

# Creative industries call to ensure a level playing field in

## Europe's Digital Single Market



January 19, 2018

Dear Prime Minister, Mr. Boyko Borissov,  
Dear Minister for the Bulgarian Presidency of the Council of the EU 2018, Ms. Lilyana Pavlova,  
Dear Minister of Culture, Mr. Boil Banov,

We represent authors from all sectors, including music, audio visual, visual, literary, etc., composers and songwriters, recorded music, books, press and music publishers, scientific, technical and medical publishers, broadcasters, distributors, film and TV producers and photo agencies. These are at the very heart of Europe's creative sector.

We have formed an alliance to campaign for a solution to a major problem which is holding back our sector and jeopardising future sustainability - the Transfer of Value, otherwise known as the Value Gap.

The Value Gap is the growing mismatch between the value that user uploaded content ('UUC') services extract from creative content and the revenues returned to the creative community.

User uploaded content services have become vast distributors of our creative works e.g. film, music, photos, and text, all while refusing to negotiate fair or any copyright licenses with us as right holders.

This problem is caused by a lack of clarity surrounding the application of copyright to certain online services and the abuse of European copyright 'safe harbour' rules in the e-commerce Directive 2000/31/EC by those services.

Bulgaria's EU Presidency provides the unmissable opportunity for a solution as it will lead the Council work on the EU Copyright Directive proposal, which was tabled by the European Commission in September 2016.

As an alliance we are convinced that the European Commission's proposal is a step in the right direction to provide for a balanced and effective solution that should clarify that:

- UUC services communicate to the public under the EU copyright framework and therefore are obliged to obtain licenses for copyrighted works, unless eligible for e-Commerce Directive 'safe harbours';
- UUC services who play an "active role" (for instance by promotion or optimisation of content) cannot benefit from 'safe harbours'.

There is no solution to the Transfer of Value/Value Gap problem without those key elements. This approach is supported by CJEU jurisprudence; most notably in *L'Oreal v. eBay*<sup>1</sup> and *Stichting Brein v. Ziggo BV ('The Pirate Bay')*<sup>2</sup> cases, and it is in line with the *acquis communautaire*, as also noted by the Council's Legal Service, and with international copyright law.

It is important to recall that the underlying policy objective of this legislation is to address the current unfairness in the online market due to the misapplication of copyright liability rules to UUC services. We would therefore like to stress that the focus should remain on finding effective solutions to tackle this issue.

As an alliance, we look forward to working with your Presidency to achieve an effective solution to the Value Gap problem for the benefit of Europe.

We remain at your disposal for any further information you may require.

Yours sincerely,

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<sup>1</sup> Case C-324/09 (2011). Judgment [available here](#) in Bulgarian.

<sup>2</sup> Case C-610/15 (2017). Judgment [available here](#) in Bulgarian.

**ACT** - The Association of Commercial Television in Europe represents the interests of leading commercial broadcasters in 37 European countries. The ACT member companies finance, produce, promote and distribute content and services benefiting Europeans across all platforms. At ACT we believe that a healthy and sustainable commercial broadcasting sector has an important role to play in the European economy, society and culture.

**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. It has affiliates in North America and Asia. CEPIC's membership includes large and smaller stock photo libraries, major photo news agencies, art galleries and museums, video companies. CEPIC has among its members the big global players such as Getty, Shutterstock or Reuters. Through this membership, CEPIC represents more than 250.000 authors in direct licensing. The annual CEPIC Congress extends CEPIC's network on all five continents. It is the largest global gathering of the international photo community representing 90% of the market worldwide.

**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. Today the Coordination represents approximately 8000 independent production companies in Europe.

**ECSA** - The European Composer and Songwriter Alliance (ECSA) represents 57 associations of professional composers and songwriters in 26 European countries and Israel. The Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music. [www.composeralliance.org](http://www.composeralliance.org)

**EPC** - The European Publishers Council (EPC) 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 since 1991 on issues that affect freedom of expression, media diversity, democracy and the health and viability of media in the EU. A list of our members can be found on [www.epceurope.eu](http://www.epceurope.eu)

**EUROPA DISTRIBUTION** - Europa Distribution is the European network of independent film distributors. Since its creation, it has reinforced the collaboration process among its members through information, brainstorming and training. The network's aim is to strengthen European ties to improve the curation, promotion and distribution of independent films. With over 120 leading independent distributors in Europe and beyond, it serves as the voice of the sector and acts as a network and a think tank. The list of all members is available on our website: <http://www.europa-distribution.org>

**FEP** – The Federation of European Publishers represents 28 national books and learned journals' publishers associations of the European Union and the European Economic Area, responsible together 22 billion euros in publishers' revenues (for an estimated market of 40 billion euros) and more than half a million new titles each year

**GESAC** – The European Grouping of Societies of Authors and Composers comprises 32 authors' societies from across the European Union, Norway, and Switzerland. As such, we represent over 1 million creators and rights holders in the areas of musical, audio-visual, visual, and literary and dramatic works. More information [www.authorsocieties.eu](http://www.authorsocieties.eu)

**ICMP** - ICMP is the world trade association representing the interests of the music publishing community internationally. The constituent members of ICMP are music publishers' associations from Europe, Middle East, North and South America, Africa and Asia-Pacific. Included are the leading multinational and international companies as well as regional and national music publishers, mainly SMEs, throughout the world. As the voice and point of reference of music publishers, the community of composers and songwriters, and the production music sector, ICMP's mission is to increase copyright protection internationally, encourage a better environment for our business and act as an industry forum for consolidating global positions.

**IFPI** - The International Federation of the Phonographic Industry is the organisation that promotes the interests of the international recording industry worldwide. Its membership comprises some 1,300 major and independent companies in 62 countries. It also has affiliated industry national groups in 57 countries. 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. 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** - the Independent Music Publishers Forum - serves as an international network and meeting place for independent music publishers. Its main objectives are to share experiences and best practices in independent music publishing; exchange information on the legal and regulatory framework and music publishing environment; coordinate actions and support projects relevant to composers, authors and their music publishers; represent the interests of the independent music publishing community; and stimulate a favourable environment for artistic, cultural, linguistic and commercial diversity. [www.impforum.org](http://www.impforum.org)

**STM** - STM is the leading global trade association for academic and professional publishers. It has 145 members in 21 countries who each year collectively publish nearly 66% of all journal articles and tens of thousands of monographs and reference works. STM members include learned societies, university presses, both subscription and open access publishers, new starts and established players.

**Tf1** - TF1 is a media group whose mission is to inform and entertain. The group operates and develops five freeview channels and several special-interest pay-TV channels as well as their digital offshoots. The TF1 group's businesses today cover the entire audiovisual value chain. France's leading mainstream television group, TF1 is also an integrated media group that has developed activities in high-growth segments for a number of years.

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