



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; photo agencies, cinema operators and a major European telecom operator that also runs a pay TV platform and produces in-house content.

Dear Sir/Madam,

We are writing to you to express our serious concerns regarding the draft law on the implementation of the DSM Copyright Directive (‘the Directive’) which was presented on 23 November 2020 and is currently being coordinated within the German Government and regarding Article 17 (the ‘value gap’ provision) in particular.

The draft proposal in its current form risks jeopardizing the existing balance between copyright and other fundamental rights to the serious detriment of the creative sector in Germany and indeed across the European Union.

There are numerous provisions in the draft proposal which are not compliant with the Directive nor EU and international law. The draft introduces a new limitation to exclusive rights for the benefit of online content sharing service providers. This is not included or foreseen in the Directive. It proposes a mechanism for disabling automatic content recognition of 'presumably permitted uses' by using purely quantitative thresholds (20 seconds, 1,000 characters, 250 kilobytes, 50% of a work) combined with the condition of 'added other content' and with the burden of proof completely shifted to right holders. Such a mechanism would constitute a limitation to the exercise of exclusive rights, would create qualifiers which are unsuitable without specific context. It would not meet the 'three-step test' enshrined in both EU and international law.

Furthermore, it 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 and conflict with the normal exploitation of their works.

A few obvious examples:

- Users seeking to upload illegal copies of films could easily do multiple uploads with only half the film (or one third, a quarter, depending on where you set 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, shifted borders, colour altering...). Because of these commonly used circumvention techniques, full length, 100% illegal copies sometimes only give a 5% technical match. This concern applies also to TV content, sports events and news segments 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).
- 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 even short excerpts of music, without the obligation to either license it or prevent its availability, is a significant exploitation of creators' content and deprives right holders of substantial revenue and amounts to an unjustified limitation of right holders' exclusive rights.

- In the field of photography and graphics, the proposed size limit of 250 kilobytes would cover practically all standard applications on the net without any permission. Online platforms that have developed lucrative business models in the mass sharing of visual works would be the primary economic beneficiaries of such a new limitation.
- As a rule, 1,000 characters can represent half and up to the entirety 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 particularly true for the specialised press, where articles often consist in abstracts or short bits of text with highly valuable information. Furthermore, the foreseen complaint mechanism's one-week term is in conflict with the general lifespan of news and press content. This would mean, with a high degree of certainty, that such content would never be removed in a timely manner.

Such concepts also jeopardise the legal harmonisation and clarity across Europe's Digital Single Market which is so necessary for businesses and which was the original purpose of the legislation.

We therefore urge the German Government to respect what has been agreed and adopted by the EU legislature by implementing the DSM Copyright Directive faithfully by adhering closely to the adopted wording of Article 17.

Yours sincerely,

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.

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.

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 34 film and TV producer organizations from 27 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.

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.