

DIGITAL ACTION PLAN

PROMOTING EUROPE'S
DIGITAL SINGLE MARKET
THROUGH CULTURE



INDEPENDENT MUSIC COMPANIES ASSOCIATION

“This Action Plan presents very practical ways to boost creativity through smaller actors and deliver a dynamic digital single market built on diversity.”

MEP Sabine Verheyen
Coordinator for the EPP group in the Parliament’s CULT Committee
Founding member of the Digital Agenda intergroup
Member of the Creative Industries intergroup

FOREWORD

Creativity is a vital asset for Europe and its citizens. It is an essential driver of jobs and growth, as well as for cultural diversity, social well-being and Europe's soft power internationally. These strengths are key elements for building a strong, inclusive and diverse Digital Single Market.

Cultural and creative sectors already account for 4.2% of EU GDP and 7.1 million EU jobs, most of which are local and cannot be relocated. They are economically resilient in times of crisis, and have a high percentage of youth employment, with 19.1% aged under 30. Copyright-intensive industries also offer a wage premium of 69%.

Imagine what more they could achieve with a new approach in Europe.

Individuals and smaller actors are the drivers of these sectors' success. In music for example, small actors account for 80% of the sector's jobs, 90% of the added value generated, as well as 80% of investment in new creative works. Natural early adopters, they lead the development of the online market, with copyright as a liberator for the artists they work with.

Europe's creativity will never run out. It is essential to build on this local, and not just sustainable, but abundant resource. Creation must be at the heart of Europe's development – for both creators and citizens. Making Europe the intellectual property capital of the world with a healthy distortion-free licensing environment is key to our 2020 strategy.

Europe needs ambition and inspiration - a new industrial policy focusing on the unique strength and diversity of Europe's cultural and creative sectors. This is the key to a successful Digital Single Market through which Europe will be the world's strongest and most inclusive digital player.

By adopting specific measures to implement this Digital Action Plan, Europe will be the first in the world to deliver a truly dynamic, diverse and fiscally fair online environment.

CREATIVITY – EUROPE AS A WORLD LEADER...

"The aim of our Digital Action Plan is to inspire decision makers, ensure Europe's position as a global power, and re-engage Europe with its creators and citizens. Let's set new standards to make Europe the best place in the world for artists and other creators and for culture enthusiasts."

Helen Smith, Executive Chair of IMPALA
January 2015

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REINFORCING

THE RIGHTS

1. REINFORCING THE RIGHTS
THAT DRIVE THE DIGITAL
MARKET AND GROW EUROPE'S
COPYRIGHT CAPITAL

A strong digital market implies reinforcing the creative “content” that drives it. This means strong creators’ rights, including copyright. An enabler and liberator of creativity and economic growth, copyright is a fundamental right. This also provides security for young people who choose to pursue a creative career.

Reinforcing copyright is particularly important for smaller actors as they represent the majority of the sector and are the main risk takers.

Proper remuneration from online intermediaries is vital. We need a healthy licensing environment without market distortions. Abuse of the “safe harbour” exemption and take-down procedures must stop for the Digital Single Market to function properly. Europe must also avoid new exceptions which would cut across revenues unnecessarily.

All private copying schemes should be kept up to date and cover all devices used to make private copies. Private copying compensation must be paid by those who benefit from the exception.

Fundamental principles such as freedom of expression, transparency and freedom for creators to decide what happens to their works, including choosing territorial partners, must be reinforced.

“Independents are proud to take risks with the most innovative artists. The way we work together ensures flexibility and solidarity, allowing us to invest in more artists.”

Jonas Sjöström
CEO of Playground Music Scandinavia
President of IMPALA

“Intellectual property shall be protected.”
Article 17.2 of the EU Charter of Fundamental Rights

RECOMMENDED MEASURES

- Reinforce copyright as a fundamental right, a liberator of the creativity that drives the digital market, and the tool that allows creators and their partners to work.
- Ensure creators and their partners are rewarded for their work all along the value chain, and are able to work out between them what type of cooperation they need to put in place.
- Level the playing field for smaller creators to deliver diversity and choice for Europe's citizens.
- Make Europe the strongest rights base anywhere in the world and the best place to set up and run a creative business by 2020.
- Stop the transfer of creators' rights to trade to those who are behind calls for weaker copyright.
- Refuse calls for more copyright exceptions which cut across licensing, and reaffirm the so-called "3 step test".
- Ensure all private copying schemes are kept up to date, include all relevant devices, and are paid by those who benefit from the exception (not by state funds) with remuneration based on local surveys which assess actual private copying.

