

# The End of Reciprocity? International Protection of Authors and Performers after *RAAP* and *Kwantum*

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*Prof. P. Bernt Hugenholtz*  
University of Amsterdam

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HELLENIC COPYRIGHT ORGANIZATION

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# International application of copyright & related rights:

## *National treatment or reciprocity?*

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- Main rule: *national treatment*: foreign creators protected as local, regardless of (protection in) country of origin
  - But *reciprocity* allowed in some cases:
    - **Rome Convention** and **WPPT**: right to SER (state reservation)
    - **Berne Convention**: works of applied art, terms of protection, artist's resale right
  - Most MS's invoke/apply reciprocity against non-EU states
  - No general EU rules of application
    - But specific EU rules for term, ARR, databases
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## About RAAP

Recorded Artists Actors Performers (R.A.A.P.) is a not-for-profit organisation set up by performers for performers to ensure that musicians receive performance royalties from broadcast recordings.

Following the introduction of the Copyright Act, 2000 R.A.A.P. was set up to administer and distribute performance royalties to artists. All artists, main and session musicians, are entitled to a payment when a sound recording, they have contributed to is communicated to the public, around the world. R.A.A.P. also represents actors working on their behalf to claim royalties for their audio-visual rights.

Based in Ireland, RAAP has agreements with over 50 territories globally, and continues to cultivate relationships with other markets to ensure all our members are represented equally. Since launching in 2001, RAAP has collected and distributed performance royalties in excess of €100 million, to more than 80,000 performers in Ireland and abroad.

The performance right exists throughout Europe and in almost every other country in the world. R.A.A.P. continues to engage in collecting income for our members through international reciprocal agreements, entered under E.U. and W.I.P.O. directives.

R.A.A.P. continues to lobby Government for legislative change as we take our role seriously in protecting the property rights of our members. We are driven by the belief that all performers should benefit from the exploitation of their performances, the creativity and cultural diversity that performers and their performances bring to society has enriched and defined the fabric of communities and they deserve to be rewarded for their endeavours.



# CJEU 8 September 2020

## C-265/19 (*RAAP*)

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- Art. 8(2) R&L Dir right to *Single Equitable Remuneration* ('SER) not limited to EU performers/phonograms
  - Interpret SER in light of WPPT (EU legal order): national treatment is default rule
  - MS may not unilaterally apply reciprocity under WPPT [to exclude U.S. performers], but EU legislature would be competent to do so
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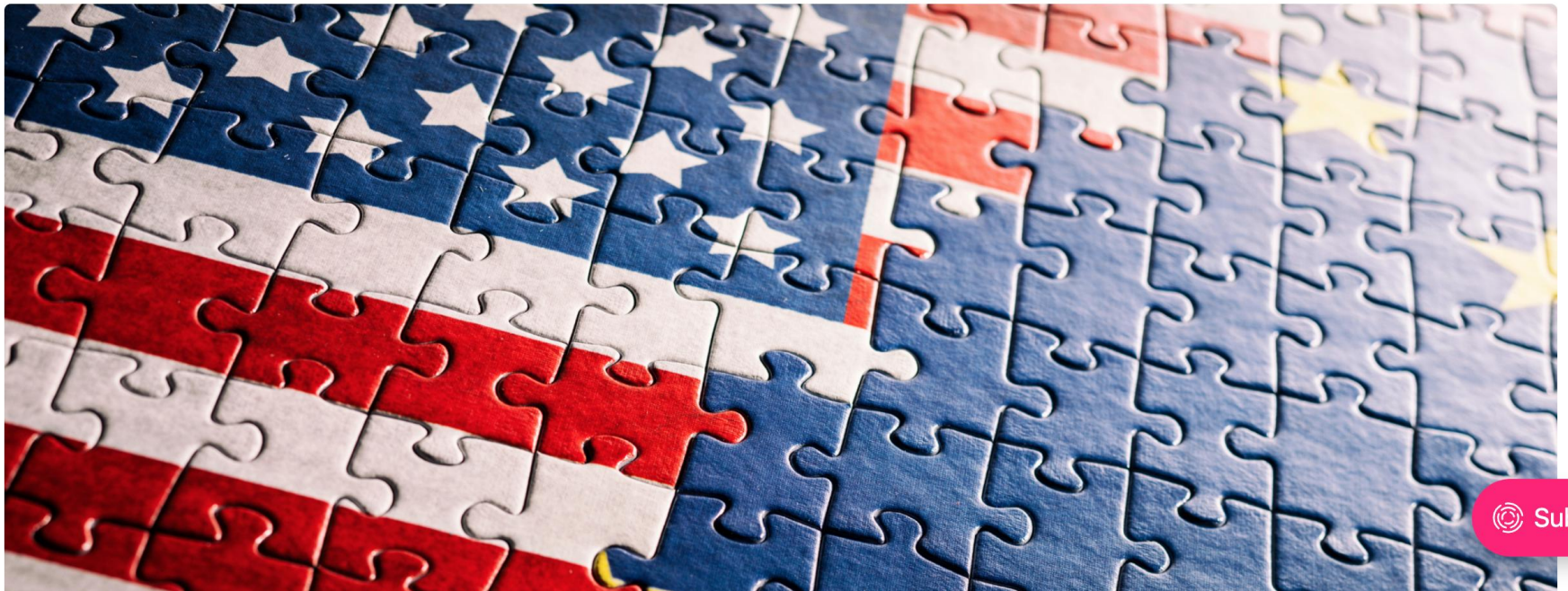


