

7 February 2019

European Producers, Broadcasters and Distributors/Publishers of Film and Audiovisual Content call for a responsible legislative approach to avoid the Copyright Directive having a chilling effect on creation, financing and distribution of films and audiovisual content.



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TO:

Dear President Tusk,
Dear President Juncker,
Dear President Tajani.
Dear Prime Minister Dăncilă,
Dear Minister Ciamba,
Dear Ministers,

CC:

Permanent and Deputy Permanent Representatives of the Member States to the European Union
Chair of the Committee on Legal Affairs of the European Parliament
Rapporteur and Shadow Rapporteurs for the European Parliament
European Commissioner Mariya Gabriel and DG CNECT

European Producers, Broadcasters and Distributors/Publishers of Film and Audiovisual Content call for a responsible legislative approach to avoid the Copyright Directive having a chilling effect on creation, financing and distribution of films and audiovisual content.

The undersigned representatives of European producers, broadcasters, and distributors/publishers of film and audiovisual content urgently call upon the EU legislators to reconsider the direction of travel on the proposed Copyright in the DSM Directive. The current version of the proposed Directive does not in any way fulfill the Commission's stated policy goals: it does not create the promised new rights for us as content producers, broadcasters and distributors/publishers, and it undermines the rights we already have. In short, the proposed Directive is not fit for purpose.

We strongly oppose the notion that a Directive must be agreed at any price – particularly not at the price of grave harm to our sector. We respectfully call for a responsible political and legislative approach to avoid a worst-case outcome that would curtail investment in the European film and audiovisual sector, undermine its competitiveness and strengthen already powerful platforms – outcomes directly contrary to the Commission's stated policy goals.

When the proposal was released in 2016, the European Commission's clearly stated political objective was to balance out the interests of different stakeholders, notably by:

- Facilitating the use of copyright protected works by proposing **three specific new mandatory exceptions** to the benefit of **users of copyright works** (Articles 3 to 9);
- Clarifying or creating new rights for **certain content producers** from creative sectors other than film and AV (Articles 11 to 13); and
- Addressing **specific transparency and remuneration aspects** in contracts of **authors and performers** (Articles 14 to 16).

More than two years later, the targeted approach and intended balance is completely gone. Fearmongering campaigns funded by powerful stakeholders have led to watered-down provisions on key issues, in particular with regard to Article 13. The proposed texts under discussion do not create **any benefit for producers, broadcasters and distributors/publishers of film and audiovisual content and even undermine our existing rights by absolving online content sharing platforms from liability beyond current legislation and case law. This has a direct and harmful effect on the very rights** that are the cornerstone of our financing and distribution models and will negatively impact our current enforcement efforts.

In parallel, the provisions benefitting users of copyright works on the one hand, and authors and performers on the other hand, have developed in a way that would create **unreasonable burdens, and serious disincentives, on those who invest daily in the creation and distribution of European films and audiovisual works.** In complete disregard of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law Making, new and extensive rights for authors and performers have been proposed in Articles -14 and 16a; rights which have **not been subject to impact assessment** on how these new provisions will affect the competitiveness of the European film and audiovisual industry in terms of the financing and distribution of films and audiovisual content or the recoupment of private investments.

We remain fully committed to remunerate authors and performers adequately. However, we must oppose the introduction of provisions which **erode or eliminate contractual freedom and conflict with national practices,** including the introduction of notions such as **proportionate remuneration** which would create legal uncertainty. Furthermore, we are concerned that the fundamental principle of unification of rights with the producer will be undermined, which in turn will harm our ability to attract and recoup investments in the development and production of films and audiovisual content as well as jeopardize legal certainty in downstream distribution. The introduction of a **revocation right** would undermine future investment and the sustainability of our sector. Simply put, investors and producers, broadcasters, and distributors/publishers would opt not to take risks in investing in a film or audiovisual project developed over many years, as it is often the case, which could be threatened by the mere possibility of an arbitrary revocation of rights.

We have consistently and constructively raised these concerns and multiple other elements related to the proposed Directive throughout the entire legislative process. Our concerns include **overly burdensome and inefficient accounting obligations** to meet the transparency requirements in Article 14, the **unsuitability and inoperability of the out-of-commerce provisions to the film and audiovisual sector** and the introduction of **new and wider exceptions for out-of-commerce works and TDM – again without impact assessment.**

We urge the EU legislators to reconsider whether the proposed texts on the table constitute a responsible approach to achieve the stated policy goals of the proposed Directive. Our members work hard every day to create, produce, finance and distribute film and audiovisual content – we call on the EU legislators to pause here to re-consider, to be sure that the next steps support our sector’s efforts to meet consumer demand rather than create new barriers to achieving that goal.

Signatories

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IVF - International Video Federation - Publishers of Audiovisual Content on Digital Media and Online - Charlotte Lund Thomsen, Legal Counsel - clthomsen@ivf-video.org

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PRODUZENTEN ALLIANZ – Alliance of German Producers - Alexander Thies, Chairman – at@nfp.de

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VAUNET - German Media Association, Verband Privater Medien e. V - Julia Maier-Hauff, Ressortleiterin Europarecht - MaierHauff@vau.net

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