

WRITTEN QUESTION E-1797/08  
by Saïd El Khadraoui (PSE)  
to the Commission

Subject: Creative commons

Article 8(2) of Directive 92/100/EEC<sup>1</sup>, which concerns broadcasting and communication to the public, reads:

'Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. (...).'

Taking this as a basis, the Belgian legislature has introduced compulsory equitable remuneration (the 'dwanglicentie' [compulsory licence]). This means that every artist and producer has to seek remuneration for his music. As in the case of authors, however, there are artists and producers who wish to make their music available free of charge as creative commons.

1. Is the term 'provide a right' which is used in Article 8 sufficiently defined for it also to be regarded as a duty?
2. Can Member States take measures to leave the option open that the equitable remuneration does not have to be collected if the rights-holders voluntarily choose to waive their right to remuneration?

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<sup>1</sup> OJ L 346, 27.11.1992, p. 61.