

Europe's Creators, Cultural and Creative Industries' Call to the European Council:

Secure the aims of the Proposed Copyright Directive in the DSM.



Thursday, 12 April, 2018

Dear Representatives of the Member States to the European Union,

We represent Europe's creators and producers - including musical, audio-visual and visual authors; literary, musical, scientific, technical and medical publishers; journalists; the recorded music sector; film and TV producers and distributors; football leagues; cinema operators and producers, broadcasters, screenwriters and photo agencies.

Our common goal is to ensure the primary objectives of the proposed EU Directive on Copyright in the Digital Single Market are achieved. Among these is a meaningful solution to the 'transfer of value' or 'value gap' problem. Solving this issue - which continues to severely harm us all - would enable a balanced, well-functioning EU Digital Single Marketplace for creative content, ensure sustainable investment, effective protection and fair return to creators and producers for their work.

The Directive's primary purpose is to level the playing field for right holders and online services who exploit copyright protected works. We recall that it seeks to do so by clarifying the legal status of User Uploaded Content (UUC) services which distribute our copyright protected works online and whose business models are based on a misuse of existing EU laws.¹

We all acknowledge the efforts by Bulgaria's EU Presidency to facilitate the work of the national delegations to find a solution. However, we are significantly concerned by certain specific suggestions in the latest text which, far from ensuring legal certainty, could be detrimental to our sectors, thereby negating the Directive's intention:

- **The Art. 2 criteria defining which services are subject to the Directive's clarification of liability (Art. 13).** The latest draft could leave most UUC platforms outside the scope, despite the fact they continue to provide access to copyright protected works and other subject-matter. Overly restricting the clarification in the original proposal (as per the latest draft) seriously risks leaving the Transfer of Value/Value Gap unsolved;
- **Art. 13(1)'s express criterion of intervening "in full knowledge"** to define when UUC services communicate to the public risks narrowing the scope of the right and contravening CJEU jurisprudence². Any new EU law should secure that this right is broad, as established under existing EU and international copyright legislation³, and contains no additional criteria which could change via future CJEU rulings.
- **As currently proposed, the language of Art. 13(4) and relevant recitals is tantamount to a new 'safe harbour' for the services involved.** It conditions copyright liability upon implementation of certain measures by services, and even refers to their subjective efforts. This would seriously undermine fundamental principles of European copyright in terms of the exclusive nature of the communication to the public right. Furthermore, such an unwarranted liability privilege risks breaching the EU's obligations under international copyright treaties. We firmly believe it feasible to mitigate the circumstances in which measures are applied, without interfering with copyright liability. We invite Member States to work on this basis and reconsider the current drafting in Art. 13(4).

¹ "Rightholders face difficulties when seeking to license their rights and be remunerated for the online distribution of their works...Against this background, this proposal provides for measures aiming at improving the position of rightholders to negotiate and be remunerated for the exploitation of their content by online services giving access to user-uploaded content." Reasons for and objectives of the proposal - Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, Page 3.

² SGAE, C-306/05; PPL, C-162/10; OSA, C-351/12; Reha, C-117/15² Stichting Brein 7450/18.

³ Article 3 of 2001 Copyright Directive and Article 8 of WIPO Copyright Treaties (WCT).

The proposed law should seek to correct the ongoing unfairness in the marketplace by establishing legal certainty and ensuring effective protection of creators and producers' rights *vis-à-vis* user uploaded content services.

We remain at your disposal to find solutions to these points. This will give the final deliberations every chance of achieving an effective solution, one which maintains the integrity of Europe's copyright framework for all creative rightholders.

Yours sincerely, the undersigned.

ACT - The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. The ACT member companies finance, produce, promote and distribute content and services benefiting Europeans across all platforms. At ACT we believe that a healthy and sustainable commercial broadcasting sector has an important role to play in the European economy, society and culture.

