

Brussels, 22 October 2018

Authors' Group comments on the Directive for Copyright in the Digital Single Market

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).

Together with the EU Cultural and Creative Industries at large, the Authors' Group strongly **supports the successful adoption of the Copyright Directive**. [Along with over 130 professional organisations representing authors from the book, music, press and audio-visual sectors¹](#), we believe it represents a once in a decade opportunity to improve the situation of authors, thereby strengthening the European creative community and cultural wealth in the digital era.

The Authors' Group calls for the adoption of a strong chapter 3 (articles -14a to 16a). The effectiveness of its approach stems from the interdependence of each article within this chapter, informally called the *transparency triangle*. It will only provide authors with a useful tool to reshape their bargaining position if none of the three original articles are weakened.

We stand ready to negotiate with our contractual counterparts a balanced and constructive implementation of those provisions.

The Authors' Group aims at striking the best compromise for European authors within the existing reports as adopted by the European Commission, European Parliament and the Council of the European Union. The annexed working paper provides concrete suggestions to this end.

¹ <http://www.filmdirectors.eu/wp-content/uploads/2018/09/EU-Authors-Statement-for-the-Copyright-Directive.10092018.pdf>

THE AUTHORS' GROUP RECOMMENDATIONS ON THE COPYRIGHT DIRECTIVE

Title 4, Chapter 3

	EC text	EP text	Council text	AG recom
	Fair remuneration in contracts of authors and performers	Fair remuneration in contracts of authors and performers	Fair remuneration in <u>exploitation</u> contracts of authors and performers	Fair remuneration of authors and performers
ARTICLE - 14 – PRINCIPLE OF FAIR AND PROPORTIONATE REMUNERATION				
	EC text	EP text	Council text	AG recom
Art. - 14, para 1		1. Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory remuneration mechanisms.		1. Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory remuneration mechanisms.
Art. - 14, para 2		2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.		2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.
Art. - 14, para 3		3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.		3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.
Art. - 14, para 4		4. Contracts shall specify the remuneration applicable to each mode of exploitation.		4. Contracts shall specify the remuneration applicable to each mode of exploitation.
ARTICLE 14 – TRANSPARENCY OBLIGATION				
	EC text	EP text	Council text	AG recom
Art 14 § 1	Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of	1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year , and taking into account the specificities of each sector, account the specificities of each sector and the relative importance of each individual contribution , timely adequate and sufficient, accurate, relevant and comprehensive information on	1. Member States shall ensure that authors and performers receive on a regular basis, not less than once a year , and taking into account the specificities of each sector and the relative importance of each individual contribution , timely, accurate, relevant and comprehensive information on the exploitation of their works and performances from those to whom they have	1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year , and taking into account the specificities of each sector, timely, comprehensive information on the exploitation of their works and performances from those to whom they have

	exploitation, revenues generated and remuneration due.	the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, direct and indirect revenues generated, and remuneration due.	licensed or transferred their rights, notably as regards modes of exploitation, direct and indirect revenues generated, and remuneration due.	successors in t regards modes direct and indi generated and due.
Art.14 §1a		1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.	1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.	1a. Member St ensure that wh or transferee o authors and pe subsequently li rights to anothe party shall sha information rel paragraph 1 wi or transferee.
Art. 14, para 1a, sub-para 2		2.The main licensee or transferee shall pass all the information referred to in the first subparagraph on to the author or performer. That information shall be		Delete

		<p>unchanged, except in the case of commercially sensitive information as defined by Union or national law, which, without prejudice to Articles 15 and 16a, may be subject to a nondisclosure agreement, for the purpose of preserving fair competition. Where the main licensee or transferee does not provide the information as referred to in this subparagraph in a timely manner, the author or performer shall be entitled to request that information directly from the sublicensee. [See Council's Article 14(1a) (row 269)]</p>		
Art 14 § 2	<p>The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.</p>	<p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate high level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate a high level of transparency.</p>	<p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those <u>Member States may provide that in duly justified</u> cases where the administrative burden resulting from the obligation <u>in paragraph 1</u> would become disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that <u>is limited to</u> the obligation remains effective <u>types</u> and ensures an appropriate level of transparency <u>information that can reasonably be expected in such cases.</u></p>	<p>2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate a high level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.</p>

