

## ANNEX I

3. Email from the International Federation of the Phonographic Industry (IFPI), 29/07/2016, (Ref.Ares(2017)2268979)

8. Email from the European Grouping of Societies of Authors and Composers (GESAC), 05/09/2016, (Ref. Ares(2017)2269315)

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10. Email from the European Grouping of Societies of Authors and Composers (GESAC), 14/09/2016, (Ref. Ares(2017)2269504)

(CNECT)

**From:** Olivia Regnier <Olivia.Regnier@ifpi.org>  
**Sent:** 29 July 2016 17:30  
**To:** [REDACTED] (TRADE)  
**Cc:** [REDACTED] (CNECT); [REDACTED] (CNECT); [REDACTED] (CNECT);  
 Frances Moore; [REDACTED]; [REDACTED]  
**Subject:** FW: Letter to President Juncker: legal opinion on copyright  
**Attachments:** Letter from right holders to Juncker re Commission's position on copyright 29 July.pdf

Dear [REDACTED],

FYI.

Kind regards,

Olivia

**From:** [REDACTED] On Behalf Of Olivia Regnier  
**Sent:** vendredi 29 juillet 2016 17:26  
**To:** Jean Claude JUNKER ([president.juncker@ec.europa.eu](mailto:president.juncker@ec.europa.eu)) <[president.juncker@ec.europa.eu](mailto:president.juncker@ec.europa.eu)>  
**Cc:** [martin.selmayr@ec.europa.eu](mailto:martin.selmayr@ec.europa.eu); [REDACTED] @cepac.org; [REDACTED] @epceurope.eu>;  
 [REDACTED] @gesac.org>; [REDACTED] @icmp-ciem.org; [REDACTED]  
 [REDACTED] @impalamusic.org>; [REDACTED] @cisac.org  
**Subject:** Letter to President Juncker: legal opinions on copyright

Dear President Juncker,

Please find attached a letter signed by seven organisations representing authors, music publishers and producers, photo agencies and press publishers in Europe, in which we express our joint concerns regarding the positions taken within the Commission in recent years on the interpretation and application of European copyright rules.

The letter by post will follow.

Sincerely,

Sylvie Fodor, Executive Director  
**CEPIC – Centre of the Picture Industry**

Gadi Oron, Director General  
**CISAC – International Confederation of Societies of Authors and Composers**

Angela Mills Wade, Executive Director  
**EPC – European Publishers Council**

Véronique Desbrosses, General Manager  
**GESAC – European Grouping of Societies of Authors and Composers**

Coco Carmona, Director General

**ICMP – International Confederation of Music Publishers**

Olivia Regnier, Director European Office

**IFPI – Representing the Recording Industry Worldwide**

Helen Smith, Executive Chair

**IMPALA – Independent Music Companies Association**

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29<sup>th</sup> July, 2016

Mr. Jean-Claude Juncker  
*President of the European Commission*  
Rue de la Loi 200  
1049 Brussels, Belgium

cc: Mr. Martin Selmayr, *Head of President Juncker's Cabinet*  
Mr. Alexander Italianer, *Secretary-General of the European Commission*

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**Re: European Commission's positions on copyright**

We represent authors from across all artistic fields, as well as music publishers and producers, photo agencies and press publishers in Europe.

We are writing to you to express our joint concerns regarding the positions taken within the Commission in recent years on the interpretation and application of European copyright rules.

In this time, it has been a source of significant concern to observe the Legal Service of the Commission submit statements in copyright cases before the Court of Justice of the European Union (CJEU) which are inconsistent with international and European copyright rules.

In many instances, these even run contrary to the Court's own case law, in particular regarding the notion of the right of 'communication to the public'.

For example, this occurred in the cases *PPI*<sup>1</sup> and *Del Corso*<sup>2</sup> as well as more recently in *GS Media*<sup>3</sup> and *VoB*<sup>4</sup> in which the Commission has conveyed a tendency to argue against copyright protection.

