

Ministry of Justice
Ministry of Education, Culture and Science
The Netherlands

Brussels, 9 April 2014

Dear Sir/Madam,

RE: consultation document article 45d Dutch Copyright Law

AEPO-ARTIS, the Association of European Performers' Organisations, represents 34 European performers' collective management organisations from 25 countries, 22 of which are established in Member States of the European Union. The other countries represented are Norway, Serbia and Switzerland. Combined these organisations have in excess of 350.000 performers as members. Our Dutch members are NORMA and SENA.

AEPO-ARTIS welcomes the proposal of the Ministries to amend the current legislative framework with regard to the film paragraph (article 45d) in the Dutch copyright law, in which a right to equitable remuneration for the communication of the public of protected works is regulated.

Indeed there is urgent need for action in this area as the vast majority of performers currently do not enjoy any financial reward from the exploitation of their performances (online).

Whilst performers are granted an exclusive right in law for the communication to the public including making available on demand of their performances (EU Copyright Directive 2001/29/EC), current contractual arrangements, which allow large companies to take advantage of performers' very weak bargaining position, make this legislation wholly ineffective in practice. In the vast majority of cases, performers are obliged to waive this exclusive right in favour of the record or film producer. In return, most performers receive no remuneration at all, or, at best, a derisory single all-inclusive fee. If performers do not accept these terms, they do not work.

AEPO-ARTIS has long recorded this situation in its study on performers' rights. A copy of the study is attached for your information.

For this reason, AEPO-ARTIS calls for a measure to be introduced in legislation guaranteeing equitable remuneration to be paid to performers where they have transferred or assigned their exclusive right of making available on demand, whenever their performances are made available on demand online to the public. This remuneration is unwaivable, should be managed by performers' collective management organisations and is collected from the users, i.e. those who make the services available to the public on demand.

AEPO-ARTIS therefore welcomes this draft legislative initiative from the Dutch Ministries.

There are two crucial elements in this legislative proposal in order to ensure that the right to remuneration is operational in practice and will benefit performers. These are that such remuneration is payable by the user and is collected and managed compulsorily by performers' collective management organisation. As mentioned above, these measures are in line with the proposals that AEPO-ARTIS is calling for at European level.

However, it is AEPO-ARTIS' view that some important issues have to be addressed in order to ensure that such a legislative proposal would grant the intended protection to performers.

AEPO-ARTIS would like to submit that such a remuneration right should not be limited to creators who have made a substantial contribution to the work. We believe that it should be the aim of such a legislative initiative to grant protection to all performers who have contributed to a work. There is neither a reasonable justification nor legal tradition to make such a distinction.

AEPO-ARTIS would like to draw the Ministries' attention to Spain where a similar provision has been introduced into Spanish law in 2006 with no such limitations. The right to equitable remuneration for the making available on demand in Spain covers both audio and audiovisual recordings and makes no distinction between main and other performers.

As NORMA is the only organisation in the Netherlands in charge of the collective management of performers' rights in the audiovisual sector, we would recommend this organisation to be appointed by law to collect the remuneration.

AEPO-ARTIS welcomes the initiative of the Ministries and would be grateful if you could take the above comments into consideration and remain at your disposal should you require any further information.

Yours sincerely,

Xavier Blanc
General Secretary

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