CEDC - The European Coalitions for Cultural Diversity (ECCD) is an alliance of 13 European national coalitions of comprising professional cultural organisations (cinema, television, music, literature, performing arts, visual and graphic arts, multimedia). The main objectives of the ECCD are to promote and support the diversity of cultural expressions, to defend the "cultural exception" in EU trade agreements and to defend creators' and cultural professionals' rights.

CEPIC - As the Center of the Picture Industry, CEPIC federates 600 picture agencies and photo libraries in 20 countries across Europe, both within and outside the European Union. It has affiliates in North America and Asia. CEPIC's membership includes large and smaller stock photo libraries, major photo news agencies, art galleries and museums, video companies. CEPIC has among its members the big global players such as Getty, Shutterstock or Reuters. Through this membership, CEPIC represents more than 250.000 authors in direct licensing. The annual CEPIC Congress extends CEPIC's network on all five continents. It is the largest global gathering of the international photo community representing 90% of the market worldwide.

CEPI TV - The European Coordination of Independent Producers was founded in 1990 to organise and represent the interests of independent cinema and television producers in Europe. Today the Coordination represents approximately 8000 independent production companies in Europe.

CIAGP - The International Council of Creators of Graphic, Plastic and Photographic Arts provides a forum for exchange of information, experience and new tools on the administration and promotion of visual authors' rights. www.ciagp.org

CIAM - The International Council of Music Authors promotes the professional, cultural, economic and legal interests of music creators across the world and provides a forum for cooperation and networking. www.ciamcreators.org

CISAC - The International Confederation of Societies of Authors and Composers – is the world's leading network of authors' societies (also referred to as Collective Management Organisations, or CMOs). With 240 member societies in 123 countries, CISAC represents over four million creators from all geographic regions and artistic repertoires including music, audiovisual, drama, literature and visual arts.

ECSA - The European Composer and Songwriter Alliance (ECSA) represents 57 associations of professional composers and songwriters in 26 European countries and Israel. The Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music. www.composeralliance.org

EPC - The European Publishers Council (EPC) brings together Chairmen and CEOs of Europe's leading media groups representing companies with newspapers, magazines, online publishing, journals, databases, books and broadcasting, communicating with Europe's legislators since 1991 on issues that affect freedom of expression, media diversity, democracy and the health and viability of media in the EU. A list of our members can be found on www.epceurope.eu

EUROKINEMA - EUROKINEMA, represents the interests of film and television producers to the European Union bodies concerning all the issues directly or indirectly affecting film production. EUROKINEMA establishes continuing consultation with organisations representing film producers in other Member States of the European Union, and define a common platform of principles and positions, which will enable effective promotion of the European film industry within the framework of the European Union.

EUROPA DISTRIBUTION - Europa Distribution is the European network of independent film distributors. Since its creation, it has reinforced the collaboration process among its members through information, brainstorming and training. The network's aim is to strengthen European ties to improve the curation, promotion and distribution of independent films. With over 120 leading independent distributors in Europe and beyond, it serves as the voice of the sector and acts as a network and a think tank. The list of all members is available on our website: <http://www.europa-distribution.org>

European Federation of Journalists (EFJ) - The European Federation of Journalists (EFJ) is the largest organisation of journalists in Europe, representing over 320,000 journalists in 70 journalists' organisations across 44 countries. The EFJ was created in 1994 within the framework of the IFJ Constitution to represent the interests of journalists' unions and associations and their journalists in Europe.

EUROPEAN LEAGUES – European Leagues is the official representative and the common voice of the major 32 European Professional Football Leagues and more than 900 Football Clubs across Europe, regardless of their sporting or economic dimensions. Amongst other activities, the European Leagues promotes the protection of its members' Intellectual Property Rights and campaigns for a more efficient European legal framework to fight against digital piracy and counterfeiting.

European Writers' Council – The European Writers' Council/EWC is the non-profit federation representing 45 national writers' and literary translators' associations and unions in 28 European countries, comprising over 160.000 professional authors in the text/book sector, working in 33 languages.

EVA - European Visual Authors gathers 26 European collective management organisations which are managing authors' rights for 100 000 painters, sculptors, photographers, illustrators, designers, street artists, architects and other visual authors.

