

Remarks by Cees Vervoord, CEO of Buma/Stemra
to the mini-hearing on creative content online / 9 September 2008
European Parliament Committee for Culture and Education

Members of Parliament, Ladies and Gentlemen,

My name is Cees Vervoord and I am the chief executive of Buma/Stemra, which is the collective management organisation for authors' rights in music in the Netherlands. I am going to speak to you in Dutch because, of course, cultural diversity is the running theme throughout my short presentation today.

The core of what I would like to say to today can be summarised as follows:

1. **Firstly**, the European Commission Recommendation of October 2005 on collective cross-border management of copyright and related rights for legitimate online music services is having a disastrous impact on cultural diversity in Europe.
2. **Secondly**, through this Recommendation the European Commission is compromising our European music culture in favour of Anglo-American

commercial interests, and in so doing is casting aside hundreds of thousands of European composers, authors and national music publishers.

3. **Thirdly**, in issuing this Recommendation, the Commission is infringing Article 151, paragraph 4 of the EU treaty.

4. **Fourthly**, you, the Parliament, forcefully rejected the Recommendation in March 2007 through the Lévai Report and Resolution; but that was not enough because the Commission did not change its policy.

5. **Fifth and finally**, you have another possibility - – together with the Council this time – to condemn this Recommendation in the strongest terms. The Recommendation on creative content online that is expected later this year offers you the chance to do just this.

Ladies and Gentlemen,

Culture, creativity and cultural diversity are taking an increasingly prominent place in European policy, and this is only to be welcomed. The role of authors' rights is recognised as one of the most important conditions for creativity to prosper. This cultural dimension and the importance of authors' rights are reflected in:

- the Resolutions that accompanied the Echerer and Lévai Reports;
- in the 2001 Copyright Directive in which many important culture policy considerations are highlighted;
- in the December 2006 ratification of the important Unesco Convention on cultural diversity;
- in the 2007 Communication of the Commission on the European cultural agenda in the light of globalisation;
- and, last but not least, in Article 151 of the EU Treaty.

In 2005 the Commission presented the Recommendation on cross-border licensing of music. There is little evidence to be found in this of any respect for the cultural dimension. The Recommendation opened the door to exclusive contracts between the biggest rights holders, such as the major global music publishers, and the three largest copyright collecting societies in Europe. As a result, the most commercially interesting repertoire is being withdrawn from national collecting societies in smaller member states, in a first phase for online exploitation but it can be expected that this will go further in the future.

The impact of this on cultural diversity is enormous:

1. **Firstly**, the revenues of the composers, authors and music publishers who are members of smaller collecting societies will decrease significantly, so that

huge numbers of these rights holders will no longer have a viable future in music and will be unable to contribute to diversity.

2. **Secondly**, rights management will become more and more commercial in approach. Commercially less interesting repertoire will be set aside because the management of the copyrights in these works is simply too expensive to execute. These are the forms of music that are very significant for cultural diversity.
3. **Thirdly**, there will no longer be much scope for collecting societies to invest in social and cultural projects. At European level about €100 million per annum of financial support for musical creation provided through the collecting societies will simply disappear.
4. **Fourthly**, the Anglo-American commercial material will smother vulnerable European repertoires which are already struggling to survive.

Ladies and gentlemen, allow me to make some further observations on this situation.

Losing the ability to deliver licenses for the most popular music makes it impossible for collecting societies in smaller Member States to defend the interest of their membership at the same level of efficiency and cost as before. The economies of

scale offered by the exploitation of the popular material will mostly disappear and administration costs will unavoidably increase, resulting in a significant decrease in royalty revenues for the members. A large number of composers, authors and music publishers will be affected. The collecting societies in smaller Member States represent over 255.000 members. It is inevitable that European musical diversity will suffer as a result.

Indeed, a number of these smaller collecting societies will disappear from the picture. Others will lose much of their independence and will end up being local agents for the three largest collecting societies.

Many collecting societies protect the lesser known material by absorbing the cost of the related rights management – sometimes the cost of managing the rights is higher than the revenue generated. If the smaller collecting societies lose their independent role, as I predict will be the case, then the larger collecting societies will force them to drop the less commercially viable repertoire to reduce the overall management costs to a minimum. The authors concerned will have great difficulty to survive in their profession, and the flow of new material will inevitably shrink.

May I draw your attention to the fact that my criticism of the Recommendation is shared by more than 20 collecting societies in smaller and medium-sized Member States.

Through this Recommendation, the European Commission is severely damaging our cultural diversity. Its behaviour is entirely in conflict with Article 151, paragraph 4, of the EU Treaty. Alas, there is very little the Parliament can do against this clear violation of European law by the Commission itself. That said, we thought that the resolution adopting the Lévai Report on 13 March 2007 was a clear and brilliant signal. This Parliament **was** aware of the danger, and **condemned** the Commission in the sharpest terms. It is unfortunate that this was not enough.

Ladies and gentlemen, the music community in Europe needs your help once again. The Commission Communication on creative content online issued in January offers a new opportunity. This Communication recognised that multi-territorial licensing is one of the most important challenges we face in this area. That said, the Commission then goes on to defer to the 2005 Recommendation when it comes to multi-territorial licensing of music rights. Once again the Commission does not follow the trail to the end. However, the Communication on creative content online will be followed by a Recommendation later this year or in the beginning of next year. Here is an opportunity.

The major absent partner in this debate over the 2005 Recommendation was until recently the Council of Ministers. Several countries – such as Germany and the Netherlands – had before criticised the approach of the Commission. Thankfully, the Slovenian Presidency and the Dutch Minister of Culture however ensured that this topic was put on the agenda of the Education, Youth and Culture Council in May this

year. It turns out that half of the Member States are very concerned about the consequences of the 2005 Recommendation.

The topic will be discussed once again when the Education, Youth and Culture Council determines its position on the Communication on creative content online during its session on 20/21 November.

Ladies and Gentlemen, in our opinion, the Parliament and the Council must work together to avoid that the Commission pushes the topic under the carpet once again. I hope that you will repeat your strong opposition to the 2005 Recommendation by, for example, a new motion for a resolution or through a position communicated by the chair of this Committee to the European Commission.

The 2005 Recommendation has severely damaged the decades-long exemplary cooperation that has existed between collecting societies in Europe – the entire European creative music community is victim of this state of affairs. The British, German and French collecting societies have been induced to acquire a dominant position in a market which has always been characterised by solidarity and harmonious cooperation. They now no longer tolerate any dissidents. Buma/Stemra has already been on the receiving end of this when it recently entered into a European wide multi-territorial licensing agreement with an American online music provider. The British collecting society immediately sought a legal injunction to halt our

initiative. We regret that the judge sustained the British position. But we are determined to appeal this decision.

This, **Ladies and Gentlemen**, is proof that the large collecting societies will not hesitate in using all means to defend the privileged position that they now have thanks to the efforts of the European Commission.

Thank you for your kind attention.