

Brussels, 26th March 2014

Dear Sir or Madam,

ECSA, the European Composer and Songwriter Alliance, represents over 17,000 professional composers and songwriters in 22 European countries. With 42 member organisations, the Alliance represents the interests of music writers of art & classical music, film & audio-visual music and popular music.

ECSA hereby submits its answer to the ongoing consultation on copyright law (*auteurscontractenrecht - Mogelijke nota van wijziging inzake artikel 45d Auteurswet (wetsvoorstel auteurscontractenrecht)*).

ECSA notes that less than a month is granted to stakeholders to provide comments on a legislative change that - if implemented - will have far-reaching consequences for professional music writers. Considering the magnitude of the planned legislative change, more time is needed to evaluate the impact of the proposal.

ECSA strongly objects to the changes that are under consideration in the Netherlands:

- The amendment establishes a general principle that in the future, an author's rights will be automatically transferred to a film producer, unless a written agreement specifies otherwise. In return, music writers will be granted a "group wage" along with actors, script writers or film directors. This proposal undermines the very nature of copyright, whose primary purpose is to grant authors protection over their works. It is widely established in Europe that copyright in a work will initially belong to the person who has created it, i.e. the author. Exceptions to this rule must be justified and respect the core principle that lies at the heart of copyright. ECSA sees no justification, whether of a legal, commercial or philosophical nature, for an automatic transfer of a music writer's rights to a film producer. We expressly request therefore that the current situation be preserved.
- The amendment provides that automatic transfer to producers will not occur if a written statement decides otherwise. This provision will fail to protect music writers in the Netherlands. Experience demonstrates that it is unrealistic to believe that the bargaining positions of music writers and producers are balanced and that music writers can successfully negotiate contractual arrangement that effectively protect them. ECSA has documented evidence that the bargaining powers of music writers and their commissioning business partners are utterly unbalanced. In fact, ECSA has a specific stakeholder dialogue with the European Commission dedicated to this very matter. ECSA will therefore discuss legislative changes under consideration in the Netherlands in its next meeting on fair contracts with European Commission officials.

- The proposal that music writers for commercials will receive a “billijke vergoeding” is also unacceptable. This would result in protracted and extensive negotiation rounds between music writers and the one hand, and producers and film theatres on the other hand. Not only is the approach utterly impractical: it is also strongly biased against music writers, who would again enter these negotiations with a structurally weaker bargaining position.
- Finally, ECSA is of the view that the proposed changes will undermine the EU single market. As a result of the proposed provisions, movie theatres located in the Netherlands would no longer pay for the use of music written for film. This means that foreign (including European) music writers will no longer receive payment for use of their music in Dutch movie theatres. ECSA reserves the right to further investigate whether these provisions constitute a regulatory obstacle to the internal market and discriminate against foreign composers with a view to protecting Dutch industry players.

ECSA is of the view that while other players in the cultural field may support the review of article 45d, the proposed changes, if implemented, would have a major detrimental effect on composers and songwriters. ECSA therefore urges the Ministry to reconsider the proposed amendment.

Your sincerely,

Lucie Mattera
Secretary General