Art 14 § 3	Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.	deleted	Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.	delete
Art 14 § 3a			3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.	
Art 14 § 4	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.	4. Paragraph 1 shall not be applicable to agreements concluded by entities subject to the transparency obligations established by defined in Article 3(a) and (b) of Directive 2014/26/EU. or by other entities subject to the national rules implementing Directive 2014/26/EU.	
ARTICLE 15 – CONTRACT ADJUSTMENT MECHANISM				
	EC text	EP text	Council text	AG recom
Art 15	Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.	Member States shall ensure, <i>in the absence of collective bargaining agreements providing for a comparable mechanism, that authors and performers or any representative organisation acting on their behalf</i> are entitled to request <i>claim and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances.	1. Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights <i>or their successors in title,</i> when the remuneration originally agreed <i>is turns out to be</i> disproportionately low compared to the subsequent relevant revenues and benefits derived from the <i>actual</i> exploitation of the works or performances.	Member States <i>the absence of bargaining agreements providing for a mechanism, the performers or representative acting on their</i> entitled to request additional, appropriate <i>fair</i> remuneration from the party with whom they entered into a contract for the exploitation of <i>their successor</i> the remuneration originally agreed is disproportionately low compared to the subsequent relevant <i>indirect</i> revenues and benefits derived from the exploitation of the works or performances.

		[See Council's Article 15(1a) (row277)].		
Art 15 § 1a			1a. Member States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.	1a. Member States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.
Art 15 § 2			2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.	2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.
ARTICLE 16				
	DISPUTE RESOLUTION MECHANISM	DISPUTE RESOLUTION MECHANISM	DISPUTE RESOLUTION MECHANISM PROCEDURE	
	EC text	EP text	Council text	AG recommendation
Art 16	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers. [See Council's Article 16(2)(row 281)]	1. Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers.
			2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.	

	ARTICLE 16a			
	<i>Article 16a - Contractual provisions</i>			
	EC text	EP text	Council text	AG recom
Art 16a			<i>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</i>	<i>Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</i>
	<i>Article 16a Right of revocation</i>			
	EC text	EP text	Council text	AG recom
16a§1		<i>1. Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>		<i>1. Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>
16a§2		<i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of</i>		<i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only upon written notification setting an appropriate deadline by which the exploitation of the transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of</i>

		<i>revoking the rights. Where a work or other subject-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.</i>		<i>revoking the ri work or other s contains the co plurality of aut performers, th individual righ of such author shall be regula law, laying dow the right of rev collective work account the re importance of contributions.</i>
16a§3		<i>3. Paragraphs 1 and 2 shall not apply if the non exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.</i>		<i>3. Paragraphs not apply if the the rights is pr due to circumst the author or t can be reasonab remedy.</i>
16a§4		<i>4. Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.</i>		<i>4. Contractual arrangements from the right shall be lawfu concluded by n agreement wh a collective ba agreement.</i>



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

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

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, writing altogether in 28 languages. EWC's members represent more than 160,000 authors in the text-sector

Web: www.europeanwriterscouncil.eu

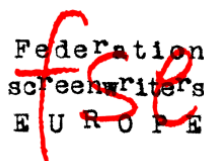
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The Federation of European Film Directors (FERA), founded in 1980, represents film and TV directors at European level, with 43 directors' associations as members from 33 countries. We speak for more than 20,000 European screen directors, representing their cultural, creative and economic interests.

Web: www.filmdirectors.eu

EU Transparency Register ID: 29280842236-21



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 25 organisations from 19 countries, representing more than 7,000 screenwriters in Europe.

Web: www.scenaristes.org

EU Transparency Register ID: 642670217507-74