99% OF MUSIC BUSINESSES ARE
MICRO, SMALL & MEDIUM SIZED
ACTORS KNOWN AS
"THE INDEPENDENTS"

THEY PRODUCE **80%** OF ALL NEW MUSIC
RELEASED IN
EUROPE

"A healthy licensing environment is fundamental. We look to the EU to take away distortions to the digital single market. It must be clear that 'safe harbour' is no place to hide in Europe if you are running a music service."

Michel Lambot
Co-Founder of [PIAS]
Board member of IMPALA

"... the impact of this no liability regime is tantamount to a limitation of copyright."

Report of the High Council for Literary and Artistic Property on the revision of the Copyright Directive, led by Professor Pierre Sirinelli, January 2015

"Birds have wings, creators have copyright."

Helen Smith, Executive Chair of IMPALA

RECOMMENDED MEASURES

- Establish a healthy licensing environment free from distortions.
- End abuse of the exemption from liability for online host providers by:
 - clarifying that those who build a business around the distribution of "content" are not mere hosts and cannot rely on the exemption;
 - making sure notice and take-down becomes "notice and stay-down".
- Support sector initiatives which promote a just and transparent value chain, such as WIN's Fair Digital Deals Declaration by independent labels.
- Ensure respect for creators' freedom of expression and right to determine what happens to their own works, including working with local partners to reach across borders.
- Promote awareness of how creators work and why moral and economic rights are important.

2/3 OF ALL THE LABELS WHO HAVE SIGNED WIN'S FAIR DIGITAL DEALS DECLARATION ARE EUROPEAN

BEST DIGITAL

INFRASTRUCTURE

2. GIVING CITIZENS THE BEST DIGITAL INFRASTRUCTURE IN THE WORLD

230 THE NUMBER OF LEGAL DIGITAL MUSIC SERVICES AVAILABLE ACROSS EUROPE

The digital segment of the European music sector has grown far faster than the global average, yet our digital infrastructure is not what it should be.

We must make Europe's internet infrastructure the best, fastest and most accessible in the world, with the best micro-payment systems so that Europeans can use the internet's full potential to access culture in all its diversity. Increasing competition between telecom operators would also benefit consumers by bringing prices down.

"Our citizens want the best the internet can offer, they want an internet that is safe and accessible to everybody. This is not a reality in Europe today."

Andrus Ansip
European Commission Vice-President, Digital Single Market
Speech at the European Parliament,
November 2014

"Access and connectivity are core issues for the Digital Single Market strategy announced by President Juncker."

Günther Oettinger
Commissioner for Digital Economy & Society
Speech at the Mobile World Congress, March 2015

RECOMMENDED MEASURES

- Increase broadband speed and regain Europe's former position as the world leader in high-speed mobile broadband.
- Improve online security by increasing the availability of secure online cross-border payment methods as well as better micro-payment systems.
- Promote improved interoperability of platforms and devices.
- Foster true competition between telecom operators to help bring prices down and increase the quality of internet packages offered to consumers.

NEARLY **40%**
OF EUROPEANS DON'T HAVE
ACCESS TO HIGH-SPEED BROADBAND

PLURALISM

AND DIVERSITY

3. IMPROVING PLURALISM AND DIVERSITY ONLINE AS WELL AS OFFLINE

Citizens' appetite for culture and diversity is huge. We need to respond to this through concrete measures to increase pluralism and diversity in traditional and online media, as well as in the supply of creative works.

The EU could broker a charter for stakeholders to promote diversity and mobility, two vital components of Europe's Digital Single Market. Let's measure performance through specific scoreboards.

We should use the power and uniqueness of Europe's culture to reconnect with citizens and start implementing the EU's *New Narrative for Europe*.

"Real choice, cultural diversity, independent media and a fair reward for investment: all of these require different forms of regulatory action."

Tibor Navracsics

Commissioner for Education, Culture, Youth and Sport
Speech at the CULT Committee of the European Parliament,
January 2015

RECOMMENDED MEASURES

- Broker a stakeholder charter with targets to increase diversity in production, distribution, consumption and access, as well as to improve mobility of artists and repertoire online/offline.
- Apply the competition measures referred to in point 5.
- Introduce EU scoreboards to measure performance in terms of diversity and pluralism.
- Consult citizens on practical ways to implement the *New Narrative for Europe*, which acknowledges the importance of cultural diversity, freedom of expression and pluralism for societal development.

