



International Coalition of Music Creators calls on European Parliament to solve Value Gap/Transfer of Value issue and strengthen fair contracts in its Report on proposed Copyright Directive

06.04.2017

Dear MEP,

The undersigned associated global songwriter and composer groups represent the interests of over half-a-million music creators in the United States, South-America, Africa, Asia-Pacific and Europe. We are collaborating in the framework of the International Council of Music Creators (CIAM), in which our partners from the European Composer and Songwriters Alliance (ECSA) informed us about recent developments related to the draft copyright directive in the European Parliament.

We are writing on what is a matter of grave urgency to us and therefore request your most rapid consideration.

The European Commission's [proposal for a Directive on Copyright in the Digital Single Market](#) was noted around the world as a meaningful and innovative solution to ensure that composers and songwriters get a fair share from the exploitation of their works on user-uploaded-content platforms. Whilst some of those platforms became the biggest online music distributors in the world, music creators and the cultural and creative sectors have been greatly deprived from fair remuneration, despite the fact that music is the reason of the commercial success of those platforms. Because of an abuse of the 'safe harbour' provision outlined in the E-Commerce Directive and outdated legislation user-uploaded-content platforms refuse to negotiate fair copyright licences, if any, with our representatives – the collective management societies.

In this regard, we believe that the Commission's proposal provides a meaningful solution to this issue in recital 38 and in Article 13, by clarifying that user-uploaded content platforms which store and provide access to copyright protected works are subject to copyright liability, and therefore must obtain licences from authors for the use of their work. The provisions suggested by the European Commission clarify if these platforms actively distribute and communicate copyright protected works to the public, then they must obtain the necessary licenses from authors.

We are also concerned by some amendments to the Commission's proposals with regards to Article 14, which sets out a transparency obligation for publishers and producers. Whilst we do note some positive amendments in the draft report of MEP Comodini Cachia, we believe that some of the proposed amendments harm the Commission's policy objective and if turned into law, would not lead to fairer copyright contracts but rather provoke the contrary. For instance, the amendment suggestion to limit the transparency obligation to these contractual relationships '*where there are ongoing payment obligations*' would incite producers and publishers to force creators into buy out contracts and lump sum payments in order to avoid falling under these transparency obligations. Not only are contracts that set out lump sum remuneration the worst scenario for creators in terms of remuneration, the suggestion to exclude these kind of contracts from the transparency obligation will have a second negative consequence: the creators already confronted with inappropriate remuneration due to lump sum payments will not be able to invoke the better seller mechanism set out in Article 15, as he or she

will not have the necessary information (provided through the transparency obligation) on what benefits and revenues their creations have generated.

As advocated by ECSA we also respectfully urge you to introduce a rights reversion mechanism, which would allow authors to terminate a contract in case of non-transparency and in case of insufficient and lack of exploitation of the rights assigned to the publisher or producer. The rights reversion mechanism would serve as a compliance mechanism for the transparency obligation set forth in article 14. Kindly note that US Copyright Law provides authors with a termination right 35 years after the contract signature. Why should EU authors be deprived from such a right? Finally, we also urge you to block any suggestions for UGC exceptions as advocated by technology companies and internet firms and set out in amendment 56 of the draft opinion of the Culture Committee. Since the suggested wording is so broad and lacks a corresponding definition, any user – including those representing political parties or extreme religious views – can take extracts out of copyright protected works and transform them into a totally different context and purpose. In times of fake news, hoaxes, disinformation for entertainment or political purposes including foreign interference in political election campaigns, such an exception would not only strongly facilitate such practices but even worse, encourage them. The detrimental effect on cultural diversity and democracy of such a provision are obvious and there are good reasons why the European Commission refrained from suggesting any UGC exception in its proposal, in particular when alternative solutions like licensing through collective management are today accessible, for the benefit of users, right holders and the European cultural sector.

In this regard, music creators around the world call upon you to make sure that the European Union remains the champion of creators' rights. Europe's pioneer role in establishing a strong legal regime providing authors with exclusive rights was modelled around the world for the benefit of vibrant cultural diversity, jobs and a solid democratic society. We count on you to ensure that composers and songwriters and the creative sectors will also benefit when their works are being exploited on user-uploaded-content-platforms and that the Commission's very significant proposal with respect to the transparency obligation is complemented with a rights reversion mechanism as requested by ECSA and supported by our sister music creator alliances around the globe. Europe has a once-in-a-generation opportunity to create a precedent for creators around the world and we count on you to take this opportunity for the benefit of culture, the creative sector and democracy in general.

With kind regards,



Eddie Schwartz, Co-Chair  
MCNA – Music Creators North America



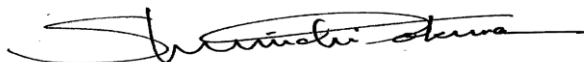
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