

EUROCINEMA

Association de producteurs
de cinéma et de télévision



FIAD



UNIC

Union Internationale des Cinémas
International Union of Cinemas



Joint letter from producers, publishers, distributors, and exhibitors of creative and cultural works on the European Parliament's Report on private copying levies

Brussels, 13 November 2013

The undersigned associations represent producers, publishers, distributors and exhibitors who together contribute to investment in new works in the music, publishing and audiovisual sectors across Europe. Our industries comprise a wide range of companies, made up primarily of SMEs, and are dedicated to cultural diversity and fair remuneration for creators. Our investments enable authors and creative contributors to live from their passion while entertaining and informing hundreds of millions of Europeans every day.

Following the successful agreement on the Collective Rights Management Directive, we encourage pursuing the same approach on private copy levies in order to promote *"a stable ecosystem that encourages investment in the cultural and creative sectors, job creation in Europe and the promotion of innovative business models"*, as highlighted by the European Parliament resolution of 12 September 2013 on promoting the European cultural and creative sectors as sources of economic growth and jobs.¹

We acknowledge the important role of private copying remuneration for authors and creative contributors; however certain proposals in Mrs. Castex's draft report do not take into account the realities of the cultural and creative sectors and the fact that Europeans enjoy access today to over 30 million licensed songs, over 3000 Video-on-Demand Services (VOD), and over 2 million e-book titles.

¹ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0368&language=EN&ring=A7-2013-0248>

1. **Licensing of exclusive rights to exploit copyright works is the primary driver for both the financing and production of creative works in Europe and the development of new digital services.** Such licensing schemes, underpinned by contractual arrangements between service providers and right holders, are crucial for the development of these services, such as Spotify, iTunes, Universcine, Deezer, Netflix, Izneo or Skoobe. The opportunities offered by digital distribution have enabled the licensing of innovative new offers and features to consumers. However, private copying continues to take place, and the remuneration will continue to play a valuable role in the years to come to guarantee that authors and creative contributors are appropriately compensated for legal acts of private copying.
 - **We therefore recommend the adoption of amendments 12, 15, 16, 19, 22, 24, 33, 38, 41, 42, 43, 44, 47, 48, 49, 60, 61, 64, 68, 69, 70, 75, 76, 91, 93, 94, 95, 96, 100, 107, 108, 109, 111, 112, 113, 114, 115, 118, 123, 124, 125, 130, 131, 132, 133, 135, 136, 137, 138, 139, 140, 143, 144, 146, 147, 148, 149, 150, 153, 156, 157, 158, 159, 160, 162, 174, 175, 176, 177 and call for the rejection of amendments 11, 20, 21, 23, 35, 36, 37, 40, 52, 53, 54, 57, 58, 65, 66, 67, 71, 72, 74, 77, 80, 85, 105, 110, 126, 127, 128, 134, 151, 152, 155, 161, 163, 164 and 165.**
2. **The elimination of technological measures (TPMs) as proposed by Mrs. Castex would undermine new business models and investment in creative works.** Increasingly, online services differentiate themselves by the unique features they provide to their customers (listen or view only, download, temporary subscriptions, stream from the cloud, sharing playlists, portability of service on mobile, premium models with ads). These features are enabled by the use of technological measures. Removing such measures would simply eliminate the possibility to provide a variety of business models available to consumers. In addition, the elimination of technological measures would be incompatible with the Copyright Directive and the WIPO Copyright Treaties. Article 6 of the Directive expressly protects the use of technological measures, and Article 5(2)(b) provides that “fair compensation” must take “account of the application or non-application of technological measures”. The Directive also establishes a balanced mechanism for conciliating TPMs and exceptions.
 - **Therefore, we regret Mrs. Castex’s call for the elimination of TPMs and strongly support the deletion of this paragraph.** As a result, we support amendments 133, 135, 136, 137, 138, 139, 140, and call for the rejection of amendments 141 and 142.
3. **The so-called legalisation of file “sharing” is an outdated and economically unviable concept. It would not only amount to expropriation of authors’ and other rightholders’ rights and discourage the financing of new creative works, but also hamper the development of innovative services. If file-sharing was legalised, innovative services such as Spotify, iTunes, Filmin, Skoobe and other new services would not survive, and file-sharing would not compensate for the huge investments made by our sectors in the creation, production and distribution of creative works.** As a result, we strongly oppose Mrs. Castex’s suggestion that legalising file-sharing would offer consumers “real choice in terms of cultural diversity” (paragraph 27) since such a system would greatly limit the incentive to invest in the creation, production and distribution of new works

and services, resulting in less cultural choice for consumers, not more. Last but not least, the legalisation of file “sharing” is clearly incompatible with the Copyright Directive (Articles 2, 3, 5(2)(b) and 5(5)) and the EU’s international obligations.

- We therefore support amendments 180, 181, 182, 183, 184, 185, 186, 187 and call for the rejection of amendments 188, 189 and 190.

4. Mrs. Castex considers that exclusive rights do not guarantee all rightholders fair and proportional remuneration from the revenues resulting from the use of their works (Paragraph 22). **We remain committed to fair remuneration of creative contributors and we strongly disagree with this oversimplified statement**, which does not recognise the foundations of the existing national industry agreements and practices on remuneration. Moreover, questioning exclusive rights would weaken the rightholders’ position vis-a-vis users, and does not take into account the financial risks taken by our sectors and the need for a return on investment to sustain the continued financing, production and distribution of creative works.

- We therefore support amendments 143 and 144 and call for a rejection of amendment 145.

In line with the comments above, please find in annex an indicative voting list.

List of signatories

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IMPALA - *Independent Music Companies Association, Helen Smith, Executive Chair - hsmith@impalamusic.org*

UNIC - *International Federation of Cinemas, Jan Runge, CEO - jrunge@unic-cinemas.org*

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MPA - *Motion Picture Association, Chris Marcich President and Managing Director MPA EMEA, – Chris_Marcich@mpaa.org - and Marc du Moulin (Marc_Dumoulin@mpaa.org)*

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