



June 2013
AK Position Paper

Gallo report: Directive on collective management of
copyright and related rights, COM(2012)0372 final

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudi Kaske
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm
Director

Executive Summary

The BAK welcomes the initiative of the EU-Commission to introduce a harmonized framework for collecting societies in order to achieve transparency and improve their management and supervision bringing about at least minimal harmonisation in this complex legal area.

From a consumers' point of view – who in the last instance has to bear the cost of licences and statutory remuneration claims (as for example the copying fee) – it is adamant that collecting societies work efficiently and transparently with regard to their tariff fixing and the management of royalties. In future, all relevant activities, that is fixing of tariffs, management and distribution of royalties and the legal position of creative with respect to the collecting societies shall be subject to the control by a regulatory authority. The relevant framework has to be set by law.

The AK position in detail

From the BAK's point of view, the present legal framework as to authors' rights in the widest sense is more and more lagging behind the development of digital society causing undesired imbalances at the expense of prosumers' and consumers. The latter are increasingly confronted with claims of collecting societies, publishing and film producing companies, the substance of which can often be clarified only by burdensome courts procedures.

Up to now, questions arising from digital technologies and their impact on users handling are only considered under the aspect of piracy. Important users' requests, as for example the right for digital private copies or consumers rights which go without saying with regard to physical goods, remain unheard. This causes a distorted balance of interests not only to the detriment of consumers/prosumers but also of creatives.

Finally, due to the technological development, the current EU-framework is characterized by many unanswered questions which also involve fundamental rights of users of the internet: As for example the project of collecting societies and rightholders to oblige internet providers to provide data about users' activities with copyright implications. Such attempts endanger the EU standard of fundamental rights. Therefore, the BAK pronounced manifold warnings relating to the "three strikes out" initiatives and the conclusion of ACTA-Treaty.

Having said this, we consider the present draft directive as a positive first

step to introduce better regulation and transparency for collecting societies, not being the right holders but the creators' trustees, supposed to collect and distribute royalties efficiently.

We highly appreciate that the EU-Commission addresses the problem of disparity of market power between collecting authorities, being vested with a legal monopoly, on the one side and mostly individually acting creatives on the other. This target of the directive should not be watered down during the ongoing decision process.

To the contrary, BAK strongly advocates to consider not only commercial users, but also consumers/prosumers as counterpart of collecting societies, because it is the consumers only, who in practice bear the cost for licensing and statutory remuneration claims like the private copying levy. Although some of the rapporteur's amendments address this issue, they do not go far enough in order to install a system that allows for fair distribution of licensing income to creatives.

In conclusion, we think that the EU-Commission's proposal is a very important step towards the introduction of transparency and equal treatment, not only within the collecting societies, but also with regard to the social and cultural funds established by them. We also welcome the EU-Commission's attempt to improve the system of cross-border management of collective rights with regard to the online-sector and to foster legal offers of music services.

However, further, more decisive steps need to be undertaken with a view to adapt legal provisions suitable for the new digital world. Therefore, we ask you, dear Member of the European Parliament, to reject the following amendments as proposed by the rapporteur:

Amendment	Appraisal	Justification
8 and 9	reject	No interference into the creative's management of rights should be admitted.
19	reject	Effective dispute management should be secured.
20	reject	Effective sanctions are prerequisite for the proper implementation of the present regulation. Ex-post monitoring and control is not enough.
21	reject	If no competent authority exists, the installation of a new one is the condition in order to allow for the implementation of the present regulation.
31	reject	Netting has already proved to be very problematic in the financial sector as the outstanding amounts are obscured by this calculation method. Taking into account the special role of collecting societies being the author's trustee, netting by deduction from the rights revenue or income deriving from investments should not be allowed. Moreover, the income of investments should be limited as the collecting authority is – in principle – a non-profit organization handling managing entrusted author's rights.
33	reject	The extension of the definition of repertoire leads to legal uncertainty and should be rejected. A differentiation between "work" and "types of works" opens new trails to court procedures.
35	reject	The proposed wording interferes into the author's individual property right on his creation by imposing decisions of the general meeting on him limiting his discretion in how far he wants to transfer his rights to the collecting society.
36	reject	The author, who entrusts the collecting society with the marketing of his rights, should be allowed to terminate the contract at least at half year's notice, as foreseen in the Commission's proposal.
40	reject	According to our experience, the wording proposed by the Commission, namely „fair and balanced“ representation of all categories of members allows for a fairer participation of all creatives than just resorting to a sheer proportional representation.
50	reject	All legal provisions concerning the most important management decisions must be adopted by the representative body of the creatives, that is the general meeting. With regard to the special mission of collective societies, being a trustee of all creatives and deriving its income solely from royalties belonging to these creatives, any transfer of powers of decision relating to the legal position of creatives must be rejected.

