

Joint Creators and Performers Statement to DG CONNECT regarding its public consultation on cloud computing



Brussels, 15 October 2014



The European Commission's DG CONNECT launched a public consultation inter alia on cloud computing.



DG CONNECT points at certain documents/reports in order to trigger the discussions and notes that stakeholders may comment on these documents/reports or come with new proposals.



One of these documents/reports is the European Commission's communication on "Unleashing the Potential of Cloud Computing in Europe" adopted on 27 September 2012.

In this communication, the Commission dedicates a section to cloud computing and private copying.



The communication notes that "(...) questions arise on the possible collection of private copy levies for any private copying of content to, from or within the cloud".

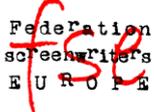
The communication then continues stating that "(...) the Commission will inter alia assess whether there is a need to clarify the scope of the private copying exception and the applicability of levies, in particular the extent to which cloud computing services allowing for the direct remuneration of right holders are excluded from the private copy levy regime".



Taking into account that the copyright portfolio is now moving to DG CONNECT, the undersigned European organisations believe it appropriate to raise the issue of private copying in this context on behalf of the hundreds of thousands of professional authors and performers that they represent.



Private copying compensation schemes remain an effective mechanism in today's environment and ensure that authors and performers receive fair compensation for the private copying of their works under the exception provided for by EU law.

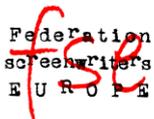


Indeed, private copying remuneration is an essential part of the income collected for authors and performers. Private copying remuneration represents on average 5% of European authors' revenue and more than 30% of the total amount collected by collective rights management organisations for performers. Moreover, in most EU countries private copying remuneration has a positive role in the development of cultural projects and on the social protection of authors and performers.





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The validity of this system has been confirmed not only legally in a number of judgements by the Court of Justice of the EU (CJEU) but also economically. A recent survey shows how much value is brought to portable devices by their ability to store predominantly copied creative content¹.

Currently the only missing element is the willingness of importers and manufacturers of recording media/devices, which are mainly non-EU companies², to fully comply with EU law as they seek higher profit margins by challenging this exception at the expense of European consumers and creators.

The fact is that more and more copies are being made, as the means by which individuals can make private copies of copyright protected content are greater now than ever before. Yet, the ability of rightholders to control and license acts of private copying continues to be unrealistic. The application of technical protection measures has been rejected by consumers especially in the audio sector and may also raise questions regarding the protection of certain fundamental rights. Moreover, the CJEU confirmed that, even if technical protection measures are applied, the existence of a technological measure is not intended to eliminate the exception for private copying when the national law of the concerned Member State recognises such exception. Only the level of fair compensation can vary depending on the application of such measures³.

In this regard we welcome the Commission's assessment that *"a cloud computing service may also permit content storage in the cloud. The consumer can use the cloud as a digital locker for content and a synchronisation tool to access content from different devices. Therefore questions arise on the possible collection of private copy levies for any private copying of content to, from or within the cloud"*.

The CJEU in its *Padawan* ruling mentions that private copies can be made not only by *"digital reproduction equipment, devices and media but also by copying services"* themselves. Copies made via such services have the same purpose (private use) as the copies made by private individuals on their phones, tablets, USB sticks, etc. It is our view that in such cases private copying remuneration should indeed be payable, in line with the principles of the private copying exception contained in article 5(2)(b) of Directive 2001/29/EC. Moreover, the CJEU in its *VG Wort* ruling stresses that in the case of private copying, any authorisation by the rightholder for the reproduction of its protected work or other subject-matter has no bearing on the fair compensation.

We remain at your disposal should you require any further information.

