

Audiovisual Producers, Distributors, Publishers and Commercial Broadcasters in support of the completion of an effective Collective Rights Management (CRM) Directive



Joint letter on the Proposed CRM Directive

Brussels, 16 September 2013

The undersigned associations represent international and European audiovisual producers, distributors, publishers, collective rights management organisations and commercial broadcasters active in the film and television sectors across Europe. Our work is based primarily on our ability to develop new talent, stories, services and modes of delivery, invest in them and bring them to the widest possible audience. We are dedicated to cultural diversity, research, innovation and consumer choice. It is worth recalling that the Commission launched the Proposed CRM Directive to introduce greater transparency, efficiency, and discipline to collective rights management in order to improve the functioning of copyright across the EU to the benefit of all stakeholders. We welcome the rapidity with which the European Parliament (EP) and the Council have examined this proposal as a priority. The cornerstone of the Proposed CRM Directive has from the outset been rights holder's choice and the recognition that different content sectors operate in different manners.

Core concerns for the audiovisual sector relate to preserving the freedom to exercise our rights and “*the need to ensure a stable ecosystem that encourages investment in the cultural and creative sectors, job creation in Europe and the promotion of innovative business models*” as highlighted by the European Parliament resolution of 12 September 2013 on promoting the European cultural and creative sectors as sources of economic growth and job.¹

With the informal “trilogue” negotiations about to begin, the Proposed CRM Directive enters a crucial stage. The EP and the Council are poised to agree a series of important modifications to the Proposed CRM Directive and we would like to share a few comments on issues which are of vital importance to the audiovisual sector:

1. **The link between national systems regulating the rights subject to collective management, exclusive exercise and presumptions of transfer and the role of the General Assembly (GA).** The Council and the EP are not far apart on this point. However, we are concerned that the EP’s proposed amendment to Article 5(2) may have unintended consequences which could undermine certain key aspects of national systems regulating copyright on audiovisual works such as presumptions of transfer and extended collective licensing mechanisms.
- Our goal here is to ensure that producers are in a position to secure the rights necessary to **ensure financing, production and exploitation of the audio-visual work which is a collective work.** **National systems of presumptions of transfer, in line with EU law** (see e.g., Article 3 of the Rental Directive) **and the international obligations** (see e.g., the Beijing Treaty on Audiovisual Performances) **of the Union and the Member States are key to the functioning of the audiovisual sector, and should be maintained. These systems have preserved the audiovisual sector from the fragmentation that exists in others sectors where users need to acquire the rights from multiple rightholders.** Indeed, the consolidation of exclusive rights into the producer facilitates direct licensing. For example, if an author or performer is required by (the General Assembly of) the CMO to transfer up-front all their exclusive rights (exploitation rights) to their CMO, including for works which have not even been created yet, the producer would be unable to acquire all the necessary rights to ensure financing, production and exploitation of the audiovisual work which is a collective work. The situation is different for remuneration rights

¹ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0368&language=EN&ring=A7-2013-0248>

(limited to private copy and cable retransmission) which are already subject to mandatory collective management. We understand that the goal is to strike the right balance between such systems on one hand and the power of the general assembly (already dealt with by the EP's proposed amendment to Article 7, paragraph 5, dd) on the other hand. Already, the EP's proposal for Recital 7c) goes a long way toward recognizing this point.

However, we would like to propose one of the following three options:

- Retain the Commission's original proposal for Article 5(2); or
- Incorporate minor changes to the EP's proposal as follows:

2. Rightholders shall have the right to authorise a collective management organisation of their choice to manage the rights, categories of rights, or types of works and other subject matter of their choice, for the Member States of their choice, irrespective of the Member State of residence or of establishment or the nationality of either the collective management organisation or the rightholder.

Without prejudice to arrangements in the Member States concerning the management of rights, such as extended collective licensing or legal presumptions of representation or transfer, the general meeting of members of collective management organisation shall, in accordance with Article 7, decide the rights, categories of rights, types of works and other protected subject matter that are managed by the collective management organisation. This decision shall be without prejudice to ~~take account of~~ rightholders' individual freedom to dispose of their works and other subject matter and to freely choose the collective management organisation which will manage their rights. It shall also take into account the specific features of the cultural sector concerned, and the necessary undertakings on the part of rightholders to enable the collective management organisation to perform its task effectively; or

- Move the EP's proposal for Recital 7c) to an article in the body of the Directive: *This Directive is without prejudice to arrangements in the Member States concerning the management of rights, such as extended collective licensing or legal presumptions of representation or transfer, provided that the arrangements in question are compatible with Union law and with the international obligations of the Union and of the Member States.*

2. **Exclusion of audiovisual producers and broadcasters from the scope of the Proposed CRM Directive.** We are supportive of modifications to the Proposed CRM Directive that clarify the extent to which different entities are subject to the provisions of the Proposed CRM Directive which is after all about CMOs. Both the EP's proposed amendment (Recital 7d) and the Council proposal (Recital 7da) draw a useful line between independent management entities on one hand (covered to some extent by Articles 2 and 3) and audiovisual producers and broadcasters on the other hand. Our goal here is to ensure that producers and broadcasters are not unintentionally made subject to the provisions of the Proposed CRM Directive. **Such entities take financial risks by investing in the development and production of content and by acquiring rights through negotiated agreements in a competitive environment. They are not engaged in collective rights management.** As such producers and broadcasters should not be required to provide information on their rights beyond what is necessary for CMOs and users to perform their tasks effectively – this will invariably form part of customary contractual practices.

List of signatories

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