



We are representatives of a broad group of right holders in Europe's creative sectors including: book, press, musical, scientific, technical and medical publishers; the recorded and published music industries; film, animation and TV producers; sporting event organisers; TV and radio broadcasters; distributors; publishers of film and AV content on physical media and online; and photo agencies.

Dear Sir/Madam,

We are writing to you to express our serious concerns regarding the draft law proposal ('the proposal') on the implementation of the DSM Copyright Directive ('the Directive'), which is now being discussed in the Bundestag.

The proposal includes elements – non-compliant with the Directive, EU and international law – which risk jeopardizing the fine balance between copyright and other fundamental rights achieved by the EU legislature. This would be seriously detrimental to the creative sector in Germany and across the European Union.

For example, the proposal introduces new limitations to exclusive rights for the benefit of online content sharing service providers ('OCSSPs'). It proposes a mechanism for disabling automatic content recognition for 'presumably permitted uses' by using purely quantitative thresholds (15 seconds, 160 characters, 125 kilobytes, less than 50% of a work). This is combined with the condition of 'other content' having been added and a mechanism of 'pre-flagging'. Such a mechanism creates qualifiers which are unsuitable without specific context. The 'red button' option provided for right holders to ask to remove the content during the complaint process, if they can demonstrate "significant economic harm", shifts the burden of proof completely onto them and is entirely unworkable in practice given the huge volume of content being made available by online content sharing service providers.

The proposed mechanisms would facilitate copyright infringement as well as undermine legitimate licensing and content protection models in ways which unreasonably prejudice the legitimate interests of right holders. They would also conflict with the normal exploitation of their works. We have included some obvious examples of this in the appendix.

The proposal not only unfairly and unnecessarily limits right holders' exclusive rights, it also jeopardises the harmonisation and clarity across Europe's Digital Single Market which is so necessary for businesses and which was the original purpose of the legislation. It would make it more difficult for online content sharing service providers to provide services to consumers across the single market and could eventually lead to a situation where services would decide not to operate in certain territories.

We therefore urge you to respect what has been agreed and adopted by the EU legislature and implement the Directive faithfully by adhering closely to the wording of Article 17.

Your sincerely,

ACT - represents leading commercial broadcasters active across the European Union and globally. The ACT member companies finance, produce, promote and distribute content and services benefiting millions of Europeans across all platforms. At ACT we believe that the healthy and sustainable commercial broadcasting sector has an important role to play in the European economy, society and culture.

ANIMATION in EUROPE - is the Federation of Animation Producers Associations from 15 countries of the European Union standing for the development of the animation industry in Europe and defend the interests of independent producers and distributors of series and films.

CEPI TV - The European Coordination of Independent Producers was founded in 1990 to organise and represent the interests of independent cinema and television producers in Europe. It represents approximately 8000 independent production companies in Europe.

CEPIC - As the Center of the Picture Industry, CEPIC federates 600 picture agencies and photo libraries in 20 countries across Europe, both within and outside the European Union. CEPIC's membership includes large and smaller stock photo libraries, major photo news agencies, art galleries and museums, video companies.

EMMA - The European Magazine Media Association, is the unique and complete representation of Europe's magazine media, which is today enjoyed by millions of consumers on various platforms, encompassing both paper and digital formats. EMMA represents 15,000 publishing houses, publishing 50,000 magazine titles across Europe in print and digital.

ENPA - The European Newspaper Publishers' Association is the largest representative body of newspaper publishers across Europe. ENPA advocates for 16 national associations across 13 European countries, and is a principal interlocutor to the EU institutions and a key driver of media policy debates in the European Union.

EPC - The European Publishers Council brings together Chairmen and CEOs of Europe's leading media groups representing companies with newspapers, magazines, online publishing, journals, databases, books and broadcasting, communicating with Europe's legislators on issues that affect freedom of expression, media diversity, democracy and the health and viability of media in the EU.

EUROKINEMA – Eurocinema represents the interests of film and audiovisual producers in EU and international policy concerning issues directly or indirectly affecting film and audiovisual production. EUROKINEMA's mission is to argue the fundamental role of the film and audiovisual industry and film-makers in a politically and economically integrated Europe.

FEP – The Federation of European Publishers represents 29 national books and learned journals publishers' associations of the European Union and the European Economic Area.

FIAD - The International Federation of Film Distributors' Associations gathers national organisations of film distribution companies covering the entire range of companies: small and medium-sized companies specialized in art house films, as well as larger companies focused on mainstream films. FIAD's members operate in 14 countries where they cover 90 to 100 percent of the theatrical market.

FIAPF – FIAPF's members are 36 film and TV producer organizations from 29 countries, including 15 in the EU/EEA. Their activities include the development and production of films and audiovisual content which are distributed offline and online via all forms of authorised and legal online distribution channels.

ICMP - is the world trade association for music publishers and companies. We represent more than 90% of the world's published music. Our membership comprises 61 national associations, including each of the 27 EU Member States.

