

To: Nemessányi Zoltán, dr. Seres Eszter Lilla

Cc: Pierre Mossiat, Ger Hatton, Coco Carmona, Andreas Schubert, Gusztav Stiedl, Antal Boronkay, Camille Mortier

Dear Deputy State Secretary,

Thank you for giving your time so generously to meet with our colleague, Gusztav Stiedl, Managing Director of Schubert Music Publishing Hungary. Your input and insights were greatly appreciated. We remain open to further discussions regarding these issues and fully welcome your suggestions and engagement. Mr. Stiedl is available in Budapest and we are available in Brussels at any convenient time. As we understand that many of these issues will be discussed at the upcoming IP Working Group of November 6 and 7, we would be grateful if you, or your colleagues, participating on behalf of the Hungarian Government could keep in mind our particular viewpoint.

Therefore both regarding some of the items discussed during the meeting and to share our first views on the Compromise Text published by the Estonian Presidency this week, we submit the following comments:

1. **On Value Gap**

In Recital 37, the compromise text makes a reference to Article 3(1) and (2). We believe that all value gap related provisions should be touching upon both the right of reproduction (article 2) and the right of communication to the public (3). Also, we would suggest making a general reference to Article 3.

In relation to Recital 38, we are concerned that detailed clarification of what an act of Communication to the Public means may lead to a very narrow scope, and to a solution which is neither future or technology proof. A meaningful legislative solution must clarify, in line with the CJEU case law, that platforms that store and provide access to copyright protected content uploaded (or displayed) by their users undertake copyright relevant acts (i.e. communication to the public and reproduction); and cannot benefit from the 'Safe Harbour' regime in Art. 14 of the E-Commerce Directive because they play an active role by, for instance, promoting such content or optimising the presentation of it. Without clear wording of the two points outlined above, there will be no solution for value gap. We are concerned therefore by the deletion of the reference to article 14 of the E-commerce directive. These same comments can also relate to Article 13, where we again don't see a reference to the reproduction right or to E-commerce.

We would also like to touch upon "Notice and Take Down" procedures as discussed. We see these measures only as a complement to the current provisions on value gap. As discussed, sending notice and take down messages is extremely burdensome and costly. It is therefore essential that the identified illegal content which has been disabled/removed from a particular website stays disabled/removed until (and if) it becomes legal. We believe that the practice of "notice and stay down" is consistent with a service provider's obligation to act if they wish to retain the safe harbour protection.

It goes without saying that in any event, notice and take down / stay down has no effect whatsoever in relation to sites structurally designed to infringe or induce infringements; services and sites which do not abide by the rules cannot benefit from the very laws they are breaking in other respects. These sites should be obliged to seek licenses.

In addition to the Value Gap, below some other items in the Compromise Text that are of interest for music publishers are the following:

2. **Illustration for teaching**

While there is a positive inclusion of sheet music on recital 17, this only refers to the possibility to give precedence to licenses which are intended for sheet music. However sheet music is not included as an exception to the exception. From what we can see in the Compromise text, the discussion of how much of a work can be included in the exception has been deferred to the Member States. In some countries, where sheet music is prohibited from reproduction, this works well. However, that safeguard is not provided for across the EU. By not having harmonisation in EU law on how much of a work can be used, cross-border use will be complicated and we, the music publishers, may end up losing a hugely important sector of our business: musical scores. We would prefer language provided for the reiteration of an exclusion of Sheet Music and Musical Scores from this exception. This exclusion is crucial for our sector: One must take into account the length of the piece of sheet music. Making available an excerpt of a musical score for illustration for teaching in the Internet may mean making available the whole work given the sometimes reduced length of the piece of work compared to others like books. Excluding sheet music from this exception is only a technicality already present in the EU Acquis (Art. 5.2.a. of the 2001/29/EC Directive already excludes sheet music for the same reason).

3. **Claims for fair compensation**

While we welcome the steps taken by the Estonian Presidency to strengthen the EC text, we are concerned that article 12 as it stands, and the amendments proposed by the Presidency, are not yet enough to solve the difficult situation in which music publishers are after the Reprobel Ruling. As you may know, article 12 was originally designed to solve the uncertainty caused by the ECJ ruling in Reprobel. While the European Commission proposal is welcomed, this is not enough to cover the situation in Continental Europe. As opposed to Anglo-American publishing agreements where the author does indeed transfer the rights to publishers, in continental Europe, authors transfer the rights to collective management organisation and then sign agreements with music publishers according to which the latter acquire the right to claim a share of the income in exchange of carrying out publishing activities.

We therefore request a technical adjustment in the wording that would reflect the above-explained situation: "Publishers, including those of press publications, books, *music* or scientific publications, often operate on the basis of the transfer of authors' rights by means of contractual agreements or statutory provisions. In ***other cases, they operate based on agreements where authors grant a right to claim a share of the income.*** In this context, publishers make an investment with a view to the exploitation of the works contained in their publications and may in some instances be deprived of revenues where such works are used under exceptions or limitations such as the ones for private copying and reprography. In a number of Member States compensation for uses under those exceptions is shared between authors and publishers. In order to take account of this situation and improve legal certainty for all concerned parties, Member States should be allowed to determine that, when an author has transferred, ***assigned*** or licensed his rights, ***including the right to claim a share of income***, to a publisher or otherwise contributes with his works to a publication and there are systems in place to compensate for the harm caused by an exception or limitation, publishers are entitled to claim

a share of such compensation, whereas the burden on the publisher to substantiate his claim should not exceed what is required under the system in place”.

This technical adjustment is already reflected in some amendments in the European Parliament to the JURI report (i.e. AMD 353).

The current situation in some EU Member States is one where we are not in receipt of income from private copying levies, preventing as a result international (non-domestic) authors from receiving a share of the compensation from levies. Please bear in mind that if collective management organisations (CMOs) fail to distribute monies to publishers, **there won't be any mechanism for publishers to distribute this income to their international authors.** This would be the case for reproduction rights, where money does not flow via CMOs but through publishers directly who, in turn, distribute the funds to their international authors.

Again, our thanks for your time and we look forward to a continued engagement,

Kind regards,

**Pierre Mossiat, President
General**

Coco Carmona, Director



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