

Brussels, 6 July 2022

Dear Ms Žvokelj,  
Dear Ms Pinter,  
Dear Mr Židan,  
Dear Ms Pečar,

### **Implementation of the Copyright in the DSM Directive 2019/790**

**AEPO-ARTIS** is a non-profit making organisation that represents 37 European performers' collective management organisations from 27 different European countries, including the Slovenian organisation AIPA. The number of performers, from the audio and audiovisual sector, represented by its 37 member organisations can be estimated at 650,000.

We understand that Slovenia is one of the remaining member states that still has to implement the Copyright Directive, but that you have draft legislation which is being considered to transpose the directive into your national law.

We are very encouraged to learn that you intend to do more than **a mere copy/paste of the directive into your national legislation**. From the information we have, Slovenia is taking a forward-thinking approach (like some member states such as Belgium) and are considering implementing the directive in a way that would **effectively** achieve the goals of the directive.

The Copyright Directive (recitals 3, 72-73) is very clear in the fact that the new online exploitation possibilities should be a source of income for **all** right holders. It emphasises the need to **adapt and supplement** the existing Union copyright framework, while keeping a **high level of protection** of copyright and related rights in the digital environment.

However, rather than offering new specific concrete rules, the European legislator, via articles 17 and 18, introduces pro-active obligations and provides that "Member States **shall**" provide the mechanisms to guarantee the effectiveness of the principles.

**Article 18** introduces the principle of **an appropriate and proportionate remuneration for performers** when they transfer their exclusive rights. It is up to the Member States to ensure this by means of any mechanism available. AEPO-ARTIS is convinced that this objective can only be achieved when performers are protected with an unwaivable remuneration right. This mechanism already exists in all EU member states for certain exploitations, but only a few have made it applicable to the making available right, which is the legal basis for the majority of online exploitations.

**Article 17** obliges Member States to ensure that large platforms such as YouTube, Facebook and TikTok can no longer hide behind the so-called safe harbour of the e-commerce directive. This article however does not provide any guarantee that revenues that result from this new obligation to pay, will be shared with the performers. It is up to the Member States to provide this. Here too, the introduction of an unwaivable remuneration right that performers can obtain through their collective management organisations is the best - if not the only - solution to guarantee that performers receive an appropriate and proportionate remuneration.

A literal implementation of these articles will therefore not change the reality for European performers. It must be remembered that **the Commission will carry out a conformity check** to ensure that all member states have **transposed the directive in a way which is compliant with the obligations the directive creates**. Member states that do not include these additional specific measures may fail this conformity check and will leave themselves open to future infringement proceedings from the European Commission.

Our understanding of your draft legislation is that you intend to introduce additional specific measures that would:

Grant all performers (audio and audiovisual) an unwaivable right to remuneration for all acts of communication to the public and that this right would be subject to compulsory collective management. **This solution is an ideal way to implement articles 17 and 18 of the directive** and would ensure that Slovenia transposes the directive effectively and in a way that **would pass any conformity check that the Commission may carry out**. It has the additional advantage of ending the discrimination against audiovisual performers that exists in Slovenia (and other member states).

It is important that this right would cover all performances, both **those that already exist** and those that will be made in the future. The reason for this is that the directive recognised that **at present** the law does not grant performers enough protection. If Slovenia transposes the directive in a way that does not protect existing performances there is no doubt that this **would not be in conformity with the directive**.

It is also a matter of fairness. All performers need and deserve to benefit from the revenue that existing films and music creates, especially those performers nearing the end of their career who may not have the opportunity to continue recording and performing.

An example of a country which has correctly introduced the necessary additional specific measures (on 16 June 2022) is **Belgium**. It introduced legislation that **effectively implemented articles 17 and 18** granting all performers a right to remuneration for acts of communication to the public covered by these articles.

It rightly resisted pressure to opt for a literal transposition and although this meant that it failed to respect the deadline for implementation, it **succeeded** in both improving the rights of performers and complying with the requirements of the directive. In brief, it has achieved an **effective** and **compliant** transposition of the directive.

We are aware that Slovenia is now under considerable time-pressure as a result of the European Commission's second step in the infringement procedure. We also know that major commercial players in the entertainment industry are ramping up that pressure with unsubstantiated statements and doomsday predictions of the end of music and audiovisual arts in your country. If our understanding of your draft legislation is correct, and it is your intention to introduce **a collectively managed unwaivable right to remuneration for all acts of communication to the public** for audio and audiovisual performers, then this would be a simple, effective and **long-term** solution.

AEPO-ARTIS worked closely with the Belgian legislator in the transposition of the directive and was able to assist them in creating a remuneration right that would indeed comply with the directive. We would be honoured to work with you and our Slovenian members to discuss the details of finalising the existing draft legislation in a way that ensures that **effective implementation** can be achieved easily in the very near future.

If you would like to explore this possibility further, please let us know and we shall prioritise the issue, especially in light of the time pressure.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ioan Kaes', with a stylized flourish above it.

Ioan Kaes  
General Secretary of AEPO-ARTIS

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