

Draft compromise amendments on Chapter 3 Fair remuneration in contracts of authors and performers

ARTICLES

Article -14 (new) - not to be further discussed at this stage -

Draft compromise amendment replacing all relevant amendments, including: AM 925 (Chrysogonos, Mastalka, Kuneva), AM 926 (Niebler, Ehler, Voss), AM 927 (Adinolfi et. al), AM 928 (Regner, Weidenholzer), AM 929 (Honeyball et. al), AM 930 (Guteland)

Article -14

Member States shall ensure that contracts with authors and performers provide for fair, proportionate and appropriate remuneration of the revenues derived from the exploitation of their works.

Contracts shall specify the remuneration attached to each mode of exploitation.

Article 14

Draft compromise amendment replacing all relevant amendments, including: AM 877 (Maullu), 878 (Chrysogonos), 879 (Reda), 880 (Rohde), 881 (Voss), 882 (Honeyball et. al), 883 (Roziere et. al), 884 (Guoga), 885 (Niebler et. al), 886 (Guteland), 887 (Mastalka, Kuneva), 888 (Zwiefka, Brunon Wenta), 889 (Comodini Cachia), 890 (Adinolfi et. al), AM 891 (Svoboda), AM 892 (Regner, Weidenholzer), AM 893 (Feringer de Oedenberg et. al), AM 899 (Reda), AM 900 (Adinolfi et. al), AM 901 (Geringer de Oedenberg et. al), AM 902 (Honeyball et. al), AM 903 (Chrysogonos et. al), AM 904 (Svoboda), AM 905 (Radev), AM 906 (Guoga), AM 907 ((Niebler, Ehler, Voss), AM 909 (Geringer de Oedenberg et. al), AM 910 (Adinolfi et. al), AM 911 (Reda), AM 912 (Svoboda), AM 913 (Mastalka, Kuneva), AM 914 (Rohde), AM 915 (Guoga), AM 916 (Voss), AM 917 (Chrysogonos et. al), AM 918 (Honeyball et. al), AM 919 (Buda), AM 920 (Reda), AM 921 (Karim, Dzhambazki)

Article 14

Transparency obligation

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, 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.a. ***Member States shall ensure that where the licensee of rights of authors and performers subsequently licenses those rights to another party, such party shall***

share relevant and comprehensive information with the rightholder upon its request.

2. The obligation in paragraph 1 shall be proportionate and effective and shall ensure 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 a high level of transparency.
3. Member States may decide that the obligation in paragraph 1 applies only at the explicit request of an author or performer when his contribution is not significant having regard to the overall work or performance.
4. Paragraph 1 shall not be applicable to entities subject to the transparency obligations established by Directive 2014/26/EU, *where those agreements provide for comparable requirement resulting in a level of transparency that is equivalent to that referred to in paragraph 2*

Article 15

Draft compromise amendment replacing all relevant amendments, including: AM 924 (Chrysogonos et. al), AM 925 (Chrysogonos et. al), AM 926 (Niebler, Ehler, Voss), AM 931 (de Grandes Pascual), AM 932 (Buda), AM 933 (Cavada et. al), AM 934 (Guoga), AM 935 (Chrysogonos et. al), AM 936 (Radev), AM 937 (Rohde), AM 938 (Karim), AM 939 (Roziere et. al) AM 940 (Honeyball), AM 941 (Adinolfi et. al), AM 942 (Guteland), 943 (Niebler, Ehler, Voss), AM 944 (Zwiefka, Brunon Wenta), AM 945 (Cofferati), AM 946 (Maullu), AM 947 (Regner, Weidenholzer)

Article 15

Contract adjustment mechanism

Member States shall ensure that authors and performers *or any representative* acting on their behalf and at their request are entitled to claim additional and 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, *as a result of a change of circumstances that occurred during the exploitation of the contract.*

Article 16

Draft compromise amendment replacing all relevant amendments, including: AM 962 (Mastalka et. al), AM 963 (Adinolfi et. al), AM 964 (Honeyball et. al), AM 965 (Dzhambazki), AM 967 (Chrysogonos et. al), AM 968 (Regner, Weidenholzer), AM 969 (Honeyball et. al), AM 970 (Guoga)

Article 16
Dispute resolution mechanism

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, including collective management organisations and Trade Unions, may initiate such procedures at the request and on behalf of one or more authors and performers.***

RECITALS

(39a) The fair proportionate and equitable remuneration of authors and performers should be set as a general principle. This principle should not lead to the creation of an additional right, but be implemented through a transparency obligation, a contract adjustment mechanism and, a dispute resolution mechanism and a right of revocation. This would contribute to a protection of their work in accordance to the fundamental principle of EU-Law.

(40) Certain rightholders such as authors and performers need information to assess the economic value of their rights which are harmonised under Union law. This is especially the case where such rightholders grant a licence or a transfer of rights in return for remuneration. As authors and performers tend to be in a weaker contractual position when they grant licences or transfer their rights, they need information to assess the continued economic value of their rights, compared to the remuneration received for their licence or transfer, but they often face a lack of transparency. Therefore, the sharing of comprehensive and relevant information by their contractual counterparts or their successors in title is important for the transparency and balance in the system that governs the remuneration of authors and performers. The information that authors and performers should be entitled to expect should cover the modes of exploitation, direct and indirect revenue generated, including revenues from merchandising, and the remuneration due. The transparency obligation should nevertheless apply only where copyright relevant rights are concerned. When authors and performers' contribution is not significant having regard to the overall work or performance, this information may be given only if authors or performers explicitly request it.

(41) When implementing transparency obligations, the specificities of different content sectors and of the rights of the authors and performers in each sector should be considered. Member States should consult all relevant stakeholders as that should help determine sector-specific requirements. Collective bargaining should be considered as an option to reach an agreement between the relevant stakeholders regarding transparency. To enable the adaptation of current reporting practices to the transparency obligations, a transitional period should be provided for. The transparency obligations do not need to apply to agreements concluded with collective management organisations as those are already subject to transparency obligations under Directive 2014/26/EU.

(42) Certain contracts for the exploitation of rights harmonised at Union level are of long duration, offering few possibilities for authors and performers to renegotiate them with their contractual counterparts or their successors in title. Therefore, without prejudice to the law applicable to contracts in Member States, there should be a remuneration adjustment mechanism for cases where the remuneration originally agreed under a licence or a transfer of rights is disproportionately low compared to the *unanticipated* relevant revenues and the benefits derived from the exploitation of the work or the fixation of the performance, including in light of the transparency ensured by this Directive. The assessment of the situation should take account of the specific circumstances of each case as well as of the specificities and practices of the different content sectors *and include the nature, significance and contribution to the work of the author or performer*. Where the parties do not agree on the adjustment of the remuneration, the author or performer *or any representative appointed by them* should be entitled to bring a claim before a court or other competent authority.

(43) Authors and performers are often reluctant to enforce their rights against their contractual partners before a court or tribunal. Member States should therefore provide for an alternative dispute resolution procedure that addresses claims related to obligations of transparency and the contract adjustment mechanism. ***Representative organisations of authors and performers, including collective management organisations, should be able to initiate such procedures on behalf of authors and performers.***