Currently, we understand that, in the context of the Commission's ongoing review of the EU copyright framework, there are views expressed within the Commission that User Upload Content (UUC) services, such as YouTube, are not "communicating to the public" within the meaning of European copyright law when providing content available on their platforms.

We resolutely maintain that this position has no basis or support in European nor international copyright law and practice.

While international copyright treaties and EU copyright law recognise that "*the mere provision of physical facilities*" does not amount to communication, no category of service is exempted at the outset from liability under copyright.

This has been confirmed by commentaries on international treaties and a number of renowned copyright academics. The CJEU case law also confirms as much in cases such as *Reha Training*<sup>5</sup>, *Airfield*<sup>6</sup> and *SBS*<sup>7</sup>.

Furthermore, in light of the Court's case law it is apparent that a UUC service, in storing and enabling access to vast amounts of content, is communicating works and other protected subject matter to the public.

The apparent suggestion within the Commission that UUC services may not be communicating to the public via their websites is tantamount to creating a *de facto* new copyright exception for these services or content aggregators without due legislative process.

Of further concern to each of our sectors is that such a suggestion could determine European copyright policy in a matter of paramount importance to the future of Europe's creative sectors.

Notably, the Commission is presently considering how to address the Value Gap – a problem prompted by the lack of clarity on applicable copyright rules which distorts and undermines the proper functioning of the EU Digital Single Market and deprives rights holders of fair remuneration.

We strongly believe that a clarification of the right of 'communication to the public' is necessary to reestablish a level playing field in the EU market online between UUC services and aggregators, and rights holders. Addressing the Value Gap by clarifying 'communication to the public' and the 'making available' rights in Article 3 of the Copyright Directive, would be compatible with international and European copyright law.

<sup>1</sup> (C 162/10)

<sup>2</sup> (C-135/10)

<sup>3</sup> (C-160/15)

<sup>4</sup> (C-174/15)

<sup>5</sup> (C 117/15)

<sup>6</sup> (C 432/09)

<sup>7</sup> (C-325/14)

We urge the Commission to ensure European copyright policy is based on solid, impartial legal analysis and robust, reliable evidence.

We remain at your disposal should you wish to discuss the matter in more detail.

Yours sincerely,

Sylvie Fodor, Executive Director

**CEPIC – Centre of the Picture Industry**

Gadi Oron, Director General

**CISAC – International Confederation of Societies of Authors and Composers**

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Helen Smith, Executive Chair

**IMPALA – Independent Music Companies Association**

**(CNECT)**

**From:** Secrétariat Général <secretariatgeneral@gesac.org>  
**Sent:** 05 September 2016 17:19  
**Subject:** GESAC press release - VP Ansip receives 20.000 creators' signatures against transfer of value  
**Attachments:** GESAC PR - VP Ansip receives 20.000 creators signatures against transfer of value.pdf

## VP Ansip receives petition signed by 20,000 creators urging Commission to tackle transfer of value

- Renowned French visual artist [Daniel Buren](#) presented a petition to Commission Vice-President Ansip today.
- The petition, signed by some 20,000 creators, calls on the Commission to end the economic and legal loophole that platforms like YouTube have been wrongfully taking advantage of these past years.
- The loophole results in a transfer of value from creators to tech giants, draining Europe of its creative potential.

**Brussels, 05/09/2016** – As the Commission finalises its work on the copyright reform, authors are active throughout Europe and the world to ensure that their biggest concern is addressed. The petition, signed by Pedro **Almodóvar**, Charles **Aznavour**, Imogen **Heap**, Agnieszka **Holland**, **Hooverphonic**, Ennio **Morricone**, Mikis **Theodorakis**, and another 20,000 creators from all creative horizons (composers, authors, directors, screenwriters, photographers, sculptors, painters, etc.) and all over the European Union, is one of many signals to the European institutions that the current state of play is unacceptable.

