



European music performers and producers to lose millions every year - urgent need to clarify 2006 Rental Directive - July 2021

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. **China** has also now introduced **performance and broadcast rights**. There is also a new campaign in the USA for terrestrial radio which we support, but public performance isn't included.

The **good news** is that the **EU court** itself stated that **changing 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 in the legislation and conform with fundamental rights. The bottom line is that the **principle of reciprocal treatment** remains compatible with European law.

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 basic 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:

- **To amend the 2006 Rental Directive using an accelerated procedure**. Several member states have made the same request and it has been discussed by Ministers of Culture as well as the Council copyright working group. Speed is of the essence to avoid unnecessary loss and disruption.

- **That the EU does not agree national treatment in any trade discussions with the USA or any other country that doesn't have similar domestic rights**. Reciprocal treatment is essential to raise protection across the globe. China now has better rights than the USA. Let's not throw away this diplomatic pressure. Otherwise countries like the USA can basically game the system. **Increasing protection worldwide for both broadcast and performance is our aim, which means confirming the principle of reciprocal treatment**. For example, if the USA gains a broadcast right but not a public performance right, we still need the principle of reciprocal treatment to protect European performers and labels from losing their European public performance income.

Performance revenues have already plummeted because venues are closed due to 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 recent reports ([here](#) & [here](#)) underline 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**.