



European music performers and producers to lose millions every year - urgent need to clarify 2006 Rental Directive

The European court decision in Case C-265/19 regarding RAAP and PPI, two Irish music collecting societies, has exposed a **significant anomaly in the EU's 2006 Rental Directive**. The **principle of reciprocity** as enshrined under international copyright has basically **been suspended as a result**. Many **Member States rely on this principle** to apply national treatment with third countries only when European performers and producers enjoy the **same rights** in those countries. This has been the **basic principle for decades** and is **vital in raising the level of protection across the globe**.

If this anomaly is not fixed, **€125 million euros a year of broadcast and public performance monies will be transferred out of the EU to the US alone, at the expense of European performers and labels**. In addition, many **Member States** would face **significant damages claims** going back many years. Such an outcome would be **extraordinary**.

The **USA is the only major economy that doesn't have the same domestic rights as the EU and they would stand to benefit massively from this transfer of European monies**. Certain digital radio transmissions are protected, and this brings some revenue to Europe, but still nothing is done on terrestrial broadcast or public performance, despite being enshrined in international law since 1961. **Even China now has better rights**.

The **good news is that the EU court itself stated that clarifying the Rental Directive is possible**. The court noted it was obliged to reach its conclusion because the Directive was silent on third countries. The court flagged that **the EU can still have limitations** to national treatment, provided they are specific and conform with fundamental rights.

There is little prospect of increasing licensing revenues in Europe to compensate for the loss. **Even if increases were possible, we would still need reciprocity as it is fundamental to ensuring the best protection worldwide**. That is why **all member states need the EU to fix this anomaly**, even those who allow their societies to pay to the USA despite not receiving revenues in return. We do not know what situations we will face in the future with third countries.

IMPALA has **two key asks**:

- **That the European Commission clarifies the 2006 Rental Directive using an accelerated procedure**. We are not seeking mandatory reciprocity, but rather the **express recognition of the principle of reciprocal treatment, with an accommodation for countries already applying another system**. This is the most proportionate response to what is an anomaly, also considering that many areas of copyright and other laws are not harmonised. Both member states and European parliamentarians have been encouraging the EC to instigate the clarification process urgently. This should be about finding a pragmatic and proportionate solution to an anomaly. Full harmonisation is a hard-line position that will prevent us from moving forward. We also need to remember that doing nothing is not neutral, it imposes one solution only and with no democratic debate - national treatment would become mandatory by the back door.

- **That the European Commission does not concede to national treatment in any trade negotiations with the USA or any other country that doesn't have similar domestic rights**. The principle of reciprocity of treatment is essential to raise the level of protection for all across the globe. We need this diplomatic pressure. Without reciprocity, countries like the USA can game the copyright system. Keeping reciprocity as the basic principle (with flexibility for other approaches) is also important as some jurisdictions may decide to introduce broadcast rights but not performance rights, or vice versa, or may even change their law. **Increasing protection across both rights is key**.

Performance revenues already plummeted when public venues closed during the Covid-19 pandemic. Now is **not the time to further impoverish European performers and their independent label partners**, who account for 80% of all new music releases and would be affected disproportionately. Two reports ([here](#) & [here](#)) in recent years have underlined the **vital contribution music makes to the EU economy and the losses already caused by the crisis**. **Urgent action is needed by the EU to avoid damaging our economy and weakening cultural diversity further**.