

# Recommendations on relationships between unions and collecting societies representing performers

## Revised Proposal (04.09.01)

### Preamble

1. As the result of claims from performer's organisations, and notably from performers' union and their international Federations, performers' intellectual property rights are now internationally recognised and could, in the foreseeable Future, reach a level of recognition similar to that of authors.
2. This development means that collecting societies have an increasing role to play, but will face contractual practices from parties contractually acquiring performers' rights. These parties are getting more and more organised to get the transfer of performers' rights through individual contracts. In this context, it becomes crucial **to rationalise and re-define co-operation between unions and collecting societies representing performers.**
3. A protected performance is often created by **the performer in a contractual relationship with an employer or engager which produces in practice a subordinate position.** For most performers this has negative consequences on their capacity to bargain individually, especially on rights when a performance is recorded.
4. Unions, nationally and internationally are the recognised "social partners" that can negotiate collective agreements which establish the framework for the uses of performances and regulate the content of individual contracts. Unions must therefore be set up where they do not currently exist (as in many African and Asian countries). Active unions must be able to negotiate (which is unfortunately not the case at present in some Latin American and eastern European countries). This requires the necessary human and material resources. In most countries, a number of performers' rights are administered through collecting societies. The establishment of such societies with the corresponding human and material resources, has to be considered as a necessity for the implementation of their rights. Unions and collecting societies should **co-operate on an international level**, when collective agreements include measures in relation to the collective management of rights.
5. Unions and collecting societies should co-operate in efforts **to increase employment for performers.**
6. Unions and collecting societies should also **collaborate to adapt themselves to the new technologies of fixation and diffusion of performances.** This is important, for example, with regard to the status of performers who produce their own recordings or concerning new ways of musical distributions via the Internet
7. **International representation of performers must be strengthened**, as users' lobbies are stronger than ever.
8. **The following Recommendations are proposed as the basis of an agreement to be concluded between the Federations FIM and FIA and collecting societies representing performers either separately or jointly:**

### **Recommendation 1: Systematic transmission of information**

Unions and collecting societies should, on a national level, exchange information on matters which have an impact on the professional life of performers. Together with this systematic exchange of information, meetings on any necessary joint action could be organised when appropriate.

### **Recommendation 2: Regular information to performers**

On a national level, unions and collecting societies representing performers should jointly inform performers on developments in intellectual property rights. This can be done by a way of common seminars, by regular publications (circular letters, bulletins, newsletters) which gather both trade unions' information (standard contracts, collective agreements, social conflicts, judicial action) and collecting societies' information (rights administered, remuneration collected, development of protected uses, distribution systems, judicial actions). Subject to the situation in each country, it could be appropriate to make these joint publications.

### **Recommendation 3: Contracts**

On a national level, unions and collecting societies should collaborate on the contents of collective agreements, when they include provisions on the transfer of performers' rights. Unions should also collaborate with collecting societies about standard individual contracts to limit the transfer of rights.

Unions and collecting societies should co-operate in establishing systems to collect the data to ensure accurate identification and distribution of remuneration. Concerning performances in phonograms, a standard contractual form could be established.

### **Recommendation 4: The interpretation of national laws and international Treaties**

When a difficulty of interpretation of national laws or national implementation of European Directives or international Treaties arises, unions and collecting societies must analyse together the difficulty and develop a common analysis.

### **Recommendation 5: Professional Training**

On both a national and international level, unions (or their Federations) and collecting societies should co-operate to obtain from governmental or intergovernmental organisations support for professional training and ensure they support programmes adapted to the development of performers' rights. Such training would be available to performers, or their representatives, as well as various interested parties (civil-servants, judges, lawyers, policemen, custom officers, etc.).

### **Recommendation 6: Legal actions**

On a national level, unions and collecting societies representing performers should co-operate to the extent that they are able to establish legal actions in order to make a collective impact in the field of intellectual property rights, and similarly should co-operate in the field of legal actions that can create a jurisprudence on questions of principle.

On an international level, collecting societies and the Federations should co-operate to the extent that is practicable when legal action against piracy must be developed in several countries.

**Recommendation 7: Authorisations and Tariffs**

In those cases where collective societies administer performers' exclusive rights, the operation of such an agreement should be carried out in such a way that the unions are fully informed and can, if they wish, make an assessment of the effect on the performers' employment.

**Recommendation 8: Social Protection**

Federations and collecting societies should consider commissioning an expert to prepare common proposals on ways to increase the social protection of performers in relation to the development of performers' rights.