FEP – The Federation of European Publishers represents 28 national books and learned journals publishers' associations of the European Union and the European Economic Area, responsible together 22 billion euros in publishers' revenues (for an estimated market of 40 billion euros) and more than half a million new titles each year

FIAD - The International Federation of Film Distributors' Associations (FIAD) gathers national organisations of film distribution companies. Film distributors are the intermediates between film producers and cinema exhibitors and cover the entire range of companies: small and medium-sized companies specialized in art house films, as well as larger companies focused on mainstream films. FIAD's members operate in 15 countries where they cover 90 to 100 percent of the theatrical market.

FSE - The Federation of Screenwriters in Europe is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 24 members from 19 countries, representing more than 10,000 writers in Europe. @ScreenwritersEU - @screenwriterseurope

GESAC – The European Grouping of Societies of Authors and Composers comprises 32 authors' societies from across the European Union, Norway, and Switzerland. As such, we represent over 1 million creators and rights holders in the areas of musical, audio-visual, visual, and literary and dramatic works. More information www.authorsocieties.eu

ICMP - ICMP is the world trade association representing the interests of the music publishing community internationally. The constituent members of ICMP are music publishers' associations from Europe, Middle East, North and South America, Africa and Asia-Pacific. Included are the leading multinational and international companies as well as regional and national music publishers, mainly SMEs, throughout the world. As the voice and point of reference of music publishers, the community of composers and songwriters, and the production music sector, ICMP's mission is to increase copyright protection internationally, encourage a better environment for our business and act as an industry forum for consolidating global positions.

IFPI - The International Federation of the Phonographic Industry is the organisation that promotes the interests of the international recording industry worldwide. Its membership comprises some 1,300 major and independent companies in 62 countries. It also has affiliated industry national groups in 57 countries. IFPI's mission is to promote the value of recorded music, safeguard the rights of record producers and expand the commercial uses of recorded music in all markets where its members operate.

IMPALA - IMPALA is the European association of independent music companies. Its mission is to grow the independent music sector, return more value to artists, promote cultural diversity and entrepreneurship, improve political access and modernise perceptions of the music sector.

IMPF - the Independent Music Publishers Forum - serves as an international network and meeting place for independent music publishers. Its main objectives are to share experiences and best practices in independent music publishing; exchange information on the legal and regulatory framework and music publishing environment; coordinate actions and support projects relevant to composers, authors and their music publishers; represent the interests of the independent music publishing community; and stimulate a favourable environment for artistic, cultural, linguistic and commercial diversity. www.impforum.org

SAA - The Society of Audiovisual Authors is the grouping of European collective management organisations representing audiovisual authors. Its members (32 societies in 24 countries) manage the authors' rights of over 138,000 film, television and multimedia screenwriters and directors. More information www.saa-authors.eu / Twitter @saabrussels

STM - STM is the leading global trade association for academic and professional publishers. It has 145 members in 21 countries who each year collectively publish nearly 66% of all journal articles and tens of thousands of monographs and reference works. STM members include learned societies, university presses, both subscription and open access publishers, new starts and established players.

Tf1 - TF1 is a media group whose mission is to inform and entertain. The group operates and develops five freeview channels and several special-interest pay-TV channels as well as their digital offshoots. The TF1 group's businesses today cover the entire audiovisual value chain. France's leading mainstream television group, TF1 is also an integrated media group that has developed activities in high-growth segments for a number of years.

UNIC - The Union Internationale des Cinémas/International Union of Cinemas is the European grouping of cinema trade associations and key operators, covering 37 territories across the region. We promote the cultural, social and economic benefits of a vibrant cinema-going culture in Europe and provide a strong and influential voice for European cinema operators on issues of shared interest. Find out more at: www.unic-cinemas.org

W&DW - Writers & Directors Worldwide champions the rights of creators working in the audiovisual, literary and dramatic repertoires and urges for the introduction of an unassignable, unwaivable right to remuneration for screenwriters and directors globally - www.writersanddirectorsworldwide.org