Irish composer [Bill Whelan](#) comments: *“The nourishing effects of creative activities are essential to our understanding of ourselves and our society. By removing the income sources which previously sustained these, we have, in a startlingly short time, reduced these careers to being essentially “amateur” or part-time (...). The Commission should be forcefully aware of the organic effect that this is having culturally and take swift and radical action to respond to this alarming and culturally damaging situation.”*

Today, Internet giants argue that copyright obligations do not apply to them and hide behind safe harbour exemptions to avoid paying creators and rights holders fairly. The petition argues that “This is an unprecedented opportunity for Europe to lead a movement that rebalances the market so that creators, consumers and smaller businesses alike get the best possible deal.”

### About the meeting

The meeting with Commission VP Ansip was attended by Daniel Buren, visual artist [C215](#), architect [Aymeric Zublena](#), painter [Paul De Gobert](#) and representatives of authors' societies [GESAC](#) and [EVA](#) (European Visual Artists). The Panorama exception was discussed; an exception that the Commission thought unnecessary to address in its legislative proposal. This is a decision that GESAC and EVA applaud.

- Read the text of the petition [here](#).
- Find the list of signatories [here](#).
- Read more about transfer of value [here](#) and [here](#).
- Read more about the Panorama exception [here](#).

GESAC groups 34 of the largest authors' societies in the European Union, Iceland, Norway and Switzerland. We defend and promote the rights of about 1 million creators and rights holders in the areas of music, audiovisual works, visual arts, and literary and dramatic works.

[www.authorsocieties.eu](http://www.authorsocieties.eu) - [@authorsocieties](https://twitter.com/authorsocieties) - [secretariatgeneral@gesac.org](mailto:secretariatgeneral@gesac.org) - +32 2 511 44 54



**GESAC - [authorsocieties.eu](http://authorsocieties.eu)**



[@authorsocieties](https://twitter.com/authorsocieties)

**(CNECT)**

**From:** Secrétariat Général <secretariatgeneral@gesac.org>  
**Sent:** 14 September 2016 13:30  
**Subject:** Press release - Copyright Package: Europe's first step to end tech giant free riding  
**Attachments:** GESAC press release - Copyright Package - Europe's first step to end tech giant free riding.pdf

## **Copyright Package: Europe's first step to end tech giant free riding**

**Brussels, 14/09/2016** – Today, the Commission released its “copyright package”. Despite requiring further steps, this proposal sends the signal to platform services that they too must play by the rules so that further distortion of the Digital Single Market for creative content can be stopped.

### **Transfer of value**

Platform services are currently making large profits thanks to the cultural and creative works that they provide access to. Little or none of these profits find their way to the creators of the works. This transfer of value seriously harms creators, puts European cultural creativity and diversity at risk, and creates a competitive disadvantage for legitimate businesses.

Christophe Depreter, President of GESAC said that “creators’ freedom of expression can only exist if there is a freedom to create and to be remunerated fairly. It is therefore crucial to have clear rules on legally making creative works available on platforms, in order to allow consumers to freely enjoy works while respecting their integrity and value.”

GESAC General Manager Véronique Desbrosses added: “we look forward to working with the EU institutions to further build on the Commission’s encouraging proposal. I am confident that most of us can agree that we are looking to obtain a more level playing field for platforms and innovators, a flourishing creative sector, and more diversity and accessibility for consumers. This is a message that was echoed this summer by over 22.000 creators from all artistic fields in a letter to the Commission. We trust MEPs and Member States will heed this message and aim for this common goal.”

### **Panorama**

GESAC believes that the Commission’s acknowledgment that the Panorama exception does not require further EU intervention is the best way forward on the matter.

### **Collective management**

GESAC also notes that the copyright package recognises collective management as an efficient and successful solution for wider access to creative content for the general public.

### **About GESAC**

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