

Commission recommendation of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services (recom. 2005/737/EC)

2006/2008(INI) - 13/03/2007 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution based on the own-initiative report drafted by Katalin LEVAI (PES, HU) in response to the Commission Recommendation of 18 October 2005 on collective cross-border management of copyright and related rights for legitimate online music services. Parliament criticised the Commission for failing to undertake a thorough consultation process with interested parties and with Parliament before adopting the Recommendation. All categories of right-holders must be consulted on any future regulatory activities in this area so as to ensure a fair and balanced representation of interests. Parliament also criticised the "soft law" approach. Parliament felt that the Recommendation was inadequate for the following reasons :

- it sought merely to regulate the online sale of music recordings, but could – owing to its imprecise wording – also be applied to other online services (e.g. broadcasting services) containing music recordings;
- there was a risk that right-holders complying with the recommendation in respect of their interactive online rights would deprive local collective rights managers (CRMs) of other rights (e.g. those relating to broadcasting), thus preventing users of those rights from acquiring user rights for a diversified repertoire from one and the same CRM ;
- national CRMs should continue to play an important role in providing support for the promotion of new and minority right-holders, cultural diversity, creativity and local repertoires, which presupposed that national CRMs should retain the right to charge cultural deductions ;
- there was concern about the potentially negative effects of some provisions of the Recommendation on local repertoires and on cultural diversity given the potential risk of favouring a concentration of rights in the bigger CRMs. The impact of any initiative for the introduction of competition between rights managers in attracting the most profitable right-holders must be examined and weighed against the adverse effects of such an approach on smaller right-holders, small and medium-sized CRMs and cultural diversity.

Parliament invited the Commission to make it clear that the 2005 Recommendation applied exclusively to online sales of music recordings, and to present a **proposal for a flexible framework directive** to be adopted by codecision. This should aim at regulating the collective management of copyright and related rights as regards cross-border online music services, while taking account of the specificity of the digital era and safeguarding European cultural diversity, small stakeholders and local repertoires, on the basis of the principle of equal treatment. The Commission's consultation of interested parties should be as broadly based as possible. The proposed directive should not in any way undermine the competitiveness of the underlying creative businesses, the effectiveness of the services provided by CRMs or the competitiveness of user businesses – in particular small right-holders and users – and should: guarantee right-holders a high degree of protection and equal treatment; ensure that legal provisions have a real impact on the effective protection of all categories of right-holders; be based on solidarity and an adequate, equitable balance between right-holders within CRMs; avoid downward pressure on royalty levels by ensuring that

users are licensed on the basis of the tariff applicable in the country where the consumption of the copyrighted work (the so-called "country of destination") will take place, and help to achieve an appropriate level of royalties for the right-holders.

MEPs also wanted to avoid the over-centralisation of market powers and repertoires by ensuring that exclusive mandates may not be granted to a single or a very few CRMs by major right-holders. In this way, the global repertoire would remain available to all CRMs for the granting of licences to users. They also said that it was crucial to prohibit any form of exclusive mandate between major right-holders and CRMs for the direct collection of royalties in all Member States, as this would lead to the rapid extinction of national CRMs and undermine the position of minority repertoires and cultural diversity in Europe.

A CRM should be free to provide commercial users based anywhere in the EU with pan-European and multi-repertoire licences for online uses (including mobile telephony uses), on fair and individually negotiated terms and without discrimination between users. The Commission was urged to conduct an assessment of the impact of a global licence for online services and its effects on the economic and social situation of authors.