

EU XXL film, forum and festival of European film, has – in cooperation with the Pécs International Film Celebration – invited a number of high level representatives of the film and music sector, e.g. directors, producers, distributors, film agencies and collecting societies, in order to discuss European AV policies, challenges and chances of the 21st century. We would like to contribute to the ongoing discussion with the following proposals elaborated by the EU XXL Forum in Pécs, October 4th to 6th 2006:

Resolution on Cross Boarder Online Licensing

We welcome the efforts made by the European Commission and the European Parliament to find solutions for a better circulation of creative works in the online environment. We agree that digitalisation and the challenges of online distribution demand an adaptation of the existing structures in order to guarantee access, diversity and legal certainty.

After the info directive and the enforcement directive the European Commission is now addressing the issue of rights' management.

The management of rights is regarded as the third pillar of the authors and related rights and is mainly fulfilled by collecting societies. These societies have a large responsibility as they act to a significant extent for the public interest. The collective management of rights plays an important role in ensuring the circulation of artistic works. It benefits rights holders as well as users and the public.

In order to promote and create an internal market, the European Commission intends to foster the emergence of Pan-European online music services by promoting Europe-wide licensing schemes.

Online services are crucial for an EU internal market for art and culture, therefore furthering their development is vital. However the regulatory development should also take into consideration the following:

- preserving solidarity amongst rights holders through their collecting societies as well as amongst collecting societies;
- the social and cultural role of collecting societies;
- cultural and linguistic diversity;
- promotion of local art and cultures in a globalised audiovisual environment
- economic diversity, tariffs and costs.

Therefore we would like to remind decision makers at the local, national and European level, that any decision regarding rights management should be taken in light of Article 151 of EC treaty which provides that the “community shall contribute to the flowering of the cultures of member states while respecting the national and regional diversity and at the same time bringing the common cultural heritage to the fore”. Especially Article 151 (4) states that “the community shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and promote the diversity of its cultures.” And last but not least we want to highlight the importance of the “UNESCO Convention for the protection and promotion of diversity of cultural expressions”, which establishes the principle of preserving cultural diversity. We, the undersigned, agree that the recommendation has the following main weaknesses:

- it creates legal uncertainty on the scope of the rights that are licensed to the users;
- it creates economic inefficiencies:
 - (i) the loss of turnover will increase to the same extent as the management costs and therefore harm domestic rights holders, cultural and economic diversity;
 - (ii) it makes it uneconomical to manage the rights of individual artists;
- it imposes on users and rights holders a model that lacks flexibility in reflecting market development in rights’ licensing
- it establishes a two-tier licensing structure, one for the international and one for the domestic repertoire;
- it favours larger collecting societies.

We, the undersigned, would like to contribute the ongoing discussion with the following requests:

- request the European Commission to carry out a full cultural impact assessment of its recommendation;
- request European institutions to consult properly with rights holders;
- request that licensing schemes do not discriminate against local service operators and national rights holders;
- request the development of charter at European level of good practice between users on the one hand and rights holders and collecting societies on the other hand in order to foster mutual understanding and good will;
- considering an EU directive to foster good management practices, better governance and transparency rules regulating collecting societies;
- supporting the establishment of alternative dispute resolution mechanisms.

It is important to ease the licensing process in Europe, this will facilitate distribution at international level of European creative works however the regulator should avoid undermining the goal of cultural diversity by making the licensing of domestic language works more difficult or by weakening the domestic infrastructure of rights’ management.

Pécs, October 6th, 2006

AKM – Authors, Composers and Publishers (A)
Association of Audiovisual and Film Industry Austrian Federal Economic Chamber (A)
Austrian Federation of Composers (A)
Austro–Mechana (A)
Croatian Directors Guild (HR)
Croatian Producers Association (HR)
Directors Guild of Slovenia (SLO)
FilmJUS Hungarian Collecting Society of Audiovisual Rights (H)
Hungarian Society of Directors (H)
OSA The Performing and Mechanical Rights Society of Composers, Authors and Publishers (CZ)
Society ARTISJUS Hungarian Bureau for the Protection of Authors Rights (H)