IFPI - The International Federation of the Phonographic Industry is the organisation that promotes the interests of the international recording industry worldwide. IFPI's mission is to promote the value of recorded music, safeguard the rights of record producers and expand the commercial uses of recorded music in all markets where its members operate.

IMPALA - IMPALA is the European association of independent music companies, representing close to 5,000 music SMEs. 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 - 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.

IVF - The members of the International Video Federation are associations representing businesses active in all segments of the film and audiovisual sector in Europe. Their activities include the development, production, and distribution of films and audiovisual content as well as their publication on digital physical carriers and via all forms of authorised and legal online distribution channels (TVOD, SVOD, AVOD).

MPA – The Motion Picture Association is the leading advocate of the film, television, and streaming industry around the world.

NME – News Media Europe, the voice of the progressive news media industry in Europe, representing over 2400 news brands, online and in print, on radio and TV.

SROC - The Sports Rights Owners Coalition is a forum of over 50 international and national sports bodies and competition organisers, with a particular focus on rights issues.

STM - is the leading global trade association for academic and professional publishers. The membership is composed of over 140 organisations who are based globally and include academic and professional publishers, learned societies, university presses, start-ups and established players.

Appendix: Some examples of how the proposal would facilitate copyright infringement and undermine legitimate licensing models

- **Audio-visual:** The proposed approach would streamline piracy on OCSSPs and devastate the entire audio-visual value-chain. Users seeking to upload illegal copies of films could easily make multiple uploads with only slightly less than half the film (or less depending on the threshold) in separate files while adding random content to the file. In addition, there are numerous ways to circumvent matching percentages (altering the speed, shifting borders, colour altering etc). Due to these commonly used circumvention techniques, full length, 100% illegal copies sometimes only give a 5% technical match. This also applies to TV content and sports events and has already been the subject of legal rulings (for example decision of Rome Ordinary Court, decision R.G. n.54218/08, Judge Tommaso Marvasi, 15/12/2009).
- **Publishing:** Setting a quantitative threshold for books would lead to the process of “filleting” or “salami tactics” where an entire work (or its key parts) would be shared online in sections (or slices) which come under the threshold. It is then of course, easily pieced back together into its complete version. Even with a right for the author to object to this, works would be quickly shared – at the start of the academic year or during the key Christmas sales period – and ruin the potential market for these publications.
- **Recorded Music:** The proposed approach would destroy the rapidly growing licensing market for short-form music content. Services, such as TikTok, Snap, Twitch, Triller, Byte and many others are based on the use of excerpts of music, often no more than 5-10 seconds in duration. Allowing online content sharing service providers to use music clips, without the obligation to either license them or prevent their availability, is a significant exploitation of creators’ content, deprives right holders of substantial revenue, and amounts to an unjustified limitation of right holders’ exclusive rights. The ‘red button’ is not a solution. The right holders would have to allocate significant time and resources to check each instance of short form content being uploaded and would be obliged to show ‘significant economic harm’ caused by that content at a short notice and en masse, which would be impossible to do. And even if it were possible, it would still be a limitation to the right holders’ exclusive rights and give OCSSPs a ‘free pass’, at a time when this legitimate source of revenue is starting to develop. It would simply create a new ‘Value Gap’.
- **Music Publishing:** Digital services operating in the EU are subject to rights clearance obligations from music publishing companies for any work in today’s digital repertoire (>100 million musical tracks). The proposed approach would negate basic legal obligations on OCSSPs, disrupt the industry’s existing multi-territorial licensing norms, invert exclusive rights,

leave millions of our writer partners unremunerated for use of works and undermine negotiating positions vis-à-vis the world's largest platforms. The smaller the SME music publishing company, the greater these concepts' harm - with 2.3 billion *YouTube*, 2.8 billion *Facebook* and 1.2 billion *TikTok* Monthly Active Users, we cannot monitor for and react to available unlicensed tracks. Such concepts are contrary to Article 17's primary purpose.

- **Photography:** The proposed size limit of 125 kilobytes is more than enough to display an image on a site in a highly visible way. Big news sites even use much lower defaults such as 20 kilobytes. News sites could be set up with photos retrieved from social networks for a flat fee paid to a collecting society. If a threshold is established for pictures at 125 kilobytes platforms will compress images so that they reach this size. It would cover practically all standard applications on the net without any permission and make it impossible to license visual content online. In addition, while the legislation seeks to eliminate any "over-blocking", it discourages the identification of works. Images of less than 125 kilobytes will not enter content recognition systems, and it will therefore be impossible to identify works and allow for fine-tuned remuneration to right holders.
- **Press Publishing:** 160 characters can be a very significant portion sometimes even represent half of a press article. In addition, very short texts or extracts of an article or a piece may often already convey its essence. This is true for both general-political news and the specialised press, where online articles often consist in abstracts or short bits of text with highly valuable information. Exemptions for snippets must be assessed on a case by case basis. Furthermore, the foreseen complaint mechanism's one-week term conflicts with the general lifespan of news and press content. This would mean that such content would never be removed in a timely manner.