

Courtesy Translation

Mr. Heiko Maas
Federal Minister of Justice
and Consumer Protection

Prof. Monika Grütters
Federal Government Commissioner
for Culture and the Media

MEP Max Andersson
European Parliament
Rue Wiertz
Altiero Spinelli 04E250
1047 Bruxelles
Kingdom of Belgium

Dear Mr. Andersson,

The WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled serves to provide better access to works which are protected by copyright or related rights. It is very important to us that this treaty is implemented as soon as possible in European law. We therefore welcome speedy negotiations on this matter not only in the Council but also in the European Parliament. You are currently deliberating two legislative proposals for such implementation, in particular the proposed Directive of the European Commission of 14 September 2016 (COM(2016) 596 final).

In your report on this proposal we would ask you to include a provision allowing publishers to claim a share of remuneration for the lawfully permitted use of works. This request also corresponds to the intentions of the German Bundestag, and has the following background:

With its judgment of 12 November 2015 in the *Reprobel* case, the Court of Justice of the European Union called into question the practice of granting publishers a share in statutory remuneration claims – e.g. for lawfully permitted private copies – which has been customary practice in many Member States for decades. Until now, authors and publishers in Germany, for example, have entered contractual agreements in order to share this remuneration. These arrangements are an expression of the fact that, while authors are responsible for creating the published works, publishers provide the basis for lawfully permitted use in the first place, such as is the case with private copies. It thus seems fair that both sides – author

and publisher – should benefit from remuneration for such use, and that joint collecting societies should collect and distribute the proceeds.

The tried and tested system of cooperation between authors and publishers in joint collecting societies is no longer provided for following the aforementioned decision of the ECJ. The European Commission proceeds on the assumption that publishers are granted a share of remuneration in at least 18 Member States (SWD(2016) 301 final, part 1/3, p. 158).

Lawmakers in Germany have already taken action and done all they can on the national level. For a definitive solution, however, corrective measures are required as soon as possible at EU level. With Article 12 of the proposed Directive on copyright in the Digital Single Market (COM(2016) 593 final) of 14 September 2016, the European Commission has put a provision on the table which would allow publishers to claim a share of the statutory remuneration granted to authors, and which is essentially well suited to this purpose.

In the ongoing negotiations in Council, Germany's active position has been that this provision should enter into force at the earliest possible stage. However, the draft Directive on copyright in the Digital Single Market (COM(2016) 593 final) also contains far-reaching proposals that will have a considerable impact on the work of creative authors in a digitalised and interconnected world, and thus, at the same time, for the online industry. While we do not wish to draw any conclusions prior to careful deliberations on these proposals, long and intensive negotiations can be expected.

In order to ensure that the aforementioned provision allowing publishers a share in remuneration can nevertheless enter into force as soon as possible, it would therefore be preferable to adopt it as part of the Directive implementing the Marrakesh Treaty. This would speed things up considerably. Since the proposal merely provides an option for Member States that already allow publishers a share in remuneration claims and wish to maintain this system in future, no political disagreements are expected. The majority of Member States would benefit from a speedy solution; other Member States would not be affected.

We would therefore be very pleased if you could turn your attention to this matter as part of your work in the Committee on Legal Affairs of the European Parliament, and include the same provision as currently foreseen in Article 12 of the Directive on copyright in the Digital Single Market in the Legal Affairs Committee's report on the Marrakesh Directive.

We have also taken this opportunity to send a copy of this letter to German MEPs Axel Voss and Dietmar Köster.

Yours sincerely,

(*sgd.*) Heiko Maas

(*sgd.*) Monika Grütters