

Brussels, 22 October 2018

Authors' Group comments on the Directive for Copyright in the Digital Single Market

The Authors' Group is Europe's leading Authors' network representing more than 500 000 authors, including writers, literary translators, composers, songwriters, journalists, photographers, film/TV directors and screenwriters in Europe. The Authors' Group consists of the following associations: European Composer and Songwriter Alliance (ECSA), European Federation of Journalists (EFJ), European Writers' Council (EWC), Federation of European Film and TV Directors (FERA) and Federation of Screenwriters in Europe (FSE).

Together with the EU Cultural and Creative Industries at large, the Authors' Group strongly **supports the successful adoption of the Copyright Directive**. [Along with over 130 professional organisations representing authors from the book, music, press and audio-visual sectors¹](#), we believe it represents a once in a decade opportunity to improve the situation of authors, thereby strengthening the European creative community and cultural wealth in the digital era.

The Authors' Group calls for the adoption of a strong chapter 3 (articles -14a to 16a). The effectiveness of its approach stems from the interdependence of each article within this chapter, informally called the *transparency triangle*. It will only provide authors with a useful tool to reshape their bargaining position if none of the three original articles are weakened.

We stand ready to negotiate with our contractual counterparts a balanced and constructive implementation of those provisions.

The Authors' Group aims at striking the best compromise for European authors within the existing reports as adopted by the European Commission, European Parliament and the Council of the European Union. The annexed working paper provides concrete suggestions to this end.

¹ <http://www.filmdirectors.eu/wp-content/uploads/2018/09/EU-Authors-Statement-for-the-Copyright-Directive.10092018.pdf>

THE AUTHORS' GROUP RECOMMENDATIONS ON THE COPYRIGHT DIRECTIVE

Title 4, Chapter 3

	EC text	EP text	Council text	AG recommendation	Remarks
	Fair remuneration in contracts of authors and performers	Fair remuneration in contracts of authors and performers	Fair remuneration in exploitation contracts of authors and performers	Fair remuneration in contracts of authors and performers	
ARTICLE - 14 – PRINCIPLE OF FAIR AND PROPORTIONATE REMUNERATION					
	EC text	EP text	Council text	AG recommendation	Remarks
Art. - 14, para 1		1. Member States shall ensure that authors and performers receive fair and proportionate remuneration for the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory remuneration mechanisms.		1. Member States shall ensure that authors and performers receive fair and proportionate remuneration from the exploitation of their works and other subject matter, including for their online exploitation. This may be achieved in each sector through a combination of agreements, including collective bargaining agreements, and statutory remuneration mechanisms.	This Article establishes a much-needed guiding principle of fair and proportionate remuneration for authors and performers for the future implementation of the Directive. It leaves enough flexibility to Member States to implement it and consider the needs of different sectors.
Art. - 14, para 2		2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.		2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge.	
Art. - 14, para 3		3. Member States shall take account of the specificities of each sector in encouraging the proportionate remuneration for rights granted by authors and performers.		3. Member States shall take account of the specificities of each sector in implementing the proportionate remuneration for rights	

				granted by authors and performers.	
Art. - 14, para 4		4. Contracts shall specify the remuneration applicable to each mode of exploitation.		4. Contracts shall specify the remuneration applicable to each mode of exploitation.	
ARTICLE 14 – TRANSPARENCY OBLIGATION					
	EC text	EP text	Council text	AG recommendation	Remarks
Art 14 § 1	Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, revenues generated and remuneration due.	1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year , and taking into account the specificities of each sector, account the specificities of each sector and the relative importance of each individual contribution , timely adequate and sufficient , accurate, relevant and comprehensive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, direct and indirect revenues generated, and remuneration due.	1. Member States shall ensure that authors and performers receive on a regular basis, not less than once a year , and taking into account the specificities of each sector and the relative importance of each individual contribution , timely, accurate, relevant and comprehensive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights, notably as regards modes of exploitation, direct and indirect revenues generated, and remuneration due.	1. Member States shall ensure that authors and performers receive on a regular basis, at least once a year , and taking into account the specificities of each sector, timely, adequate, comprehensive and sufficient information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights or their successors in title , notably as regards modes of exploitation, direct and indirect revenues generated and remuneration due.	We support timely (“ at least once a year ”), “ accurate ” and “ comprehensive ” information that would cover “ direct and indirect revenues ”, including for “ successors in title ”. The Digital era offers unique tools and opportunities to make information related to the exploitation of creative works available all along the value chain. Yet authors have very often no access to it. This Directive should promote the use of those tools to provide accurate, comprehensive and comprehensible information to authors. There is no technical nor legitimate reason for the online world to

