

## Council IP Working Group – 30 November 2018

### Authors' Group comments

Dear Member of the IP Working Group,

Ahead of the upcoming IP Working Party meeting on November 30, the Authors' Group would like to call your immediate attention to several aspects of the compromise solution on the proposed Copyright Directive Chapter 3 "Fair remuneration in contracts of authors and performers", which are of critical importance to the EU creative community.

**The Authors' Group is Europe's leading Authors' network representing more than 500 000 authors**, including writers, literary translators, composers, songwriters, journalists, photographers, film/TV directors and screenwriters in Europe. The Authors' Group consists of the following associations: European Composer and Songwriter Alliance (ECSA), European Federation of Journalists (EFJ), European Writers' Council (EWC), Federation of European Film and TV Directors (FERA) and Federation of Screenwriters in Europe (FSE).

The Copyright Directive represents a once in a decade opportunity to improve the situation of authors, thereby strengthening the European creative community and our cultural wealth in the digital era. Chapter 3 of the proposed Copyright Directive lays out provisions aiming at fixing the systemic weak bargaining power of authors and performers when negotiating their contracts, including their duration. **It is a key element of the political agreement struck within the European Parliament in adopting its position on September 12. Authors' contractual counterparts are in a systemic dominant position over freelance individuals which are grossly underpaid for their work and can barely sustain a living as freelancers with an irregular workflow, despite a strong regulatory environment supporting the business activities of Creative and Cultural Industries.**

#### **Article 15 – Contract adjustment mechanism**

- The necessity to allow for the representation of individual authors by representative organizations in implementing the contract adjustment mechanism stems from the risk of blacklisting and potential negative impact on their careers when using it in individual contracts.
- In practice, **a representative organisation would only act on behalf of their members on the basis of a mandate in such a claim procedure.** We welcome a clarification of this point in article 15 para 1.

## Article minus 14 – Principle of fair and proportionate remuneration

- Directive 2001/29/EC recital 10 states that “*If authors or performers are to continue their creative and artistic work, they have to receive an appropriate reward for the use of their work*”. The **notion of “appropriate reward” has not brought any improvement to the situation of authors** due to their systemic lack of bargaining power.
- **We refute the idea that Cultural Creative Industries’ business models require “safe harbour rules” or “blanket licenses” in negotiating authors’ remuneration**, and that the notion of proportionate remuneration hinders their legal security and business planning. **Authors’ remuneration is not an adjustment variable for the CCIs business model, but an investment in the creativity from which stems the very value of the copyright licensing system.**
- **Proportionate remuneration** brings stability to unstable creative careers by (i) **allowing authors to invest in the development of future project** before a new contract is signed, and (ii) **compensating for their lack of social benefits** (unemployment, pensions, health care). The introduction of the notion of “**proportionate remuneration**” is necessary, due to the ineffectiveness of Directive 2001/29/EC “appropriate reward” approach.
- Authors’ fair and proportionate remuneration should be understood as sharing in the economic success of their works, by taking into account the **potential and actual economic value of the rights transferred/licensed** by authors to their contractual counterparts.
- The implementation of the principle of proportionate remuneration **cannot be considered only through individual contracts**, as proportionate remuneration is ensured through different existing mechanisms in various Member States, including collective bargaining, collective management, statutory right remuneration.

## Article 16a) Mechanism for the revocation of rights

- Authors have very little room to maneuver when signing their contracts but have one obvious legitimate expectation: **their works should be exploited. If this is not the case, this results in a lose-lose situation for creators, citizens’ access to cultural diversity and fair competition.**
- **The European Parliament rightly supported such a mechanism for the revocation of rights to ensure that author’s works are exploited and made available to the public, in line with many EU Member States legislations.** There is no legitimate business explanation that can justify that authors’ hands are tied when their works are not exploited. There is no legitimate reason either to believe that such a mechanism would prevent the exploitation of creative works, simply because it would only apply in case of a lack of exploitation.
- Copyright contracts are often concluded for the entire duration of the copyright term, even though the duration of authors’ rights (70 years after the death of the author) and the duration of transfer (contracts between authors and

publishers/producers/broadcasters/etc) are two entirely different concepts. Such a very long duration of transfer prevents authors from taking into account the different and dynamic modes of exploitation and grant their rights to the most efficient contractual counterparts, encouraging fair competition amongst them. It also encourages some unfair business practices that consist in acquiring multiple works for ages to get a stronger and consolidated position in the market without actually exploiting them and giving them the possibility to find their public.

- **Excluding from the scope of this mechanism works that “*contain contributions of a plurality of authors*” would simply be an empty and ineffective promise, since most copyright works contain a plurality of authors.** Both the texts of the European Parliament and the compromise put forward by the European Commission already provide sufficient flexibility to Member States to take into account the specificities of different sectors and deal with the question of joint ownership in a flexible and efficient way, in line with the principle of subsidiarity. Such a “use it or lose it” clause for performers has been implemented by Member States (as per the Term Extension Directive) and the national solutions found have all preserved the notion that collaborative works need a collaboration of creative contributors to exercise this right. There is no reason to believe that the future implementation of such a provision would lead to a different result.
- Such an exclusion would also prevent the exercise of this right for a specific contribution if the final work is not even finally made (for a scenario, an article in a book, a music sheet, etc.). This means that a contributive author would not be able to invoke this right to grant his work to another contractual counterpart if the first one does not even start to exploit the full work, leaving millions of works unknown to the public.
- **As a result, we strongly oppose the exclusion of “works or subject matter from the application of the mechanism if such works or subject matter usually contain contributions of a plurality of authors or performers” and we urge you to reject it, to the benefit of authors, fair competition and cultural diversity.**

Sincerely yours,



The European Composer and Songwriter Alliance (ECSA) represents over 50,000 professional composers and songwriters in 27 European countries. With 56 member organizations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music.

Web: [www.composeralliance.org](http://www.composeralliance.org)  
EU Transparency Register ID: 71423433087-91



The European Federation of Journalists (EFJ) is the largest organization of journalists in Europe, representing over 320.000 journalists in 61 journalists' organizations across 40 countries. The EFJ fights for social and professional rights of journalists working in all sectors of the media through strong trade unions. It strives to maintain or create environments in which quality, journalistic independence, pluralism, public service values and decent work in the media exist.

Web: [www.europeanjournalists.org](http://www.europeanjournalists.org)  
EU Transparency Register ID: 27471236588-39



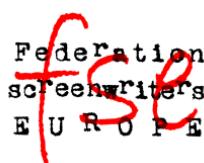
EWC, founded in 1977 in Germany and newly constituted in 2006 in Brussels as an international non-profit organisation, the European Writers' Council is the federation of 45 European national organisations of professional writers and literary translators in all genres in 34 countries. EWC's members represent more than 160,000 authors in the book sector

Web: [www.europeanwriterscouncil.eu](http://www.europeanwriterscouncil.eu)  
EU Transparency Register ID: 56788289570-24



The Federation of European Film Directors (FERA), founded in 1980, represents film and TV directors at European level, with 35 directors' associations as members from 29 countries. We speak for more than 20,000 European screen directors, representing their cultural, creative and economic interests.

Web: [www.filmdirectors.eu](http://www.filmdirectors.eu)  
EU Transparency Register ID: 29280842236-21



The Federation of Screenwriters 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 25 organisations from 19 countries, representing more than 7,000 screenwriters in Europe.

Web: [www.scenaristes.org](http://www.scenaristes.org)  
EU Transparency Register ID: 642670217507-74