

## JOINT STATEMENT OF RIGHTHOLDERS



10 November 2017

### Copyright Directive impasse in LIBE Committee

#### Right holders call to improve draft Opinion via effective compromises

Dear Member of the LIBE Committee,

We represent Europe's authors, creators, music publishers and producers, broadcasting organisations, TV producers, film distributors, photo agencies and press publishers - all of which are at the heart of the creative sectors fuelling the European digital economy.

The European Parliament's LIBE committee will soon vote on its Opinion on the Copyright Directive's Article 13 and Recitals 37-39. These provisions address the Value Gap/Transfer of Value for copyright protected content online – an issue of profound importance for our sectors.

The Value Gap/Transfer of Value is the drastic disparity between the profits made by online 'User Uploaded Content' (UUC) services from using our creative works and the revenue returned to us as rightsholders. UUC

services engineer this market distortion by exploiting Article 14 of the EU's e-Commerce Directive to claim 'Safe Harbour' status to avoid copyright liability. This mass avoidance of liability was not the intention of the original law when it was drafted in 2000 – long before the emergence of these companies. Art. 14 was intended to be applicable only to "passive" hosting services – an interpretation subsequently supported by the Court of Justice of the EU.

A balanced solution is offered by the proposed Copyright Directive to avoid the free-riding of today's self-proclaimed intermediaries, while preserving important values such as freedom of expression and other fundamental rights that are also a prerequisite for independent and free artistic expression. Therefore, we urge you to clarify in your Opinion that services which store and provide access to copyright protected content uploaded by users:

- undertake copyright relevant acts (i.e. they communicate to the public and as the case may be reproduce content) and;
- should not benefit from the e-Commerce Directive's 'Safe Harbour' status because by promoting, optimising and presenting such content they are playing an active role.

However, recent developments in LIBE have become a source of serious, collective concern to us.

The draft Opinion of the Rapporteur, MEP Michal Boni, outright removes the draft solutions to the Value Gap/Transfer of Value problem.

Furthermore, in its current form the draft Opinion would codify the present day misapplication of EU rules that platform services rely on to avoid remunerating European creators and right holders. Finally, the Rapporteur's draft removes the Commission's clarification of UUC services' copyright liability and the clarification that when such services play an 'active role' they cannot benefit from EU 'Safe Harbours'.

In addition, we hear of an impasse in the compromise discussions between the Rapporteur and Shadows.

**We would encourage all MEPs involved to renew their efforts to reach a compromise text**, however we emphasise that the rapporteur Boni's draft Opinion cannot be an option for a compromise text as it does not solve the Value Gap/Transfer of Value problem in Europe.

Should there be no meaningful compromise text by the time of the vote, **we ask you to vote in support of the amendments below relating to Article 13 and Recitals 37-39**, and to reject all other amendments including those in MEP Boni's draft Opinion:

## EPP

- Voss (DE): 37; 40; 42; 46; 109; 116
- Barbara Matera (IT): 49; 59; 68; 74; 81
- Brice Hortefeux (FR), Rachida Dati (FR), Nadine Morano (FR), Heinz K. Becker (AT): 52; 67; 79
- Hortefeux, Dati, Morano, Becker, Matera: 105; 107

## S&D

- Juan Fernando López Aguilar (ES): 48; 60; 82; 84; 111; 119; 127
- Miltiadis Kyrkos (GR), Giorgos Grammatikakis (GR), Silvia Costa (IT), Luigi Morgano (IT), Mary Honeyball (UK): 36; 37; 50; 58; 73; 77, 103
- Sylvie Guillaume (FR), Christine Revault D'Allonnes Bonnefoy (FR), Pervenche Berès (FR), Virginie Rozière (FR): 39; 41; 43; 47; 62; 69, 104; 108; 136

## Greens

- Jan Philipp Albrecht (DE): 54; 63

We count on LIBE MEPs to defend Europe's cultural and creative sectors and solve the Value Gap, as intellectual property rights are fundamental rights requiring this committee's protection.

Yours faithfully,

**ACT** – Association of Commercial Television in Europe

**CEPI** - The European Coordination of Independent Producers

**CEPIC** – Centre of the Picture Industry

**ECSA** – European Composers and Songwriters Alliance

**EPC** – European Publishers Council

**EVA** – European Visual Artists

**FIAD** - International Federation of Film Distributors' Association

**GESAC** – European Grouping of Societies of Authors and Composers

**ICMP** – International Confederation of Music Publishers

**IFPI** – Representing the recording industry worldwide

**IMPALA** – Independent Music Companies Association

**IMPF** - Independent Music Publishers Forum

**TF1** – Media group