					be less transparent than the offline world. In addition, this Article does not require the disclosure of new information. Contractual partners of authors are obliged due to fiscal and accountancy rules to keep and store information about the exploitation of the works.
Art.14 §1a		1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.	1a. Member States shall ensure that where the rights referred to in paragraph 1 have subsequently been licensed to another party, authors and performers may, at their request, receive from those third parties additional information if their first contractual counterpart does not hold all the information that would be necessary for the purposes of the information provision set out in paragraph 1. Member States may provide that such request to those third parties is made directly by the author or performer or indirectly through the contractual counterpart of the author or the performer.	1a. Member States shall ensure that where the licensee or transferee of rights of authors and performers subsequently licenses those rights to another party, such party shall share all information referred to in paragraph 1 with the licensee or transferee.	We support the obligation for sub licensees to share all the necessary information with the licensee (EP position). Individual creators are not in a position to request such information from third parties directly , as they would not necessarily have been informed of the existence of a license, and would have difficulties in engaging said third parties on their own.
Art. 14, para		2.The main licensee or transferee shall pass all the		Delete	We fully support the first sentence of the EP

<p>1a, sub- para 2</p>		<p>information referred to in the first subparagraph on to the author or performer. That information shall be unchanged, except in the case of commercially sensitive information as defined by Union or national law, which, without prejudice to Articles 15 and 16a, may be subject to a nondisclosure agreement, for the purpose of preserving fair competition. Where the main licensee or transferee does not provide the information as referred to in this subparagraph in a timely manner, the author or performer shall be entitled to request that information directly from the sublicensee. [See Council’s Article 14(1a) (row 269)]</p>		<p>amendment but we strongly oppose the exception for commercial sensitive information and non-disclosure agreements which would only incentivize malpractice by developing non-disclosure agreements along the licensing chain.</p> <p>The end-result would not only bring more opacity to the overall value chain and be detrimental for all creators but also create a distortion of competition. <u>Article 14 does NOT aim at creating horizontal transparency between potential competitors, but at providing vertical transparency along the copyright value chain</u> to create a fair negotiation environment for creators. This does not hinder the confidentiality of business agreements as it only concerns the much-needed sharing of information on</p>
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					exploitation results between rightholders of the same work.
Art 14 § 2	The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate level of transparency.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate a high level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate a high level of transparency.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate level of transparency in every sector. However, in those Member States may provide that in duly justified cases where the administrative burden resulting from the obligation in paragraph 1 would be become disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that is limited to the obligation remains effective and ensures an appropriate level of transparency. information that can reasonably be expected in such cases.	2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure an appropriate a high level of transparency in every sector. However, in those cases where the administrative burden resulting from the obligation would be disproportionate in view of the revenues generated by the exploitation of the work or performance, Member States may adjust the obligation in paragraph 1, provided that the obligation remains effective and ensures an appropriate a high level of transparency.	We support a “high” level of transparency , the EP deletion of paragraph 3 (no carve-out for non-significant contributions, but obligation to take the importance of any contribution into account in paragraph 1), and the reference to collective bargaining agreements .
Art 14 § 3	Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.	deleted	Member States may decide that the obligation in paragraph 1 does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance.	delete	
Art 14 § 3a			3a. Members States may provide that for agreements subject to or based on collective bargaining agreements the transparency rules of the relevant collective		