RULES OF

ENGAGEMENT

4. REVISITING THE “RULES OF ENGAGEMENT” ONLINE

“Clear rules on what global online powerhouses can and can’t do are a must.”

Helen Smith,
Executive Chair of IMPALA
Contribution to The Digital Post
March 2015

How we engage online covers a range of issues, from respecting people’s data, property and privacy, to fair search, to ensuring “digital humanism”, as well as other vital “general interest” matters such as citizen trust in the online world and security. It also covers issues such as internet governance and generic top-level domain names (such as .music) which must be run by community led initiatives rather than sold off to the highest bidder. Europe must lead these debates.

Further, artists and creative businesses are born equal. Online operators must follow the principles of non-discrimination and “must-carry”. Ensuring choice and innovation will also require regulating and unbundling “essential facilities”, as well as tackling unfair trading practices.

“... in some areas of the digital single market there are vulnerabilities brought about by excessive market concentration and dominant operators.”

European Parliament Resolution on Supporting Consumer Rights
in the Digital Single Market, adopted on 27 October 2014

RECOMMENDED MEASURES

- Make sure competition rules are properly applied in the digital market.
- Establish a non-discrimination principle applying to search and data, as well as to online music services, to ensure they do not discriminate between large and small repertoire owners.
- Set “must-carry” obligations for music services (obligation to obtain a licence for all repertoire authorised by right holders).
- “Unbundle” dominant players, especially those controlling multiple points in the online ecosystem.
- Devise a new rulebook for all online players, including global data monopolies and other “essential facilities”.
- Stop the censorship-style negotiating tactics used by dominant players, such as “threats” to remove content or block access.
- Start a proper debate on achieving “digital humanism” in Europe and determine which “general interest” measures are required for meaningful engagement online.
- Ensure Europe’s citizens have full control over their own data and property, and of course over their privacy.
- Europe should lead the worldwide internet governance debate to deliver a safe and fair online environment.
- Make sure generic top-level domain names are run by community led initiatives and not just sold off to the highest bidder.

MISSING

MIDDLE

5. GROWING EUROPE'S "MISSING MIDDLE" BY IMPROVING CONDITIONS FOR SMALLER ACTORS

SMALLER ACTORS
ACCOUNT FOR **80%** OF JOBS,
80% OF INVESTMENT IN NEW
WORKS, AND **90%** OF ADDED VALUE
GENERATED

Innovation, diversity, investment and jobs would be enhanced by levelling the playing field for smaller players.

We need a new regulatory, competition, social and fiscal environment.

Europe must grow its “missing middle” by creating the best possible conditions for smaller cultural actors who contribute the most in terms of jobs and innovation, and by opposing further concentration in the cultural markets.

1.5% THE GLOBAL MARKET SHARE
OF THE BIGGEST INDEPENDENT

RECOMMENDED MEASURES

- Design a new regulatory environment, together with a new competition approach, as well as a new social and fiscal status for cultural actors.
- Adopt new rules prohibiting unfair trading practices against SMEs.
- Prioritise SMEs in the financial measures recommended in point 7.
- Oppose further concentration in music (the music market has three majors controlling 80% of the wider market, and 90% to 95% of the top 100 airplay and downloads).

OVER 40%
THE GLOBAL MARKET SHARE
OF THE BIGGEST MAJOR

STRUCTURALLY

INFRINGING

6. EFFECTIVELY TACKLING STRUCTURALLY INFRINGING WEBSITES

\$ 227 M

THE ESTIMATED ANNUAL ADVERTISING REVENUE OF STRUCTURALLY INFRINGING WEBSITES

Jobs and revenues would grow significantly if structurally infringing websites were tackled properly. This involves implementing the “follow the money” approach with advertisers, credit card and online payment services, as well as effectively addressing search results.

Internet service providers (ISPs) should take all reasonable measures to comply with court injunctions to stop access to infringing sites. Cross-border application of rulings should be improved.

It is also time to review wider internet governance issues such as the balance between anonymity and liability of intermediaries. Europe must lead the world here, as with the “rules of engagement” in point 4.

“It is clearly no one’s intention to criminalise individual users but to apply a so-called ‘follow the money’ approach which aims at depriving commercial scale infringers of their revenues.”

