



International and European authors, performers and rightholder organisations warn that proposed amendment to Czechia's Copyright Law is incompliant with EU and international law

3 October 2022

Dear Minister of Culture Baxa,
Dear Members of the Czech Chamber of Deputies,

We write to you as representatives of the Czech and international music sectors - including authors and composers, performers, music producers, publishers and collective management organisations - to convey our serious concerns over the Amendment proposed by Deputy Jakub Michálek on the Government's bill amending Act No. 121/2000 on Copyright and Rights Related to Copyright (the 'Copyright Law'), Parliamentary Document No. 31 (the 'Amendment').

The Amendment is not required by and does not contribute to the transposition of the EU DSM Copyright Directive. It is nebulous in scope and would contravene the EU copyright legislative framework and international treaties in substance. If enacted, it would disrupt longstanding licensing practices and undermine a significant source of revenues for rightholders.

The Amendment suggests removing the obligation to obtain a license for the communication to the public of copyright protected works and sound recordings included in radio or TV broadcasts, where the music is made available "*accidentally...*" and "*...to a narrow circle of persons*" when "*not of a profit-making nature*"¹.

By doing so, the Amendment would contravene EU law and be inconsistent with the interpretation of "communication to the public" established by the Court of Justice of the European Union (CJEU). It would be inconsistent with the principles of European law for Czech legislators to foresee a specific definition for the concept in Czech law.

Legally, the Amendment would introduce a new exception to music rightholders' right of communication to the public, which is not permitted by the exhaustive list provided by the EU 'InfoSoc' Directive.² Moreover, the Amendment would breach several international treaties and conventions to which the Czech Republic is a contracting party, including provisions granting rights under the Berne Convention³, TRIPs Agreement⁴, the WIPO Copyright Treaty⁵ and the WIPO Performances and Phonograms Treaty⁶. If adopted, the provision would fail to comply with the international standard three-step test⁷ for assessing compliance of provisions on exceptions and limitations and would expose Czechia to the risk of new legal conflicts between users and rightholders.

Practically, the Amendment would significantly and unreasonably limit the scope of rightholders' exclusive rights, without any justification or legal basis. This would result in substantial losses of revenues due to the commercial and legal uncertainty and potential misinterpretation by users, as a result of which rightholders would need to pursue their claims via the courts, thereby incurring unnecessary costs for all stakeholders. It would cause harm to all operators in the cultural sector, at the present time of economic crises.

Politically, it would fundamentally deviate from the scope of the very EU legislation it transposes – the EU DSM Copyright Directive⁸. One of the core purposes of this Directive is to boost – not reduce - the licensing of rights and negotiating position of right holders vis-à-vis users.

The Amendment has no comparable equivalent in other national or international legislation and is not supported by any economic analysis or evidence. We urge you to reject the Amendment.

Yours sincerely, the undersigned.

¹ Translated from the original Czech language proposal.

² Article 5(3), [Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society](#).

³ Article 11(1)(ii) [Berne Convention for the Protection of Literary and Artistic Works](#) 1886 (Am. 1979), WIPO.

⁴ Article 14(3), [TRIPs Agreement](#) on Trade-Related Aspects of Intellectual Property Rights, 1994, WTO, Annex 1C.

⁵ Article 8, World Intellectual Property Organisation [WIPO Copyright Treaty](#) (1996).

⁶ Articles 11 and 14, [WIPO Performances and Phonograms Treaty](#).

⁷ Article 9(2), Berne Convention; Article 13, TRIPs Agreement; Article 10 WCT ; Article 16(2) WPPT.

⁸ [Directive \(EU\) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market](#).



AEPO-ARTIS, the Association of European Performer Organisations, is a non-profit making organisation that represents 37 European performers' collective management organisations from 27 different countries, including the Czech organisation INTERGRAM. As an organisation we represent more than 650.000 performers in the music and audiovisual sector.

CISAC, the International Confederation of Societies of Authors and Composers, is the world's leading network of authors' societies.

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 countries. ECSA's core mission is to defend and promote the rights and interests of composers and songwriters with the aim of improving their social and economic conditions, as well as enhancing their artistic freedom. www.composeralliance.org/

The International Federation of Musicians (FIM), founded in 1948, is the only body representing professional musicians and their trade unions globally, with members in about 65 countries covering all regions of the world. FIM is recognised as an NGO by diverse international authorities such as WIPO, UNESCO, the ILO, the European Commission, the European Parliament or the Council of Europe.

GESAC (European Grouping of Societies of Authors and Composers) groups 32 authors' societies from across the European Union, Iceland, Norway, and Switzerland. As such, GESAC defends and promotes the rights of more than 1 million creators and rights holders in the areas of music, audiovisual works, visual arts, and literary and dramatic works. www.authorsocieties.eu

IAO (International Artist Organisation) is the umbrella association for national organisations advocating for the rights and interests of the Featured Artists in the music industry. Our main interests are transparency, the protection of intellectual property and a fair reflection of the value an artist's work generates.

ICMP is the global trade body for the music publishing industry. It represents over 90% of the world's published music used in approximately 100 million musical works. We represent 76 national associations across 6 continents, the major multinational and significant Indie music publishing companies.

IFPI, the International Federation of the Phonographic Industry, is the organisation that promotes the interests of the international recording industry worldwide.

IMPALA, the European association of independent music companies, represents close to 6,000 music SMEs across Europe. Its mission is to grow the independent music sector, return more value to artists, promote cultural diversity and entrepreneurship, improve political access and modernise perceptions of the music sector.