



Position of the European Arts and Entertainment Alliance
on the Commission's Report about the application of Directive 2004/48/EC
on the enforcement of intellectual property rights

EUROPEAN ARTS AND ENTERTAINMENT ALLIANCE (EAEA)

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1. The European Arts and Entertainment Alliance (EAEA) gathers the European members of UNI MEI, FIM and FIA. The Alliance speaks on behalf of several hundreds of thousands of professional cultural and media workers at international and regional level – most of which are holders of intellectual property rights – and is recognised by the ETUC as the industry federation for the media, entertainment and arts sector.

UNI MEI affiliates over 140 unions and guilds representing creators, technicians and other media & entertainment workers worldwide. It has 67 members in the EU and other European countries.

The International Federation of Actors (FIA) has 27 members in the EU and EFTA countries. It represents more than 100 unions, guilds and associations, in more than 75 countries around the world.

The International Federation of musicians (FIM) has 24 member organisations in the EU, and 72 throughout the world. FIA and FIM members operate both in the live performance and the recording industry.
2. The EAEA welcomes the EC report in reference, which is aimed at evaluating the impact of the Directive 2004/48/EC on the enforcement of intellectual property rights. Both the tone and the content of this document show that the European Commission is fully committed to protecting and enforcing intellectual property rights - including online, where the spread of infringing behaviour is becoming an issue of great concern.
3. The EAEA considers that this directive is relevant, useful and balanced, and requires as such proper implementation by the Member States. Although it already provides for a set of procedures and protection measures that go further than those required by the TRIPS Agreement, the EAEA endorses the Commission's view that this directive cannot adequately tackle the challenges raised by the development of broadband Internet and its undesirable side-effects, e.g. sleek, unauthorised access to protected contents. The comments here below focus on this latter aspect.
4. Since 2004, the online legal exploitation of copyrighted works and recorded performances has increased. Meanwhile, as underlined by the report, the Internet's multi-purpose nature has made IP rights infringements even easier: file sharing may now occur through either downloading or streaming and is facilitated by dedicated search engines.
5. This situation is particularly worrying for authors, co-authors and performers – in particular those who receive royalty payments from the exploitation of their work, as it may directly impact their remunerations. As the return on investment in sound and audio-visual production becomes increasingly uncertain, the industry is less inclined to negotiate fair remuneration agreements with our members and their unions. It may be useful to recall in this respect that in the vast majority of European countries audio-visual authors, co-authors as well as audio-visual and music performers still don't earn anything from the online exploitation of their works and performances.
6. Moreover, as the unauthorised online use of protected contents negatively impacts on the creative industries' revenues and investment capacities, job opportunities for creators, technicians and all other workers in the sector are also affected.
7. The measures that have been or are being developed at national level, based on current EU legislation, may not be sufficient to properly address the widespread and unauthorised access to protected contents online, with the level of coherence that is needed for these measures to be truly effective in a multi territorial environment. The EAEA considers that an updated and better-fitted European legal framework is therefore needed.

8. The EAEA would therefore welcome a dialogue amongst EU institutions, Member States and all stakeholders regarding a possible revision of Directive 2004/48/EC in order to adapt IP protection to the digital era, provided that:
 - a. Such revision does not offer an opportunity to lower the level of protection,
 - b. It addresses shortcomings or ambiguities that could lead to diverging interpretations at national level,
 - c. It facilitates harmonisation at a higher level, especially on areas that are not currently or clearly covered.
9. The EAEA believes that, with due care and respect for the protection of personal data, privacy and other fundamental rights:
 - a. Such harmonised measures should primarily target those who provide access to and/or distribute protected contents online on a commercial scale, by whatever existing or future means without proper authorisation of the rights holders concerned.
 - b. The directive should seek to achieve adequate compensation for rights holders who suffer damages from IP infringements and provide for effective and deterring sanctions against infringing behaviour. In their current state, the EU legal framework and regulations in the Member States do not achieve these goals. The directive should therefore provide for an obligation on Member States to ensure that sanctions against those who violate IP rights on a commercial scale are proportionate to the economic benefit derived from the infringement and that none of such benefit can be retained by the infringer.
 - c. The directive should clarify the concept of proportionality, effectiveness and dissuasiveness as far as non-commercial infringement is concerned and provide for minimum harmonisation regarding administrative remedies that may apply.
 - d. The directive should provide for clear obligations for Member States as regards educational and awareness raising campaigns – which should be targeted to all potential audiences and have a special focus on youngsters – in consultation with all stakeholders concerned.
 - e. The directive should clarify the relationship between the right of information and the protection of personal data and privacy.
 - f. The directive should clarify that injunctions (including interlocutory) may be issued towards intermediaries regardless of any considerations about the legal liability of the latter, so as to make sure that those who are passively involved in the infringement chain have an obligation to cooperate.
 - g. The directive should shed light on the respective roles of the various service providers somehow involved in the infringement chain and/or deriving a direct or indirect benefit from it (ISPs, Credit Card companies, advertising services etc.) and clarify the extent to which they may be made to comply with interlocutory injunctions and other remedies in the directive as intermediaries.
 - h. As outlined above, sanctions should be primarily directed at those who make of copyright infringement their business, thus promoting illegal behaviours and consciously damaging the jobs and welfare of all those who create and perform. The Commission should ensure that effective, speedy and costless remedies are made available in all Member States for this purpose.

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