

Report By Mr. Adolf Dietz at the Executive Committee of January 2004

I would like to mention an important document stemming from the European Parliament, namely the report "Echerer" on collecting societies ("Report on a Community framework for collecting societies for authors' rights"- 2002/2274(INI) - , Rapporteur : Raina A. Mercedes Echerer, adopted on 11 December 2003 by the Committee on Legal Affairs and the Internal Market and on 15 January 2004 by the Plenary Session of the European Parliament). The document is interesting and important, indeed, since it demonstrates a positive and, at the same time, critical and realistic evaluation of collecting societies and their activities within the whole copyright (authors' rights) system, a position unanimously adopted by the European Parliamentarians. It is also important since it sets a precedent for the preparation of the planned Commission Communication on "Rights Management" which will also deal, at least to an important part, with regulation of the activities of collecting societies.

In order to be as short as possible I would like to make only three brief comments here:

- a) The Report Echerer (drafted by an Austrian Lady Parliamentarian belonging to the Green Party) is very positive about the normal and traditional work of collecting societies whose necessary function in the implementation of the political aims behind copyright protection (the public interest) is clearly mentioned and recognized.
- b) But the Report is also critical about the actual situation of regulation of the law of collecting societies on the national level as well as about the lack of European harmonization in that field in spite of the fact that collection societies are several times mentioned in EU harmonization directives and partly included in some complexes of regulation. Also a lack of transparency, of internal democratic structures and effective control of collecting societies is criticized.
- c) Still, simply control of the societies by the mechanisms of antitrust law (competition law) is not the most adequate way; consequently, in a number of points of the Resolutions Part of the Report and even more in the Explanatory Statement a more reticent application of competition law, respecting the public interest in functioning collecting societies is recommended as can be demonstrated by the following quotation from that Statement (p. 16 of the Draft Report):

"On the other hand, stringent criteria and conditions - provided they are always based on a conceptual approach - and the nature of the material could possibly justify restricting competition law, even warranting an exception to it. What use is a position that is recognized and safeguarded by law, if it cannot be exploited because of the need to protect competition? A misguided insistence on competition would also lead to further fragmentation of the markets, chaos in the clarification of rights and dumping tariffs".

I think these are important statements, indeed, and I would like to recommend that ALAI should deal with such questions as the relation between copyright and competition law and, more generally, the law and regulation of collecting societies in the digital era more intensively in the future.