



Brussels, 12 April 2021

Dear President,

The College of Commissioners will soon be asked to approve the European Commission's Guidance on the application of Article 17 of the Copyright Directive in the Digital Single Market (the 'DSM Copyright Directive').

We, the undersigned organisations representing authors, record labels and music publishers in the European Union, are greatly concerned that the Guidance will undo what has been agreed by the EU legislature and will be detrimental to European music creators and their business partners. If followed by Member States, it would undermine the fine political balance achieved during the legislative process and is highly likely to fragment the digital single market, leading to a plethora of litigation at national level and to future cases before the CJEU.

Article 17 of the DSM Copyright Directive is a once-in-a-generation opportunity to rebalance the power between large online platforms, which distribute copyright content, and European creators and their business partners, who create and invest in this content. If implemented faithfully and effectively it will ensure the future sustainability of Europe's cultural content, including music. For the music sector, Article 17 enables creators and right holders to negotiate fair licences with platforms across Europe. It cannot be right that the Commission is now promoting in its Guidance a model that could disincentivise platforms from negotiating fair licences.

Services, such as TikTok, Snapchat, Twitch, Triller, Byte, and many others, have structured their business models on the large-scale use of excerpts of music, often no more than 5-10 seconds in duration. The introduction of a model based on the distinction between "manifestly and non-manifestly infringing" content would be particularly detrimental to the music industry if, for example, the large-scale exploitation of content under a certain duration were argued to be "not manifestly infringing" and therefore the platform might decide not to negotiate a licence before making the content available to the public. Moreover, large services like YouTube and Facebook which distribute both short form and longer versions of content could try to exclude the former from the scope of their licensing negotiations completely and/or engage in lengthy litigations through national courts as a preferred calculated risk by relying on the Guidance and with the hope of achieving further uncertainties, rather than paying for a proper licence as required by Article 17.

In addition, the Commission's proposed model would require an extremely complex assessment from platforms with regards to which content has to be blocked. Platforms would be obliged to bifurcate their systems and prevent the availability of content captured by divergent legal solutions in different Member States. This would make it considerably more costly and burdensome to operate a pan-European Online Content Sharing Service Provider and could lead to a situation where platforms would be forced to geo-block in order to be in line with the Guidance.

In summary, we feel that with this proposed Guidance the Commission is reopening and reinterpreting the Directive's Article 17, which is the result of long negotiations and represents a carefully crafted compromise by the EU legislature. This would set a dangerous precedent, and the approach proposed will weaken Article 17 and the music sector's successful licensing model at a time when Online Content Sharing Service Providers, such as those targeted by Article 17, have become some of the biggest music services in the world, but also those who pay the least.

We urge you to take our concerns into consideration when reviewing the final guidance and remain available to discuss.

Yours sincerely,

GESAC, the European Grouping of Societies of Authors and Composers. GESAC comprises 32 authors' societies from across the European Union, Norway, and Switzerland. It represents over 1 million creators and rights holders in the areas of musical, audio-visual, visual, and literary and dramatic works.

IFPI, representing the recording industry worldwide. IFPI is the organisation that promotes the interests of the international recording industry worldwide. IFPI and its National Group network has over 8,000 members across more than 70 countries. There are over 70 IFPI offices, National Groups and Affiliated MLCs. IFPI's mission is to promote the value of recorded music, campaign for the rights of record producers and expand the commercial uses of recorded music in all markets where its members operate.

IMPALA, the European association of independent music companies. Its mission is to grow the independent music sector, return more value to artists, promote cultural diversity and entrepreneurship, improve political access and modernise perceptions of the music sector.

IMPF, Independent Music Publishers International Forum. IMPF is the global network for independent music publishers. IMPF represents the interests of indie music publishers internationally, shares experiences and best practices, exchanges information on the copyright and legal framework in different territories and jurisdictions, and helps stimulate a more favourable environment for artistic, cultural and commercial diversity for songwriters, composers and publishers everywhere.