51	reject	Any restriction of powers of control of the general meeting limits transparency.
53	reject	Appraisal: see amendment 40
54 to 57	reject	The only reason for the establishment of collecting societies and transferring special (monopolistic) powers on them is to collect royalties and to distribute them to the creative, who entrusted them with this task. By no ways, collective societies should be involved in additional financial transaction, least in speculative investments. However, if they are allowed to do so, it is adamant that the tasks of the supervisory authority are clearly defined by the regulation and are not left to the discretionary decisions.
60	reject	Decisions concerning the conditions of licences and the conclusion of contracts should be taken by the general assembly.
64	reject	It should be determined by the legislator that collecting societies are not allowed to use rights revenue and any other income for their own account. This important rule should not be left to any discretionary decision.
65	reject	Appraisal: unnecessary, if amendment 64 is rejected.
84 and 86	reject	It is counterproductive to transparency if collecting societies are allowed to reject rightholders' request because they are not duly motivated. As collecting societies are only trustees of rightholders, it goes without saying that they have to answer any request of their trustor (ie the rightholder).
87 and 89	reject	It is adamant for transparency that the rules on distribution and not only "the general policy regarding distribution" are made available to the public. Otherwise, the well-known opacity and discretion of collecting societies as to distribution will remain as it is. Therefore, it is also necessary to combine this transparency obligation with effective controlling powers of the competent authority.
103	reject	There is no reason why rightholders should be prevented to defend their rights by bringing an action before courts.
105	reject	Dispute resolution should be left to an impartial dispute resolution body. The proposed amendment opens the dispute resolution to "soft law" procedures which are inappropriate to protect creative against monopolistic collecting authorities.
106 and 107	reject	Access to dispute resolution has to be granted for all cases not only for the specific case of multilateral licences. Moreover, the possibility to bring an action at law has to be maintained.
110	reject	The proposed title waters down the necessity to grant the right to file a complaint.
111-116	reject	Unnecessary and redundant amendments, the relevant provisions are already to be found in the Commission's wording under articles 37 and 38.
121	reject	In times of smart governance it is no need to establish new committees making decision processes more burdensome.
122	reject	Reforms and transparency concerning this sector have already been delayed for years.

By contrast, BAK asks you, dear Member of the European Parliament, to support the following amendments of the rapporteur for the reasons as elaborated below:

4	adopt	Golden plating by Member States in order to achieve better transparency within this sector should be allowed.
6	adopt	Useful clarification and delimitation between collecting societies and other professional associations and trade unions.
13	adopt	Collecting authorities should have the right to information by users in order to allow the exercise of the rights of their trustee.
42	adopt	All legal provisions concerning the most important management decisions must be adopted by the representative body of the creatives, that is the general meeting. With regard to the special mission of collective societies, being a trustee of all creatives and deriving its income solely from royalties belonging to these creatives, any delegation of powers of decision relating to the legal position of creatives must be rejected. Therefore, amendment 50, relating to the present amendment by allowing for delegation of fundamental powers should be rejected-
43	adopt	Appraisal: see amendment 42 by rejecting at the same time amendment 50.
45	adopt	Appraisal: see amendment 42 by rejecting at the same time amendment 50.
46	adopt	Appraisal: see amendment 42 by rejecting at the same time amendment 50.
47	adopt	Appraisal: see amendment 42 by rejecting at the same time amendment 50.
48	adopt	Appraisal: see amendment 42 by rejecting at the same time amendment 50.
52	adopt	The wording helps to clarify the legal framework for proxies, a restriction of the number of proxies seems to be reasonable in order to avoid abuse.
59	adopt	Any collecting society entrusted with the management of creatives' rights must be subject to the present directive. Introducing thresholds opens the possibility for regulatory arbitrage and hence should be rejected.
62	adopt	The distribution of the rights revenue is the equally important part of the rights' management. Therefore, it should be included in the diligence obligation.
63	adopt	The new wording adds to the clarity of the paragraph.
66	adopt	Useful clarification of the collecting societies' obligation.
68	adopt	Clarification which enhances transparency.

69	adopt	Clarification which enhances transparency.
70	adopt	Clarification which enhances transparency.
71	adopt	This article refers to the transfer of royalties to the rightholders. Taking into consideration that royalties represent their lifetime income, and bearing in mind that the collecting societies are only trustees of the creatives, we endorse the proposed cut-back of the payout period. In addition, this is also necessary for the sake of transparency, as disbursements concerning royalties for activities lying more than one year back in the past are difficult to comprehend.
79	adopt	The explicit right of users to a reply within a reasonable period endorses transparency of the management of collecting societies.
80		From the users' and consumers' point of view it is unacceptable that collecting authorities are allowed – at least in some Member States – to fix their tariffs autonomously, without any counter-balance or regulatory control. It is high time to ban such a practice on EU-level.
117	adopt	The amendment endorses transparency.

We kindly request to consider the appraisal of the rapporteur's amendments and to support respectively reject the proposed amendments of the draft Directive in order to achieve a level playing field between rightholders and consumers/prosumers in the digital world.

Should you have any further questions
please do not hesitate to contact

Susanne Wixforth

T: + 43 (0) 1 501 65 2122

susanne.wixforth@akwien.at

as well as

Sonja Auer-Parzer

T: + 43 (0) 1 501 65 2311

sonja.auer@akwien.at

and

Amir Ghoreishi

(in our Brussels Office)

T +32 (0) 2 230 62 54

amir.ghoreishi@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Straße 8-10

A-1040 Vienna, Austria

T +43 (0) 1 501 65-0

F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation of Austria to the
EU

Avenue de Cortenbergh, 30

B-1040 Brussels, Belgium

T +32 (0) 2 230 62 54

F +32 (0) 2 230 29 73