			bargaining agreement are applicable provided that they meet the minimum criteria laid down in the national provisions adopted in conformity with the requirements of paragraphs 1 to 3.		
Art 14 § 4	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU.	4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU or to collective bargaining agreements, where those obligations or agreements provide for transparency requirements comparable to those referred to in paragraph 2.	4. Paragraph 1 shall not be applicable to agreements concluded by entities subject to the transparency obligations established by defined in Article 3(a) and (b) of Directive 2014/26/EU. or by other entities subject to the national rules implementing Directive 2014/26/EU.		Final wording of this paragraph should ensure that any carve out based on the CRM Directive 2014/26/EU should only concern organisations that are effectively covered by its Chapter 5 “Transparency and reporting” .
ARTICLE 15 – CONTRACT ADJUSTMENT MECHANISM					
	EC text	EP text	Council text	AG recommendation	Remarks
Art 15	Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights when the remuneration originally agreed is disproportionately low compared to the subsequent relevant revenues and benefits derived from the exploitation of the works or performances.	Member States shall ensure, <i>in the absence of collective bargaining agreements providing for a comparable mechanism,</i> that authors and performers <i>or any representative organisation acting on their behalf</i> are entitled to request <i>claim and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights when	1. Member States shall ensure that authors and performers are entitled to request additional, appropriate remuneration from the party with whom they entered into a contract for the exploitation of the rights <i>or their successors in title,</i> when the remuneration originally agreed is <i>turns out to be</i> disproportionately low compared to the subsequent relevant revenues and benefits derived from the <i>actual</i> exploitation of the works or performances.	Member States shall ensure, <i>in the absence of collective bargaining agreements providing for a comparable mechanism,</i> that authors and performers <i>or any representative organisation acting on their behalf</i> are entitled to request <i>claim and fair</i> remuneration from the party with whom they entered into a contract for the exploitation of the rights <i>or their successors in title,</i> when the remuneration originally	AG welcomes the contract adjustment mechanism as it provides a new tool creating more fairness in creators’ sharing in the economic success of their works. We therefore welcome the EP amendment, which clarifies the provision (with the terms “claim”, “fair” remuneration, “direct and indirect” revenues, which corresponds to

		the remuneration originally agreed is disproportionately low compared to the subsequent relevant <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances. <i>[See Council's Article 15(1a) (row277)].</i>		agreed is disproportionately low compared to the subsequent relevant <i>direct or indirect</i> revenues and benefits derived from the exploitation of the works or performances.	the reality of creative works' exploitation).
Art 15 § 1a			<i>1a. Member States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.</i>	<i>1a. Member States may provide that for agreements subject to or based on collective bargaining agreements the rules of the relevant collective bargaining agreement for the adjustment of remuneration are applicable instead of the national provisions implementing the contract adjustment mechanism.</i>	Collective use of the contract adjustment mechanism via collective bargaining agreements or joint remuneration rules would overall set a workable framework for all parties involved, providing legal certainty, practical process and predictability of its implementation consistent with the contractual counterpart business model.
Art 15 § 2			<i>2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.</i>	<i>2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.</i>	
ARTICLE 16					
	DISPUTE RESOLUTION MECHANISM	DISPUTE RESOLUTION MECHANISM	DISPUTE RESOLUTION MECHANISM PROCEDURE		
	EC text	EP text	Council text	AG recommendation	Remarks

Art 16	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers. [See Council's Article 16(2)(row 281)]	1. Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure.	Member States shall provide that disputes concerning the transparency obligation under Article 14 and the contract adjustment mechanism under Article 15 may be submitted to a voluntary, alternative dispute resolution procedure. Member States shall ensure that representative organisations of authors and performers may initiate such procedures at the request of one or more authors and performers.	We support amendments which provide that “ representative organisations of authors and performers may initiate such procedures ” but we believe that “including collective management organisations ” (in Article 16 of the Council’s text) is not warranted nor necessary. CMOs are not necessarily representing only authors and performers but also their contractual counterparts in certain sectors (as in the music sector). Representative organisations should be duly mandated by creators and devoid of any potential conflict of interest.
			2. Member States shall ensure that representative organisations of authors and performers, including collective management organisations, may initiate such disputes on behalf of one or more authors and performers at their request.		
ARTICLE 16a					
Article 16a - Contractual provisions					
	EC text	EP text	Council text	AG recommendation	Remarks
Art 16a	.		Member States shall ensure that any contractual provision which prevents the compliance with the provisions in Articles 14 and 15 of	Member States shall ensure that any contractual provision which prevents the compliance with the	We fully support this provision, which would guarantee that the law supersedes contracts,

