



Brussels, 24 October 2018

The fair remuneration of authors and performers must not mean "business as usual".

For a final agreement on Chapter III of the directive on Copyright in the Digital Single Market that is truly meaningful to authors and performers.

The International Federation of Actors (FIA), the International Federation of Musicians (FIM) and UNI – Media, Entertainment & Arts (UNI MEI) are the representative global trade union federations for workers in the media and entertainment sector, including audio and audiovisual performers, authors and co-authors. Together, they speak for tens of thousands of European professionals.

Ahead of the trilogue meeting of 25 October on the draft *EU directive on Copyright in the Digital Single Market*, we call on the EU institutions and member states to work towards a final text on Chapter III on the fair remuneration of authors and performers that is truly meaningful to them and can sensibly improve their livelihood.

Since the publication of the Commission proposal in September 2016, the three federations and our national member organisations have worked with the EU institutions and national governments to strengthen the extremely weak and unacceptable position of authors and performers against overwhelming industry buy-out practices. To this day, most performers and authors only get an upfront, all-inclusive fee, in return for a global and permanent transfer of their licensing rights on all media and for all uses, known or yet to be discovered. This means that most performers and authors do not get a fair share of the benefits that their work generates.

Discussions have very much focused on the “value gap” and art. 13. We would like to draw your attention to the fact that the real value gap for media and entertainment workers is the one between them and their employers or engagers. Art. 13, no matter the language, merely seeks to articulate the relationship between our employers and certain types of platforms. Despite the industry's convenient claims, this article alone will have little or no impact on the precariousness that our members endure on a daily basis.

We take the view that the long and detailed debate in the Committees and in Plenary of the European Parliament has delivered a balanced report, overwhelmingly supported across political groups and countries and adopted by a very large majority.

The industry has fought hard against the compromise amendments on Chapter III, claiming that these provisions would generate administrative burden, legal uncertainty and loss of income. In fact, they are determined to consolidate unfair business practices preventing authors and

performers from having a fair share of the benefits generated by the exploitation of their work, especially in the online environment.

We call on the EU institutions and national governments to stand by cultural workers, to strengthen the position of authors and performers in the trilogue negotiations.

We would like to draw attention to the following key aspects of Chapter III:

1. New article -14: Although this article constitutes only a partial response to the legitimate requests of authors and performers, it represents one important step in the right direction:

- It acknowledges the fact that the remuneration of most authors and performers is currently unfair and encourages Member States to implement an efficient solution to address this problem, by ways of collective agreements, statutory remuneration mechanisms or both;
- It secures the situation of Member States where collective bargaining agreements or statutory remuneration mechanisms are already in place.

It is absolutely essential to safeguard the explicit reference to statutory remuneration mechanisms, which represent the easiest and most efficient response to unfair contracts in most cases.

It seems necessary, in order to make the wording of this article compliant with well-established legal language, to substitute “proportionate” – an unknown concept – with “proportional”, with a view to clarifying beyond doubt that the fairness of contracts and the remuneration therein is to be measured with respect to the direct and indirect revenue generated by the exploitation of the works or performances.

2. Article 14: We support the principle that transparency obligations must be relevant and comprehensive and that they must encompass both direct and indirect revenues. Anything less than this would completely miss the point, deliver poor or misleading information, undermining the aims and purpose of the entire Chapter III.

For this same reason, it is absolutely crucial to ensure that any third party with whom a licensing agreement is signed is equally bound by transparency obligations. The first contractual counterpart must act as a one-stop shop and regularly make such information available to authors and performers. If such information were only to be made available upon request, no author or performer would dare asking for it, let alone have the time to chase up his or her contractual counterparts on a regular basis to that end. Even where representative organisations were authorised to request such information on their behalf, we have strong concerns that they will have to deliver the identity of the concerned author(s) or performer(s), unwillingly jeopardising their future work opportunities.

Article 14.3: The European Parliament has deleted paragraph 3. This is the right thing to do and it should not be brought back in. This paragraph conveys the unbearable principle that some performers and authors may be deprived of any information, based on a questionable assessment of their contribution to the work or performance. Transparency obligations must benefit all authors and performers and, were the level of detail to vary on a case-by-case basis, this should strictly be on the basis of objective criteria.

3. Article 15: We support the compromise amendment adopted by the European Parliament. The improvements in this article aim at enabling third party representatives of authors and performers to act on behalf of their members. This is because few performers and authors have enough leverage to individually seek contractual adjustments and may fear blacklisting. That is why the wording “at their specific request” is not protecting authors and performers. On the contrary, it may deter authors and performers to act collectively as they may fear of being identified and labelled during the early stages of a contract adjustment procedure.

To properly assess the proportionality of the remuneration originally agreed with revenues and benefits derived from the exploitation of a work or performance, all forms of exploitation, whether direct or indirect (e.g. advertising) must obviously fall in the equation.

4. Article 16: We support the amendments adopted by the European Parliament. However, further improvement is necessary to ensure a level playing field for authors and performers in a dispute resolution with corporations. Therefore, we call on you to support moving the last sentence of recital 43: "*Details about who initiated the procedure should remain undisclosed*" into the text of Article 16. Alternatively, the words "at the specific request of" could be replaced by "as mandated by". The language should further be improved to make clear that trade unions will not so much "initiate these disputes" but may rather avail themselves of dispute resolutions mechanisms on behalf of their members.

Alternative dispute settlement mechanisms should not be left to the goodwill of the strongest party - i.e. the employers - but rather be made a compulsory first step to finding possible solutions to contractual disputes. Employers should engage in good faith in these procedures. Enabling representative organisations, such as trade unions, to represent the interests of the weakest party and to protect them from blacklisting is absolutely key, as most performers and authors are unlikely to take individual action.

We call on the trilogue negotiation team, EU Institutions and member states to achieve a meaningful balance in any compromise on Articles -14, 14, 15 and 16 and urge you to work towards language that would give authors and performers a real chance to obtain fair remuneration for the use of their works, including in the online environment.