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Big changes in the world of copyright – a threat to cultural policies and diversity

The recent and very quick changes that the handling of performing rights are undergoing might cause bad consequences for the music culture, especially in Europe. It will effect not only individual composers but also independent publishing houses. It will effect the conditions for creation of music in Europe. The development is in opposition to promotion of cultural diversity. One of the reasons behind is of course Internet but another is the tendencies of the EU to swift the focus of the rights from authors' rights to copyright. There are two documents from the EU Commission nurturing this development. One is from DG Internal Market and the other one is a preliminary decision by the EU DG Competition.

The first document is a recommendation from the DG Internal Market. The recommendation says that the performing rights societies should change their way of handling the rights for Internet ("online") distribution of music. The EU Commission would prefer that two to three societies in Europe take care of the licensing for the whole of Europe. Today each society can only give permission for its own country.

In connection with this recommendation the EU has written in other documents that the societies should not continue to make deductions for national or cultural purposes. Each society can today set aside maximum 10% of the earnings within its own country to support the music from its country. This should not be possible in the future, especially not for music being distributed online (via Internet), since Internet does not recognize any borders. Since that part is the fastest growing income of the societies it will mean that the support for the music in smaller countries will be less in the future, if the EU gets as it wants. Possibly could a deduction be made at those two to three societies but only for European music in general. The result of this is less support to the music of small countries and it will thus threaten cultural diversity.

The second document comes from the EU Commission DG Competition. It is a preliminary decision about new regulations how to handle the performing rights for Internet (online distribution), broadcasting (radio and TV) and mechanical licensing (permission to produce records, films etc.). The background is that two big media companies (the British Music Choice Europe and RTL, the radio/TV of Luxemburg) that are broadcasting pan-European have complained about the present system of performing rights societies. Since they distribute music pan-European they want one license from one society instead of having separate licenses for each country. They are both using Internet and cables for their broadcasting. Beside the Internet development in general, the EU has decided on a new Competition Law that now thus should be applied also for performing rights. During the whole process the EU DG Competition has not listened with the composers at all, which is really very remarkable. They have listened to the big users like Music Choice and RTL and their wishes. And you must not forget that the authors' rights were invented by composers for composers to enable them to get some remuneration for the use of their music! It was not invented for the users!

The reciprocity agreements between the performing rights societies contain rules about market shares – each society can only give a license for its own country. All societies

represent each others music – but only for their own country. EU wants that the societies should be able to give a license for the whole of Europe in the above mentioned fields. The commission also wants that all composers and publishers should be able to join any of the societies without any restrictions for the whole of his or her repertoire or just parts of it. If the European societies do not follow those rules they will have to pay very high fines to the EU.

It is not difficult to understand the demands both from the EU and from the users. Music is global today and the copyright system has to be changed to follow the Internet development and the general development of the use of music. A very intensive work is going on this spring between the societies to see how they can find solutions to avoid paying those high fines to the EU and to meet the demands put forward by EU.

All this together will lead to a lot of consequences. The competition law does not take into consideration that the authors' rights also have a component of cultural policy built into the system. It encourages and stimulates creation of music. If the DG Competition gets things as they want, it will mean that the licensing for Internet, broadcasting and mechanical rights will be concentrated to two to three big societies in Europe. The remaining societies will shrink to small suppliers of information, a kind of local agents, to those to guarantee that the money goes to the rights persons. The small societies will continue to take care of the live music-scene and the licensing for that – at least for the moment. That part is the most expensive one to license. The consequences for a small performing rights society only handling that area are quite evident.

If DG Competition gets its will through, it will mean that the societies will most probably not be able to finance projects to support music from their own countries. This is of course an especially big concern for small countries. In the model presented by the EU there is simply no space for cultural deductions.

This development is a big threat to cultural diversity, since the support in different ways to national musical culture will diminish. Just a few months ago 148 countries voted for the UNESCO convention about cultural diversity. There it is stated that countries should work to stimulate cultural diversity and take this into consideration when forming policies and international agreements. So our governments are right now both signing this convention and doing nothing to prevent the DG Competition to decide about measures going in opposite direction to this convention.

What we witness right now is a development where the authors' rights are leaving its cultural functions and entering a phase to become only an economical and juridical function. Since the proposals of the EU only consider the wishes of big structures in music it is a very big threat to cultural diversity. It will make European music less competitive in the future.

In Sweden we have therefore started a procedure to inform the government about the consequences of the EU proposal. Everybody should act. Write articles, arrange panels etc. on this topic. It is a sad development that a law made for ordinary products and services will be applied in culture. The only ones who can influence this development are the ministers in the Council of Ministers of the EU – probably as a “joint venture” between the ministers of justice and those for culture. This has to be done right now during this spring, since the decision will, according to the plan, be made this summer.

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