



ASSOCIATION LITTÉRAIRE ET ARTISTIQUE INTERNATIONALE

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RESOLUTION FOLLOWING THE 2015 BONN CONGRESS OF ALAI

concerning proposals to base the exploitation right on a comprehensive system of remunerations

In its September 14, 2016 meeting in Rome the Executive Committee of The International Literary and Artistic Association (l'Association Littéraire et Artistique Internationale - ALAI), has unanimously adopted a resolution, following the Congress of ALAI of June 18-19, 2015 in Bonn:

The Executive Committee,

Stating

That ALAI devoted its congress of 2015 to the subject of 'the remuneration for the use of works';

That it is a basic principle of the system of copyright universally in place and laid down in the international treaties, that authors and other copyright owners are free to negotiate the best conditions for the use of works by consumers and intermediaries on the basis of licensing their exclusive rights, including the best price;

That this is only different where, within the limits allowed by the international treaties, certain statutory exceptions and limitations to the exclusive right apply, which allow the use of the work on the condition of the payment of a remuneration;

That proposals are raised to replace copyright's primary basis in the private law model of an exclusive right by a generalized system of exceptions and reasonable remunerations;

That these find their basis in a strong favour for rules which allow consumers an easy and large access to cultural production, making it possible for them to take full advantage of digital means of storage, distribution and adaptation ;

That some are also driven by a desire to arrive at effective statutory guarantees realizing the fair remuneration of authors, as it is believed that a system of remunerations would secure better rewards for most of them;

Considering

That ALAI fully supports efforts leading to an improved contractual and pecuniary situation of authors;

That ALAI welcomes the aim of helping to make authors better known with the public and their work more widely accessible;

Considering however

That, especially where it concerns the exploitation of works on primary markets, proposals to replace the exclusive right by an approach based on a global license system call for caution;

That there is no promise that remuneration systems will create a better balance between authors, exploiters and consumers, guarantee a proper reward and preserve strong incentives to foster a flourishing market for creativity and creative products;

That remuneration systems, if based on governmental tariffs instead of the rules of offer and demand, create room for lobbying and bureaucracy and make the authors and creative industry as a whole more dependent on the government; that stake holders placed relatively far from the relevant market mechanisms might be led to exert downward pressure on prices, and that an excess of administrative formalities could stifle entrepreneurial initiative;

That rate-setting by the State almost invariably leads to a depressive effect on the development of market license mechanisms and on the level of remuneration; that generalizing this solution will create a chilling effect on material and non material investments by parties who act as vital intermediaries between the author and his public, in discovering new talents, creating new content for new media, and enhancing the quality of cultural information products;

That the principle of exclusive rights has proven its eminent value as a basis for establishing and fostering a flourishing market for culture and information, and that it consequently should be retained as the indispensable principal form of right;

Recalls and reconfirms

its resolution unanimously adopted at its January 14, 2006 session, in light of the deliberations in the French legislative assembly concerning the transposition of the European Union Directive of 22 May 2001, and particularly with regard to the proposal of amendments to adopt a system of obligatory collective management under the name of a "global license" in which it was stated as follows:

Whereas the fundamental rule of copyright, according to the international treaties, is the exclusive right of the author to decide on the principle and the manner of dissemination of the work of authorship, and

Whereas the diminution of exclusive rights is authorized only to the extent set out by those treaties,

Recalls firmly therefore that, beyond the limits expressly provided by the international instruments, any modification of copyright laws, whatever its form or its label, whose result would be to deprive authors of the effective exercise of their exclusive rights is contrary to the *spirit* and the letter of the international agreements.

Therefore, calls for

Utmost circumspection with regard to every proposal to replace copyright's primary basis in the private law model of an exclusive right by models based on statutory remunerations.

On the understanding that

Any limitation of an exclusive right to a mere right to remuneration should be in accordance with the three-step test under the international treaties and the European Union directives, in a way, however, that in the application of the test, the legitimate interests of authors as original owners of rights, should be taken into account as a decisive factor.