¹ UK Music Consumer Survey 2012

² According to StatsCounter Global Stats, none of the first 10 most sold mobile and tablet devices in Europe is manufactured by a European-owned company, as Nokia was recently acquired by Microsoft and Sony took full control of Sony-Ericsson in 2011: <http://gs.statcounter.com/#mobile+tablet-vendor-eu-monthly-201309-201409>

³ *VG Wort* ruling (C-457/11 to 460/11)



AEPO-ARTIS – AEPO-ARTIS represents 35 European performers’ collective management organisations from 26 countries, 23 of which are established in the Member States of the European Union. The other countries represented are Norway, Serbia and Switzerland. The number of performers represented by the 35 member organisations can be estimated between 400,000 and 500,000. For more information: www.aepo-artis.org



ECA – Founded in 1995 the European Council of Artists represents the joint bodies of artists’ associations in 28 European nation states and autonomous territories. ECA is an interdisciplinary and democratic forum with clear representative structures and works for the interests of the professional artists in Europe – visual authors (writers, composers etc) and performers from all disciplines – and for cooperation between them. The purpose of ECA is to help professional artists influence European strategies concerning European artists/creators, particularly their social and economic situation. For more information: www.eca.dk



ECSA (the European Composer and Songwriter Alliance) is the European voice of living music authors and represents over 23,000 professional composers and songwriters in more than 20 European countries. With 43 member organizations across Europe, the Alliance speaks for the interests of music writers of art & classical music (contemporary), film & audiovisual music as well as popular music. More information at www.composeralliance.org. Follow us on Twitter @Creators2015

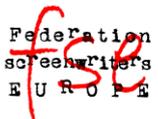


EFJ – The European Federation of Journalists gathers 58 journalists’ unions and associations in Europe representing 320,000 journalists in thirty nine countries. The EFJ supports its affiliates to foster trade unions and to maintain or create environments in which quality, journalistic independence, pluralism, public service values and decent work in the media exist.

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EVA – EVA represents 24 European collective management organisations for fine arts, photography, illustration, design and other visual works for close to 100,000 authors. They manage for authors primary uses, the resale right and they collect and distribute remuneration rights. For more information: www.evarartists.org



EWC – Founded in 1977 in Germany and newly constituted in 2006 in Belgium, the European Writers’ Council is the federation of 50 national and transnational organisations of professional writers and literary translators in all genres in 34 countries including the EU as well as Belarus, Iceland, Norway, Switzerland, Turkey and Montenegro. EWC’s members represent 433,000 individual creators, including more than 150,000 authors in the text-sector.



Society of Audiovisual Authors
Société des Auteurs Audiovisuels





FERA – Founded in 1980, the Federation of European Film Directors represents 37 directors’ associations from 29 countries. FERA speaks for approximately 20,000 European screen directors, who work in all formats and genres, promoting and defending their cultural, creative and economic interests both at the European and at the national level. www.filmdirectors.eu



EuroFIA – The European group of the International Federation of Actors represents performers’ trade unions, guilds and associations in most of the EU and the EEA. It voices the professional concerns and interests of actors (in film, television, radio, theatre and live performance), broadcast professionals, dancers, singers, variety and circus artists and others, with the exception of musicians and visual artists. For more information: <http://fia-actors.com>



FIM – The International Federation of Musicians (FIM) is the international NGO representing musicians’ trade unions, guilds and associations globally, with members in about 70 countries covering all regions of the world. In the European Union, FIM counts 26 member unions in 21 EU Member States.



FSE – The Federation of Screenwriters in Europe (FSE) is the voice in Europe for more than 6,000 professional screenwriters working mainly in the film and television industry. It is a federation of currently 25 associations, guilds and unions of screenwriters in 20 countries.

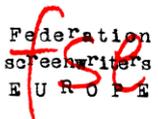


GESAC – Founded in 1990, the European Grouping of Societies of Authors and Composers (GESAC) represents 34 of the main copyright management societies (authors ‘societies) in the European Union, Iceland, Norway and Switzerland, administering the rights and remuneration of almost 920,000 authors, composers and writers in a variety of sectors (music, audiovisual, literary and visual and graphic arts) and music publishers. More information www.authorsocieties.eu and www.gesac.org

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SAA – The Society of Audiovisual Authors (SAA) is the grouping of European collective management organisations representing audiovisual authors. Its members (25 societies in 18 countries) manage the authors’ rights of over 120,000 film, television and multimedia screenwriters and directors. More information www.saa-authors.eu Follow us on Twitter @saabrussels



UNI Global Union – Media Entertainment & Arts (UNI MEI) – represents 170 national unions & guilds affiliating more than 375,000 creators, technicians and other workers in the media, entertainment and arts worldwide. More information at www.uniglobalunion.org/mei



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