

Remuneration of authors and performers

Exploratory texts following the Trilogue of 25 October

Article -14 – Principle of remuneration

1. Member States shall ensure that when authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject-matter they receive appropriate [and proportionate*] remuneration.
2. Paragraph 1 shall not prevent an author or a performer from granting a non-exclusive licence or usage right for the benefit of all users free of charge.
3. Member States shall ensure that contracts concluded with authors and performers for the exploitation of their works or other subject-matter explicitly specify the modes of exploitation as well as the remuneration attached to each mode of exploitation.

** The term "proportionate" could be kept but provided that a common understanding about its meaning is reached. This could be reflected in a recital, building on the case law of the court of justice. Suggestion for Recital 39d, row 90: **"In order to be appropriate [and proportionate], the remuneration should be reasonable in relation to the actual or potential economic value of the licensed or transferred rights."** This explanation of the term "proportionate" is in line with the case-law of the Court of Justice (Premier League, C-403/08) and clarifies that lump-sums should not be prohibited.*

Article 16a – Mechanism for the revocation of rights

1. Member States shall ensure that where an author or a performer has licensed or transferred her or his rights concerning a work or other protected subject-matter on an exclusive basis, the author or performer may revoke the licence or the transfer of rights where there is a lack of exploitation of the work or other protected subject-matter **or where there is a continuous lack of regular reporting in accordance with Article 14**. Member States may provide for specific provisions in relation to the revocation mechanism taking into account the specificities of different sectors.

2. The revocation mechanism provided for in paragraph 1 may be exercised only after a reasonable time after the conclusion of the licence or transfer agreement. The author or performer shall notify the person to whom the rights have been licensed or transferred and set an appropriate deadline by which the exploitation of the licensed or transferred rights is to take place. After the expiration of that deadline, the author or performer may choose to terminate the exclusivity of the contract **or revoke** the license or the transfer.

3. When implementing the mechanism referred to in paragraph 1, Member States shall, in cases where a work or other subject-matter contains the contribution of more than one author or performer, take into account for the exercise of the revocation mechanism by an individual author or performer, the relative importance of the individual contributions and the legitimate interests of all affected authors and performers.

3a. Paragraphs 1 and 2 shall not apply if the non-exercise of the rights is predominantly due to circumstances which the author or the performer can be reasonably expected to remedy.