Nov 28, 2023 • 2 min read

# European artist groups call on EU to address the 'reciprocity' problem created by the RAAP case

European performer unions and collecting societies, and indie label trade group IMPALA, have called on the EU to come forward with a solution to address what they see as a bad precedent set in a 2020 court case involving Irish performer society RAAP

Chris Cooke



# *RAAP: consequences for CRM*

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- EC study post RAAP (2023):
    - around 50% MS's applied reciprocity to SERs
    - income from SERs to be shared with much larger right holder base (US and other countries)
    - annual losses (EU → US): € 35-66 M
  - higher CMO revenues, but lower SER income per EU artist
  - In NL: SENA tariffs increased by 26,6%
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# **Study on the international dimension of the single equitable remuneration right for phonogram performers and producers and its effect on the European Creative Sector**

Final report

## SYNOPSIS REPORT

### **Targeted consultation on the conditions for the remuneration of certain third country performers and phonogram producers for their phonograms played in the EU**

#### **1. INTRODUCTION**

The Commission conducted a targeted consultation on the conditions for the remuneration of certain third country performers and phonogram producers when their phonograms are played in the EU between 11 September and 19 November 2023.

Article 8(2) of Directive 2006/115/EC<sup>1</sup> ('RLR Directive') provides for a remuneration right for performers and record producers (so-called 'single equitable remuneration right' or 'SER'), when their sound recordings are used, i.e. broadcast to the public (such as on radio and TV) and played in public places (such as bars and restaurants). This remuneration is typically collected by collective rights management organisations ('CMOs') from the users (such as broadcasters and various venues) and shared between the relevant performers and record producers.

In the judgement in case C-265/19<sup>2</sup> ('RAAP'), the Court of the Justice of the European Union ('CJEU') held that, as the EU law currently stands, Article 8(2) of RLR Directive interpreted in the light of the EU's international obligations applies to use of phonograms published for commercial purposes in the territory of the Union irrespective of the nationality of performers. The CJEU also held that as the RLR directive makes no reference to national law, Member States cannot themselves choose the beneficiaries of the single equitable remuneration right. In addition, as far as the EU's obligations under the WIPO Performances and Phonograms Treaty ('WPPT') are concerned, the CJEU held that this is a matter of exclusive competence and it is for the EU and not Member States to limit the SER of the third country nationals, should it choose to do so.

The purpose of this consultation was to gather information on the application of the single equitable remuneration right under Article 8(2) of RLR Directive in the different Member States.





Modern  
Vintage



# CJEU 24 October 2024

## C-227/23 (*Kwantum*)

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- Works of applied art ‘normal’ works under EU copyright law
  - Scope of application of InfoSoc Directive not limited to EU works/nationals
  - Therefore, MSs may not unilaterally apply Art. 2(7) BC reciprocity, but EU legislature would be competent to do so
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# *Kwantum: consequences for CRM*

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- Universal protection of copyrights and related rights in the EU, regardless of country of origin
    - Unless special rules of application in EU law
      - Term Directive, Resale Right, Database Directive
    - Authors & composers from non-BC countries protected in EU (Eritrea, Ethiopia, Iran, Iraq, Palestine, Somalia, etc.)
    - What about non-Rome/WPPT performers?
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## *RAAP & Kwantum:*

# Consequences for international trade

- End of reciprocity rewards asymmetric legal protection
  - EU protects US artists, record producers & designers but not vice versa
  - Substantive additional royalty flows to US
- ***RAAP* and *Kwantum*: reciprocity no longer a bargaining chip in EU trade negotiations**



# Kluwer Copyright Blog

CJEU, EUROPEAN UNION, LEGISLATIVE PROCESS

## EU countries call for legislation on international application of EU copyright law

Kluwer Copyright Blogger / December 19, 2024 / Leave a comment

Ministers from six European countries (Belgium, Denmark, Finland, France, The Netherlands and Sweden) have written a joint letter to the European Commission regarding the need for a legislative proposal on rules and boundaries of international application of EU law on copyright and neighbouring rights. The English version of the letter is available [here](#) .


The letter refers to two judgments from the European Court of Justice on the international application of European law – *RAAP (C-265/19)*  in 2020 and *Kwantum*



Image by [Dimitris Vetsikas](#)  from [Pixabay](#) 



# High Time for EU to Intervene

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- Joint letter by Bel, Den, Fr, Fin, NL, Swe to EC: EU should urgently legislate
  - CJEU *Raap* and *Kwantum*: invitation to EU legislature to act
  - Legal instrument:
    - Amend Directives (InfoSoc, R&L, others?) or
    - Regulation
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