clearly says that Member States may rely on different existing or newly-introduced mechanisms, including collective bargaining and other mechanisms. Our organisations are calling on Member States to give this principle its full potential by introducing in their national laws a right to remuneration for making available on demand for performers, paid by online platforms and subject to mandatory collective management. This is, in our view, the best mechanism to make sure that performers get fully rewarded for on-demand uses.

Whilst providing guidance to the Member States with respect to the implementation of the directive, your support for this statutory mechanism would be invaluable. Most performers in Europe are in fact unlikely to be properly rewarded in the online environment without this legal entitlement.

Moreover, we call on you to develop an ambitious policy that will further strengthen performers' rights in Europe. We therefore believe that the following points should be on the list of priorities:

2. Extension of term of protection for audiovisual performances

In 2011, performers welcomed the adoption of the Term Directive (2011/77/EU) extending the term of protection for sound recordings in the EU from 50 to 70 years. Regrettably, a similar extension was denied to audiovisual recordings, for no objective reason. In the digital environment, feature films and other audiovisual works can easily be exploited for a much longer period than in the analogue world.

In this regard, we welcome the on-going consultation of the European Commission on the extension of term for audiovisual performances. Whilst our organisations and members will do their utmost to respond to the consultation, we wish to stress that we do not always have access to the information that the Commission is requesting. In any case, we argue that a presumption should be established in their favour and that the industry should provide solid evidence as to why audiovisual performances should be discriminated and benefit from a lesser protection than sound recordings. In addition to the collection of data through this consultation, we encourage you to also conduct objective studies on the subject with a clear timetable – with a view to completing a comprehensive and balanced report on this important topic.

3. EU ratification of the Beijing Treaty on Audiovisual Performances

The WIPO Treaty on Audiovisual Performances, adopted in Beijing on 24 June 2012, grants meaningful intellectual property protection to audiovisual performers for the first time at international level. By acknowledging their economic and moral rights, it ends a discrimination going back to early 60's, when only performances in audio recordings were deemed worthy of protection.

However, as of today, the European Union has not yet ratified this important international convention. We therefore call upon you to promote a swift ratification of the Treaty by the EU and ensure that the European Commission drafts a proposal in that sense as soon as possible in 2020.

4. Protect the European system of private copying compensation

Directive 2001/29/EC enables Member States to implement in their national legislation exceptions or limitations to the reproduction right for copies made for private use. The Directive also establishes that rightholders must be compensated for such use. As a result, reasonable levies on media typically used for such purposes (blank media, recording equipment, mobile listening devices such as mp3/mp4 players, computers, etc.) are charged in most EU countries where this exception was introduced. This compensation represents 31% of all revenues distributed to performers by collective management organisations in Europe. In many European countries, compensation for private copying also significantly contributes to support cultural activities.

Today, manufacturers of electronic devices, notably through their trade organisation in Europe (Digital Europe), are aggressively attacking this long-standing practice with a view to depriving European stakeholders from this vital compensation. Remarkably, none of these companies are European.

We therefore urge you to uphold the interests of European creators and take a firm stand against these attempts to weaken EU legislation, which has been the subject of a number of clear and constructive rulings by the CJEU. Rightholders cannot be deprived of a legitimate, fair and significant, compensation for acts of private reproduction of their works.

5. Improve access to key information held by producers as Directive 2014/26 on Collective Management is subject to review

Every day, consumers enjoy listening to hundreds of thousands of audio and audiovisual recordings. In the case of sound recordings, performers are entitled to receive a remuneration for such use, claimed and distributed to them by their collective management organisations. The latter, on the other hand, have both a legal duty and a moral obligation to keep administrative costs to the strictest minimum, in order to maximise the revenue paid out to individual performers.

A significant part of the administrative costs of performers' collective management organisations are directly linked to their efforts in making enquiries to identify the performers involved in recordings for the use of which a remuneration is due to them.

This is because producers do not willfully cooperate or charge collective management organisations unreasonable costs to access information they already have, as the initiators and makers of those recordings.

Amending the Directive by introducing a legal obligation for producers to provide this elemental information, free of charge, would be of great assistance to the efficient administration of performers' rights, which is at the core of this Directive.

We would welcome an opportunity to discuss the above with you in further detail. In the meantime, we remain at your disposal should you require any further information and are looking forward to hearing from you.

Yours sincerely,

Tilo Gerlach
President



Dominick Luquer
General Secretary



Benoît Machuel
General Secretary



Nacho Garcia Vega
President

