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INFORMATION NOTE

From: General Secretariat of the Council

To: Council

Subject: Recent copyright issues

- Information from the Belgian, Danish, French and Netherlands delegations

Delegations will find attached an information note from the Belgian, Danish, French and Netherlands delegations concerning the above subject, which has been put on the agenda under ‘Any other business’ of the next Education, Youth, Culture and Sport Council meeting on 16 May 2023.

Recent copyright issues*Information from the Belgian, Danish, French and Netherlands delegations*

The RAAP preliminary ruling (C-265/19), delivered by the Court of Justice of the EU (CJEU) on 8 September 2020, has had major legal and economic consequences on the music sector in several Member States. In Belgium, for instance, the collective management organisations indicated that the application of national treatment could lead to an increase of at least 30 % of the relevant tariffs in order to maintain the same level of remuneration for rights holders, which would mean a more expensive access to culture. In France the preliminary ruling creates a shortfall of 22 million euros per year for cultural actions that benefit all players in the sector, including foreign rights holders. In the Netherlands, the latest numbers indicate that EU rights holders receive 15 million euros per year less and users of commercial phonograms from the Netherlands need to pay 11 million euros per year more.

Despite the completion of a study and numerous contributions from the stakeholders to the call for evidence published by the Commission, no text proposal on the conditions for the remuneration of music recorded in third countries and played in the EU has been published yet, although several Member States have called for such an initiative since the 1st of March 2021.

The situation has been ongoing since 2020 and it is now urgent to restore legal certainty and to clarify relations between the EU and third countries regarding the remuneration of performers and phonogram producers, as well as safeguard policies that support the diversity of creation. Indeed, as the CJEU pointed out in its preliminary ruling, *“the need to safeguard fair conditions of involvement in the recorded music business constitutes an objective in the public interest”*.

In line with the principle of European sovereignty, a solution aiming to enshrine the application of a principle of material reciprocity would, at this stage, be favoured: on the one hand, it would ensure conditions of fair competition between right holders in the EU and third countries and, on the other hand, encourage the latter to introduce a right to fair remuneration.

Given the diversity of situations within the EU, we invite the Commission to propose a legislative measure that would safeguard the interests of the EU, the Member States, the rights holders in the recorded music market as well as the users of commercial phonograms in Member States. Faced with the urgency, we call to consider a flexible, realistic and pragmatic framework to take into account the plurality of national situations and interests involved. This call for a flexible approach was favourably received by many Member States at the latest meeting of the Intellectual Property (Copyright) Working Party on 25th April.
