



Brussels, 24 May, 2018

Dear Deputy Permanent Representatives,

RE: Copyright Directive for the DSM: EU creative media businesses' ongoing concerns on text to be presented at COREPER I

The Creative Media Business Alliance writes to you ahead of the COREPER I meeting on Friday, 25 May at which the Council will consider the text of the draft Copyright Directive and a mandate for negotiations with the European Parliament and Commission.

We outlined in [our letter of 26 April](#) our firmly held concerns stemming from the latest text. The current drafting still needs to be improved in order to achieve the primary objectives of the Proposal.¹

The latest Presidency text adds to the concerns of Europe's creative media industries, some of which we have previously iterated. Consequently, we call on you consider the issues listed below as you seek to reach the stated objectives. We must ensure the final Directive complies with international law and safeguards the fundamental right to intellectual property. There are many articles and recitals that are problematic for rightholders (e.g. multiple issues around the proposed exceptions, including their application in the online environment, Article 14 *ff et al*). In the interest of brevity and by way of example we refer below only to the provisions on publishers' rights and the value gap in the Presidency text.

First, the latest Presidency's draft compromise does not provide sufficient protection of publishers' content with regard to the digital use of their press publications. Notably, we are concerned by the reduction of the scope of the Publishers' Right in Article 11 which would not only limit the future potential for licensing of press publishers' content, but actually undermine and threaten existing licensing contracts and current revenue streams.

Second, Article 13(4) and corresponding recitals remain a concern as they create a new exemption from copyright liability for online content sharing service providers who demonstrate "best efforts" to implement "effective and proportionate measures" to prevent the availability of unauthorised content. As work continues, we ask for Article 13(4) and corresponding recitals to either be deleted or substantially redrafted.

The latest text conveys a preferred status to small and micro-sized services as regards the implementation of measures and therefore negatively impacts on copyright. The size of a company is irrelevant to the assessment of copyright enforcement obligations and would introduce a dangerous precedent in copyright law. Using size on this basis creates exceptions in an environment where technology allows for access on vast scales to immaterial content. This would roll back protection of rightholders and weaken the chain of rights.

We trust a solution can be found for these issues in a way which would not negatively impact the norms of international and EU copyright law. We urge improvement of the text so that it achieves a fair and balanced outcome for all stakeholders. We remain at your disposal for any further input.

¹ "Rightholders face difficulties when seeking to license their rights and be remunerated for the online distribution of their works...Against this background, this proposal provides for measures aiming at improving the position of rightholders to negotiate and be remunerated for the exploitation of their content by online services giving access to user-uploaded content." Reasons for and objectives of the proposal - Directive of the European Parliament and of the Council on Copyright on the Digital Single Market, Page 3.



ABOUT THE CREATIVE MEDIA BUSINESS ALLIANCE (CMBA)

We are an alliance comprised of trade associations and individual companies active in the advertising, broadcasting, film, music and publishing sectors. The Creative Media Business Alliance (CMBA) represents a wide range of activities of the different content industries. Business and Trade Association Members are set out below. Creative and media industries are key contributors to our digital society and economies, which are to the benefit of all European citizens. Our sectors have fully embraced the digital transformation and are at the forefront of building Europe's Digital Single Market. We continue to do so every day and we wish keep on in the long-term future.

<https://cmba-alliance.eu/>