



## Pearle\* recommendations to the European Parliament on the proposal for Directive on copyright in the digital single market

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In light of the ongoing development of the digital world and – at the same time – outdated, unsuitable copyright rulings, comprehensive copyright reform has been discussed by the public, in Member States and within the European institutions.

The European Commission has published a proposal for Directive on copyright in the digital single market which is now discussed in European Parliament. Pearle\* welcomes this initiative to review the EU copyright framework for the digital age. It is essential to introduce overdue modernisations and make European copyright rules fit for the online world. As creative content online is able to circulate regardless of national frontiers, certain rules on copyright and neighbouring rights need to be tackled at European level.

### General remarks

Pearle\* is the European sector federation of performing arts and music organisations. Pearle\* represents through its members' associations more than 10,000 theatres, theatre production companies, orchestras and music ensembles, opera houses, ballet and dance companies, festivals, and other organisations within the performing arts sector across Europe.

Live events are the core business of performing arts organisations providing a stage for authors and performers. This means, live performance organisations primarily act as professional users of copyright and related rights, producing or hosting a live production. The rights for the use of texts, music, photographs, videos, visual arts, choreographies, and the light or set design must be cleared before a performance can be staged. Depending on the kind of show, performing arts organisations might have to get licenses for a high amount of works protected by copyright and neighbouring rights. On the contrary to mass scale users such as broadcasters, they operate on a case-by-case basis to obtain licenses for one specific performance.

## Online services

The organisation concerned has to go through a complex and time-consuming rights clearance process, dealing with a multitude of different right holders, respectively the collecting societies or publishers responsible.

For the purpose of dissemination and with the aim to better communicate with their target audiences, a great number of organisations in the sector provides online audio-visual services, be it recordings, (live) streaming, advertising campaigns or online archives.

Online services facilitate access to culture for a wider audience. Live performance organisations make use of the digital world to provide these new services to consumers. However, when online services are involved in the performing arts sector, the rights clearance process gets increasingly complicated and new administrative and legal hurdles must be overcome.

## Specific remarks on the proposed Directive

1. Pearle welcomes the proposed rule to provide for an exception to permit cultural heritage institutions to reproduce works and other subject-matters permanently in their collections for preservation purposes (Article 5).

For internal training, educational, artistic, research and archive purposes, performing arts organisations may hold (public) archives. They give access to culture to a wider audience. It is therefore of high importance for the sector to be included in the scope of the text.

2. Pearle\* welcomes the Commission proposal on out-of-commerce works (Article 7).

We call on Member States to choose specific mechanisms such as the "extended collective licencing" which would allow for the (online) use of out-of-commerce works by cultural heritage institutions, including live performance organisations.

3. Pearle\* strongly opposes the Commission proposal on a press publishers' right (Article 11).

For the purpose of promotion and audience development, it is common practice for performing arts organisations to make available online short excerpts and quote arts reviews of journals or magazines.

The possibility to quote from press articles must be maintained without paying compensation to the publisher. This would add financial and administrative burdens to live performance organisations.

We would also like to stress that the Commission proposal is not clear on whether it would still be allowed to use headlines of press articles and link them to their websites, without paying a compensation. In order to be in line with the very clear rulings of the ECJ on this matter, linking should not be affected by the proposed new rules.

Pearle\* urges the European Parliament and Member States to delete article 11 of the proposed Directive.

4. Pearle\* advocates for the inclusion of a "fair dealing" exception in case of quotations and the use of excerpts of press articles online (Article 12).

As mentioned above, for the purpose of promotion and communicating with the public, live performance organisations quote headlines and excerpts of press articles to report about a show, a theatre play or opera, a concert, a dance performance or another type of live performance.

Pearle\* therefore proposes to include the possibility for Member States to provide for a "fair dealing" exception to national copyright law.

**Amendment Article 12:**

*Member States may provide for a "fair dealing" exception where the copyright infringement is for the purposes of non-commercial research or study, criticism or review, or for the reporting of current cultural events.*

5. Pearle\* observes that the reality of the live performance sector is hardly reflected regarding fair remuneration in contracts of authors and performers (Article 14, 15).

In seeking to redress a balance of rights holders with producers, the Commission lost sight of other sectors such as the live performance sector. In most cases there are no revenues generated or benefits derived by the online exploitation of performances. As a recent survey of Pearle\* revealed, online activities in the live performance sector are to a great extent of non-commercial nature. They have the aim to develop audiences and give access to cultural content for a wide range of society.

6. Pearle\* underlines that live performance organisations need legal certainty when clearing copyrights and neighbouring rights, offline and online.

In general, Pearle\* observes that the Commission proposal is short in detail; as the liability to authors and performers is not clear from the outset, it is difficult for professional rights users to assess the impact and for example budget the exploitation of recordings of their theatre show.

Further problems could arise when authors and other rights holders would be allowed to claim their rights back from collective management organisations with the aim to grant the rights themselves. It has to be stressed in this context that agreed licenses on a performance with professional rights users cannot in any circumstances be put into question. For live performances, a high number of copyrights and neighbouring rights must be cleared in advance and budgets cannot be re-adjusted retroactively. When the touring of a show or a concert is planned, rights clearances get even more complex. Re-opening rights agreements would put serious financial

and legal uncertainties to live performance organisations and could lead to the annulation of a live event.

### Conclusions

In the frame of new European copyright rules in the digital single market, Pearle\* urges the European institutions and Member States to consider professional right users in the live performance sector such as theatres, orchestras, music groups, concert organisers, festivals, dance companies etc.

New proposals for a copyright framework are a difficult balancing act and it is necessary to create a level playing field for all stakeholders in the copyright value chain. In this discussion, Pearle members strongly support copyright rules that enable users to efficiently clear all relevant rights, while right holders receive fair reward for their work. Performing arts organisations need the works of composers and librettists, authors and choreographers, as these form the intellectual foundation of the performing arts – and vice versa, artists need theatres, opera houses, dance ensembles, orchestras and other music groups to bring their creations to life.

The proposal for Directive on copyright in the digital single market should help live performance organisations to thrive and hold their own in the diverse digital world.