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## Committee on Legal Affairs

# Working Group on Intellectual Property Rights and Copyright Reform

Meeting of Tuesday 23 June 2015 from 14:00 to 16:00

in Brussels

## Minutes

### 1. Adoption of agenda

The agenda was adopted.

### 2. Approval of minutes of meeting of 28 May 2015

The minutes were approved.

### 3. Adoption of draft calendar for the September-December 2015 period

Members agreed in organising additional meetings on Thursday 17 September from 9:00 to 11:00 and on Thursday 15 October from 9:00 to 11:00. The dates for November and December will be decided at a later stage.

### 4. Roundtable discussion on copyright issues in the digital environment - focus on the audiovisual sector

The following spoke: Jean-Marie Cavada, Cécile Despringre (Society of Audiovisual Authors), José Maria Montes (Association of European Performers' Organisations), Bertrand Moullier (Narval Media), Michael Ryan (Independent Film and Television Alliance), Neil Watson (Association of the European Film Agency Directors), Lenz Queckenstedt (Verbraucherzentrale Bundesverband - German national consumer organisation), Dragoslav Zachariev (European Federation of Independent Cinema Video on Demand Platforms), Patrick Messerlin (Sciences Po Paris), Silke von Lewinski (Max Planck Institute/ University

of New Hampshire), Julia Reda, Therese Comodini Cachia, Dietmar Koster, Sabine Verheyen.

The first issue dealt with remuneration for authors and performers. SAA presented the needs and proposals of the audiovisual authors (i.e. screenwriters and directors). Ms Despringre underlined that EU harmonisation process secured IP rights to audiovisual authors but did not ensure remuneration. She questioned the relevance of the (too) long commercialisation chain which ends up in preventing remuneration to flow back from the distributors to the authors. SAA proposes to set up a mechanism to ensure that authors get a share of exploitation of their works maintaining the commercialisation chain but setting a different road for remuneration with just one intermediary: the collecting management organisations. SAA insisted on the need for authors to receive money when their work is used online, and underlined that since the adoption of the CRM directive, this is the most regulated sector in the EU.

Mr Montes underlined the need to improve the contractual position of performers. He said that performers benefit in principle from exclusive rights, but this proves to be ineffective in practice as the majority of performers contractually transfer all their exclusive rights to producer in return for a single all-inclusive fee (i.e. buy-out contracts for a minor lump sum), depriving performers from fair share of the revenues from online exploitation of their work. AEPO-ARTIS therefore proposes to provide performers with an unwaivable right to remuneration to be collectively managed by collective management organisations. This could be done amending Article 4 of the Rental Directive of 1992 which provides for remuneration rights when authors and performers have transferred their exclusive rights to producers.

The representatives of IFTA started by underlying that, unlike manufacturing goods, a film cannot be standardised and all the manufacturing costs are spent upstream, i.e. before the screenplay is financeable. They insisted on the economic risk in making a movie, given the high development costs and the very high failure rate. They then explained how independent sector mitigates the cost of a product by selling independent territories. Finally, they insisted

on the risk for the independent industry of unbundling rights as a distributor will never buy a movie if he doesn't get all the rights in a given territory.

Mr Watson said that we are facing a digital evolution, not a revolution. The optimal position should be to allow the market to develop over time a holistic strategy. According to Mr Watson, we need a managed transition – in IP, regulatory and competition frameworks – if independent European films are to remain competitive and if we are to maintain cultural diversity in Europe. He said that we need an EU initiative which goes with the grain of the market and that we should take into account that consumer demand is dynamic, innovative and unpredictable. According to Mr Watson, legislative and competition framework should be based on principles rather than being prescriptive. Those principles should strike a balance between the needs of citizens, consumers and industry. He said that forcing the online sale of films may put at risk the financing and good distribution of European works. The role of intermediaries should furthermore be looked into, in what he described as a culture of "large scale theft" on the Internet. Mr Watson finally shared the EFADs' top five demands for ensuring better distribution and circulation of European works: EU funding, enforcement, open film heritage, level playing field for all operators and export strategy for EU films.

The representative of German consumers recalled the complexity of copyright law for consumers, the lack of interoperability and the fragmentation of audiovisual streaming. He stressed the need for a clear legal position and consistent law so that respecting the law would be less difficult. Mr Queckenstedt called for limitations to be harmonised in the EU and said that exceptions should take into account technical innovation. As regards improving access to content, he said they do not want to do away with territoriality but want to improve access crossborder. He considered favourably improving portability as well as improving licences practices (e.g. simplified licence systems in Scandinavia).

EuroVoD's representative said that crossborder access already existed (technically and legally possible) and that this should be developed in accordance with the principles on which film financing is built, namely territoriality, windows and exclusivity. He explained the reasons for these principles underlying that cultural specificity has structured the EU audiovisual

industries and reflect demand in local market. EuroVoD's representative said that with digital evolution we are in the process of finding new business models.

Patrick Messerlin focussed his presentation on private copy levies, saying that they are enforced differently across the EU and have different results. He underlined that there is no relationship between private copy levies and success. Taking the example of France, he considered that there is no impact of subsidies on the level of audience. Internet is the "game changer" as it can reduce production cost and generate alternative resources. He believed that a completely harmonised system is neither possible nor desirable, but called for a convergence and a focus on new business models.

Silke von Lewinski was of the opinion that reopening the Directive 2001 would not be appropriate and that at this stage having a single unitary title would not be realistic since it would most likely lead to a too complicated system and therefore less legal certainty for stakeholders, in particular consumers. Instead of a general review, she favoured the option of having one single new Directive amending different existing directives on precise aspects. She also mentioned the issue of the EU competence and said that subsidiarity principle should be respected. As regards exceptions and limitations, she said that they must be based on policy reasons (education, research) and warned that the main existing markets should not be destroyed (e.g. e-lending by libraries /streaming for free). In her opinion, mandatory exceptions would not enhance legal certainty and "fair use" would create legal uncertainty which is not in the consumers' interest. Other policy options would provide better solutions to cross-border problems. Regarding remuneration of authors, she favoured the extension of the Rental Directive of 1992. Finally, she expressed the need for facilitating the enforcement of rights and said that more obligation and responsibilities should be put on ISPs as the main benefit of access to works goes to internet companies. There should no longer be any "safe harbours" for ISPs.

During the debate, questions dealt with sublicences and private copy levies; the possibility of licencing a film under creative commons; how far legislative intervention should go;

commercial/non-commercial use; how to strengthen authors in front of TV broadcasters; solution to improve cross-border access and still protect the financing structure.

## **5. Next meeting**

The next meeting will take place on 2 July from 9:00 to 11:00.