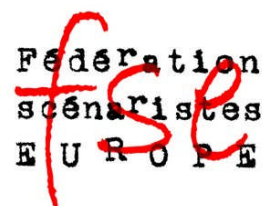


**OPEN LETTER OF THE EUROPEAN CREATIVE COMMUNITY
TO THE EUROPEAN PARLIAMENT
ON THE TELECOMMUNICATION PACKAGE REVIEW**



Brussels, 29 August 2008

Dear Members of the European Parliament,

The vote on the Telecommunication Package Review in the leading committees (ITRE and IMCO) on July 7th brought some positive amendments to the revision of the 2002 directives. Nevertheless, it remains unsatisfactory regarding several elements which are of the utmost importance for the European creative community whose works highly contribute to the development of the electronic communications and services. These elements need to be addressed at the September plenary session.

We represent authors and independent producers who deserve greater benefits from the Internet, particularly for the distribution of their works as well as the development of new business models for European works. The most important tool at the disposal of the creative community is intellectual property rights to safeguard their works. These rights have been threatened on the web because lots of web users have lost respect for them and consider that illegal downloading does not harm the creative community. This is false. Illegal downloading harms the European creative community and prevents the development of business models for legal online offers.

In this context, the creative community calls on all stakeholders, including telecommunication operators, to work together to find the best ways to deter massive online piracy and to develop legal alternatives for consumers. Dialogue and co-operation is only possible if the Telecom Package creates the appropriate conditions which will foster awareness on this issue.

Therefore, we would like to inform you by this letter of the amendments considered as essential by the European creative community and we invite you to support them in the perspective of the September Plenary vote.

1. INFORMATION ON THE RESPECT FOR COPYRIGHT

Compromise amendments, proposed by the draft person, MEP Malcolm Harbour were adopted in IMCO committee in order to supersede article 20.6 proposed by the Commission in the Universal Service Directive. In spite of our strong support to article 20.6, we have been convinced that the compromise amendments proposed by MEP Malcolm Harbour and adopted in IMCO on July 7th are the only ones acceptable by all interested parties (amendments 62 and 67). Furthermore, it reinforces subscribers' information about their rights and obligations in article 21.4a (amendment 76).

Indeed, it is indispensable to inform subscribers in their contract on the use of electronic communications networks and services to help them prevent that they carry out unlawful activities; it is equally important to distribute public interest information on prejudicial activities for the rights and freedoms of others, including copyright.

This general information is not directed in particular at copyright infringers, but will be sent to all subscribers. Therefore, these provisions cannot be compared in any way to the "French graduated response" which has been proposed by the French government in a draft law on June 18, 2008. We would like to add in this context that it is not the purpose of the European creative community to incorporate the "French graduated response" in the Telecommunication package.

In addition, we call on you to reject amendment 120 of the ITRE committee report which deletes point 19 of the Annex I of the Authorisation directive introduced by the Commission. This provision incorporates the respect of implementation laws of intellectual property directives as a possible condition for an authorisation to be given to a telecom operator and should be maintained.

2. THE COOPERATION FOR THE PROTECTION AND PROMOTION OF LAWFUL CONTENT

Despite its adoption in four out of five opinion committees (IMCO 26, JURI 14, CULT 20 and LIBE 28), the so-called “cooperation amendment” was not adopted by the ITRE committee on July, 7th with just one vote of majority (amendment 308).

The European creative community considers that this amendment would be a great opportunity for all interested parties in the electronic communications sector to create a constructive dialogue in order to contribute to the development of creative content online.

It seems that some MEPs believe that this amendment aims to introduce in European law the French graduated response mechanism. The European creative community would like to stress that the “cooperation amendment” only aims at creating a dialogue in each Member State between the sectors concerned by entrusting the National Regulatory Authorities with the mission of ensuring it. This amendment will not, in any case, set up any obligation concerning the form and the results of this dialogue.

Amendment 61 adopted by the ITRE Committee, which refers to article 33 of the Universal Service Directive is not enough in this context. Cooperation will only take place if it is clearly part of the mission of the National Regulatory Authorities to ensure it. A simple reference to article 33 of the Universal Service Directive related to the consultation of interested parties on consumers’ information does not create any competence of the National Regulatory Authorities to ensure cooperation.

In addition, article 33 of the Universal Service Directive modified by amendment 112 of the IMCO report, only refers to cooperation for the promotion of lawful content; the term “protection” has been deleted. We consider that both aspects “promotion” and “protection” are inseparable. Protection of lawful content is necessary to ensure its promotion. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions refers to both terms as you cannot promote something that you do not respect and protect.

Therefore, the European creative community urges you to support a cooperation amendment which should be tabled again in the plenary, in line with the one tabled by Mrs Vlasto, Mr Belet and Mrs Hieronymi in the ITRE committee (amendment 308) and adopted in four opinion committees (IMCO 26, JURI 14, CULT 20 and LIBE 28).

3. THE APPROPRIATE BALANCE BETWEEN THE RESPECT OF PRIVACY AND THE PROTECTION OF COPYRIGHT

We deeply regret that the opinions of the different committees on the privacy issue were taken into account neither by the Civil Liberties nor by the Internal Market committees. Indeed, two of them aimed at integrating into the “privacy directive” the lessons taken from the European Court of Justice in its decision in the *Promusicae v. Telefonica* case.

The first one, which has been tabled and adopted by the Civil Liberties committee, incorporates a new amendment 30 b in the privacy directive (amendment 35 of the IMCO

report) which states that *When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States shall not only interpret their national law in a manner consistent with that Directive but also make sure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.* This amendment should be confirmed in the plenary.

The second one, adopted in two opinions' committees (JURI 32 and CULT 15) but not in the LIBE committee, should be tabled again for the plenary. It would contribute to clarify the reference to the 1995 framework privacy directive in article 15.1 of the 2002 privacy directive. It would therefore establish a better balance between the respect for intellectual property rights and privacy protection, by providing the possibility for an exception to the confidentiality of private data in order to protect the rights and freedom of others.

This amendment is essential to clarify the relationship between the two fundamental rights. It is also appropriate and balanced since article 15.1 on one hand already provides that the exception will be strictly limited to necessary, appropriate and proportionate measures and on the other hand, only gives Member States the possibility to introduce such an exception into their legislation.

The European creative community represented by our organisations calls on your support for those amendments at the plenary vote in September. The development of the European electronic communication networks and services cannot be done at the expenses of the European artists and creativity.

Yours sincerely,

Signatories:

CEPI – European Coordination of Independent Producers

www.cepi.tv

ECSA – European Composer and Songwriter Alliance

www.composeralliance.org

EPC - European Producers Club

www.europeanproducersclub.org

EUROCINEMA - Association de Producteurs de Cinéma et de Télévision

www.eurocinema.eu

EVA – European Visual Artists

www.eartists.org

EWC-FAEE - European Writers' Council

www.european-writers-congress.org

FERA – Federation of European Film Directors

www.ferainfo.org

FSE – Federation of Screenwriters in Europe

www.scenaristes.org

IMPALA – Independent Music Companies Association

www.impalosite.org

UNI-MEI – Global Union in Media, Entertainment and Arts

www.union-network.org/mei

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