			<i>this Directive shall be unenforceable in relation to authors and performers.</i>	<i>provisions in Articles 14 and 15 of this Directive shall be unenforceable in relation to authors and performers.</i>	which are unfair to the overwhelming majority of authors across the EU.
Article 16a Right of revocation					
	EC text	EP text	Council text	AG recommendation	Remarks
16a§1		<i>1. Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>		<i>1. Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject matter on an exclusive basis, the author or performer has a right of revocation where there is an absence of exploitation of the work or other protected subject matter or where there is a continuous lack of regular reporting in accordance with Article 14. Member States may provide for specific provisions taking into account the specificities of different sectors and works and anticipated exploitation period, notably provide for time limits for the right of revocation.</i>	Several EU Member States and certain third countries (such as the US) already grant to authors the possibility to claim back their rights in case their contractual counterparts are not exploiting their works, hence breaching their contracts (“right of revocation” or “rights reversion mechanism”). We fully support this “use it or loose it” principle (as adopted by the EP - new Article 16a) which would encourage publishers and producers to duly exploit the authors’ works, as provided in contracts. Such a provision would not only benefit authors but also encourage fair competition and citizen’s access to our
16a§2		<i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only</i>		<i>2. The right of revocation provided for in paragraph 1 may be exercised only after a reasonable time from the conclusion of the licence or transfer agreement, and only</i>	

		<i>upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.</i>		<i>upon written notification setting an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract instead of revoking the rights. Where a work or other subject-matter contains the contribution of a plurality of authors or performers, the exercise of the individual right of revocation of such authors or performers shall be regulated by national law, laying down the rules on the right of revocation for collective works, taking into account the relative importance of the individual contributions.</i>	<u>common cultural diversity and heritage.</u> Linked to Article 14, it would also serve as an efficient compliance mechanism to ensure the application of the transparency provisions set out in Article 14.
16a§3		<i>3. Paragraphs 1 and 2 shall not apply if the non exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.</i>		<i>3. Paragraphs 1 and 2 shall not apply if the non exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.</i>	

16a§4		<i>4. Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.</i>		<i>4. Contractual or other arrangements derogating from the right of revocation shall be lawful only if concluded by means of an agreement which is based on a collective bargaining agreement.</i>	
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The European Composer and Songwriter Alliance (ECSA) represents over 50,000 professional composers and songwriters in 27 European countries. With 56 member organizations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music.

Web: www.composeralliance.org

EU Transparency Register ID: 71423433087-91



The European Federation of Journalists (EFJ) is the largest organization of journalists in Europe, representing over 320.000 journalists in 61 journalists' organizations across 40 countries. The EFJ fights for social and professional rights of journalists working in all sectors of the media through strong trade unions. It strives to maintain or create environments in which quality, journalistic independence, pluralism, public service values and decent work in the media exist.

Web: www.europeanjournalists.org

EU Transparency Register ID: 27471236588-39



EWC, founded in 1977 in Germany and newly constituted in 2006 in Brussels as an international non-profit organisation, the European Writers' Council is the federation of 45 European national organisations of professional writers and literary translators in all genres in 34 countries, writing altogether in 28 languages. EWC's members represent more than 160,000 authors in the text-sector

Web: www.europeanwriterscouncil.eu

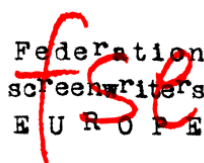
EU Transparency Register ID: 56788289570-24



The Federation of European Film Directors (FERA), founded in 1980, represents film and TV directors at European level, with 43 directors' associations as members from 33 countries. We speak for more than 20,000 European screen directors, representing their cultural, creative and economic interests.

Web: www.filmdirectors.eu

EU Transparency Register ID: 29280842236-21



The Federation of Screenwriters in Europe is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 25 organisations from 19 countries, representing more than 7,000 screenwriters in Europe.

Web: www.scenaristes.org

EU Transparency Register ID: 642670217507-74