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Mr
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Frankfurt, 23 February 2017

The importance of Art. 12 of the proposed copyright Directive (COM (2016) 596 final) / Letter sent by the German Minister of Justice and Consumer Affairs and the Minister of State for Culture and the Media

Dear Mr. Andersson,

Börsenverein des Deutschen Buchhandels represents the German book sector, including publishers and booksellers in Germany. Jointly with our European partner organisations, we are actively engaged in working towards the speedy adoption of the legislation implementing the Marrakesh Treaty benefiting blind, visually impaired and otherwise print disabled persons. Improving access to books for these groups of readers has been an important goal for our members for a long time. Therefore, we are delighted that the proposals implementing the Marrakesh Treaty are expected to be adopted very soon.

In a letter dated January 11th, 2017, the German Minister of Justice and the Minister of State for Culture and the Media have jointly written to you, requesting you to add a certain provision to your report on the Marrakesh proposals. This provision aims to re-establish a firm legal framework for Member States who wish to continue to permit publisher shares in collective management revenues.

The German government's proposal to connect the publisher share in collective management revenues with the Marrakesh process was designed to enable a speedy adoption of a provision whose urgent adoption is essential to the survival of many book publishers in Europe. There was no material link between the Marrakesh proposals on the one hand and the content of Art. 12 of the Copyright in the DSM Directive on the other. In many conversations during the past weeks, we have realised that this lack of substantive relationship between the issues is viewed by many as a barrier to the joint adoption of the provisions.

We note this with great concern and would like to re-iterate our urgent appeal to find a way to ensure speedy adoption of Art. 12. The provision allows Member States to continue to operate systems which include publisher shares in collective management revenues. As explained in the letter by the two German ministers, Art. 12 is designed to remedy the situation which has arisen in the wake of the

CJEU's decision on the HP/Reprobel case (C-572/13). This decision threatens a practice which has proven beneficial over decades (even centuries) in 18 Member States.

The consequences of this decision are disastrous. In Germany, we are already experiencing a situation which could occur in other Member States: The HP/Reprobel ruling of the CJEU effectively forces publishers in this country to return well over 200 million Euros to collective management organisations. These claims are particularly harsh for small publishers. We expect a significant number of failures of publishing companies and the loss of many jobs if the European legal framework is not changed very soon. For your personal information, I attach three letters we have received from members which are typical examples of the circumstances publishers are finding themselves in due to the current legal situation.

The German legislator has recently adopted interim legislation to temporarily address the problem. In addition, the book sector has set up a rescue fund for publishers who are at risk. These measures, however, cannot re-establish the necessary legal certainty. The only way to achieve this is a legislative solution at EU level, which needs to come into force very quickly in order to prevent further failures of businesses. This is why a fast track adoption of Art. 12 would have been life-saving for many publishing companies in Germany. This urgency was reflected in the letter of the German ministers. The dire situation of many German book publishers continues to require urgent redress.

European book publishers must now trust that the adoption of the Copyright in the DSM Directive will not be delayed. In the meantime, tried and tested systems of distribution of collective management revenues in many Member States are at risk of attack.

This situation explains the urgency of our request for your full support of the substance of Art. 12 in future. We are at your disposal for any questions you may have.

Sincerely,