MEP Pavel Svoboda
Chair of the Parliament’s JURI Committee
Member of the Parliament’s Copyright Working Group
Contribution to the Parliament Magazine, March 2015

RECOMMENDED MEASURES

- Implement the “follow the money” approach to tackle illegal activities making money from creators’ works (advertising, selling behavioural data, subscriptions, etc.).
- Oblige all member states to adopt a national “follow the money” plan.
- Promote pan-European collaboration between right holders, ISPs, payment providers and advertisers.
- Require all search engines to stop listing links to pirate sites in their search results, or at least de-prioritise such links.
- Review the balance between anonymity and liability of intermediaries as part of the wider debate on internet governance.
- Monitor ISPs to ensure they take all reasonable measures (as upheld by the Court of Justice of the EU) to comply with a court injunction to stop access to infringing sites.
- Improve cross-border application of rulings.

INCREASING

INVESTMENT

7. INCREASING INVESTMENT THROUGH A NEW FINANCIAL APPROACH TO CULTURE

Investment in culture would increase if intangible assets were properly valued, including through revised accounting standards. Fiscal and other incentives such as loan guarantee schemes are also required, along with sector initiatives which share revenues and reward investment in new talent.

Allowing a reduced VAT on cultural goods and services online and offline, as well as ending double taxation is also crucial, especially given the new “country of destination” VAT rules on digital products. Those benefitting economically from carrying cultural works must contribute financially to their creation.

€ 13.4 BN

ESTIMATED CULTURAL SECTOR
FUNDING GAP BY 2020

RECOMMENDED MEASURES

- Work on better valuation of copyright and other intangible assets.
- Develop new international accounting standards.
- Ensure all countries have at least one fiscal incentive, such as tax credits.
- Promote sector schemes which reward investment in new talent (e.g. revenue sharing and other models outlined in IMPALA's Action Plan for Finance).
- Make sure the innovative loan guarantee instrument in the Creative Europe programme is implemented in a way which is balanced across all cultural sectors.
- End VAT discrimination between cultural products.
- Apply reduced VAT for all cultural products and services offline and online to end confusion, boost Europe's digital market and improve access to culture across Europe.
- Allocate a fixed percentage of the recently announced € 315 bn EU investment plan to the cultural and creative sectors.
- Examine how those who benefit economically from carrying creative works online should contribute financially to creation.
- Tackle double taxation and withholding tax problems, which create barriers to the mobility of artists and their works.

FISCAL

FAIRNESS

8. INTRODUCING GREATER FISCAL FAIRNESS

€ 1 TRILLION

THE ESTIMATED ANNUAL LOSS
ACROSS THE EU DUE TO TAX FRAUD
AND TAX EVASION

With smaller actors and citizens shouldering the lion's share of tax, it is time for Europe to take a stance and make minimum fair and direct taxation of online operators and multinationals a reality.

If we want citizens to re-engage with Europe, this would go a long way. This is also a pre-requisite to achieving a meaningful Digital Single Market.

ONE INDEPENDENT MUSIC COMPANY
WAS REPORTED IN RECENT YEARS
TO HAVE PAID

ALONE MORE TAX IN THE UK
THAN GOOGLE, APPLE,
FACEBOOK AND
AMAZON COMBINED

"It is clear that we need to take a more systematic approach to the problem of corporate tax avoidance."

Pierre Moscovici

Commissioner for Economic and Financial Affairs, Taxation and Customs

Speech at the European Parliament

Brussels, November 2014

RECOMMENDED MEASURES

- Enforce minimum, fair, unavoidable and direct taxation for online operators and multinationals, irrespective of their structure.
- There should be fines for non compliance.
- Member states who do not respect the new rules should be restricted in their ability to apply austerity measures to citizens and creative structures.
- Prioritise taxation and illegal state aid investigations to stop unfair competition between multinationals and SMEs.
- Build on the G20/OECD 'Base Erosion and Profit Shifting' project to ensure this issue is fully addressed and the fiscal burden evenly shared.

MAPPING AND

MEASURING

9. MAPPING AND MEASURING THE SECTORS AND HOW CREATIVITY WORKS

A better understanding of the functioning of cultural and creative sectors is needed to deliver the best environment anywhere in the world.

Revising statistical measures to make sure they properly identify all relevant cultural sectors is also a fundamental part of mapping Europe's future priorities.

We need to be able to measure each sector separately and ensure relevant statistical codes do their job.

