



Centre of the Picture Industry



Dear Ambassador,

A proposal for the Directive on Copyright in the Digital Single Market following intensive work by national experts is moving towards final agreement and we would like to take this opportunity to ask you to consider what is at stake for Europe's creators, producers, publishers and consumers in the latest proposals before you.

The very carefully found balance of interests reflected in the original proposal from the European Commission between authors, other rights holders and their licensees, users and consumers is at risk. Furthermore, the integrity of the existing EU copyright acquis which reflects international treaties is also at risk of being weakened from some of the latest proposals.

We are deeply concerned that the latest Council Presidency proposals do not deliver the intended objectives of this Directive, as stated in its Explanatory Memorandum, particularly, to facilitate new uses

in the fields of research and education and clarify the role of online services in the distribution of copyright works and other subject-matter. Our main concerns are:

- The definition of OCSSP in **Article 2.5** is too narrow and legally unjustifiable in that it could exclude active service providers that undertake acts protected by copyright in EU and international law
- **Article 3 - TDM exception for the purposes of scientific research:** the beneficiaries of all exceptions must have lawful access to the copyright protected content. This means *acquired* access with the consent of the authors and other rights holders.
- **Article 3a - Optional TDM exception:** the proposed text is problematic – it has no specified beneficiaries and no identified purpose. It would apply to all content and turn copyright law on its head since copyright holders could only be protected by copyright law if they “expressly reserve” their rights. This would be contrary to Article 5(2) of the Berne Convention.
- **Article 4.2 - Illustration for teaching:** The provision allowing the licensing solutions to prevail over the exception should be made mandatory, to foster innovation in the field of educational use of copyright works.
- The provisions of **Article 6.4.4.** of the 2001/29 Directive must apply to all of the proposed exceptions in order to sustain and promote on-demand business models.
- It must be clarified that **exceptions cannot be combined** with each other. It should be made clear that, consistent with the three-step test and international copyright norms, each exception and limitation to an exclusive right under copyright and related rights is to be interpreted restrictively as to its own beneficiaries, scope and purpose.
- **Articles 7-9 - Out of commerce works:** given the existence of national mechanisms allowing for the digitisation of out-of-commerce works, the licencing solutions for the new edition of out-of-commerce works should be accessible to stakeholders other than cultural heritage institutions willing to re-commercialise the works, with the agreement of the authors and other rights holders and in line with the Collective Management Organisation Directive (CMO). Moreover, for reasons of international comity, the Extended Collective Licensing (ECL) mechanism created by this provision should not apply to third country works.
- **Article 11 – Press publishers’ right:** should include all small parts of press publications to grant the press sector the needed legal clarity that would enable it to negotiate on fairer terms with news aggregators and platforms for the digital uses of their content.
- **Article 13.4 and the corresponding recitals** should be deleted, or substantially redrafted, so as not to undermine the entire solution proposed in Article 13.

We respectfully invite you to consider the overall balance of interests when making your final decision and call on you to support a level playing field for all those who invest in culture. We remain at your disposal.