CULTURAL AND CREATIVE
SECTORS ACCOUNT FOR

7.1 M EU JOBS

19.1% OF PEOPLE WORKING IN
THE CULTURAL AND CREATIVE
SECTORS ARE UNDER 30

RECOMMENDED MEASURES

- Revisit statistical measures and introduce new classification codes (e.g. “NACE”) for the statistical analysis of the economic sectors, to enable a more accurate valuation of the sectors’ contribution.
- Make sure music is measurable as a distinct sector (currently it is grouped with other sectors).
- Map out how the cultural sectors work to establish how to boost their output and diversity.

69% THE WAGE PREMIUM OFFERED
BY COPYRIGHT INDUSTRIES

INTERNATIONAL

WORK

10. PLACING CULTURE AND DIVERSITY AT THE HEART OF EUROPE'S INTERNATIONAL WORK

Europe's lead internationally means we must ensure that trade agreements respect copyright, the specificities of culture and its importance for development.

We also need to see concrete implementation in Europe and internationally of the UNESCO Convention principle of fair and equitable access to the means of production, dissemination and distribution of cultural activities, goods and services.

THE 2005

UNESCO

CONVENTION ON
THE PROTECTION AND PROMOTION
OF THE DIVERSITY OF CULTURAL
EXPRESSIONS IS PART OF

EU LAW

€ 15 BILLION

THE TRADE SURPLUS GENERATED BY
COPYRIGHT-INTENSIVE INDUSTRIES

RECOMMENDED MEASURES

- Reinforce the EU's position on culture and audiovisual matters in all trade negotiations.
- Convince territories like the USA and Japan to introduce full performance/broadcast rights for performers and labels.
- Review how to apply the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (which is part of EU law).
- Implement the principle of fair and equitable access to the means of creation, promotion, production and distribution.

“President Jean-Claude Juncker has asked me to promote culture as a catalyst for innovation. I intend to do this by addressing three main goals: promoting cultural diversity, maximising the contribution of the cultural and creative sectors to growth and job creation, and helping them to thrive in the Digital Single Market.”

Tibor Navracsics
Commissioner for Education, Culture, Youth and Sport
*Harnessing the potential of culture as a driver
of growth and innovation – time to step up our efforts*
Speech at the Latvian Presidency’s international
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IN A NUTSHELL

IMPALA's members believe in the power of the online world to promote a new economic, social and cultural strength through diversity. We are passionate about our artists and are at the forefront of the online market for music. We are proud to account for 80% of the sector's jobs and 80% of new music released in Europe, and to have our repertoire available on all legitimate digital music services.

IMPALA's Digital Action Plan is a 10-point strategy to build on this and deliver a truly dynamic Digital Single Market. We believe Europe needs a new industrial policy focusing on the unique strength and diversity of cultural and creative sectors to grow our digital prowess. The 10 points include practical recommendations which can be summarised as follows:

COPYRIGHT

Reinforce creators' rights, including copyright as a fundamental economic and moral right. This implies ensuring respect for freedom of expression, more transparency and the right for creators to decide what happens to their own works. This also means refusing calls for more copyright exceptions which prevent licensing and cut across revenues, and keeping private copying schemes up to date. Promoting awareness of how creators work and why their rights are important is also key (point 1).

SAFE HARBOUR, NOTICE & TAKE DOWN, "FOLLOW THE MONEY"

Stop abuse of the "safe harbour" rules by clarifying that those who distribute or facilitate access to copyright works are not mere "hosts" within the meaning of the "host" exemption (point 1). Make sure "notice and take-down" becomes "notice and stay-down" (point 1). Develop national and EU plans to implement the "follow the money" approach to tackle structurally infringing sites (point 6).

ONLINE INFRASTRUCTURE, OPERATING RULES, TAXATION

Improve access to high-speed internet and digital infrastructure (point 2). Revise the "rules of engagement" online to give citizens and small businesses more rights (point 4). Introduce a level playing field for SMEs (points 1 & 5). Apply competition rules to taxation (point 8). Commit to legislation to stop unfair trading practices (point 5). Make sure operators such as search engines and online music services follow the non-discrimination principle (point 4).

FINANCE, STATISTICS, DIVERSITY

Adopt other measures to improve conditions for smaller players, promote diversity and map the sector, including through: revised accounting standards (point 7); new financial schemes and lower VAT on culture (point 7); new regulatory and competition approach to boost smaller players (point 5); charter and scoreboards to increase diversity and pluralism in traditional and online media (point 3); revised statistical codes (point 9); and promoting culture and diversity in the EU's international work (point 10).

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“The challenge now is to build on Europe’s thriving digital market through a serious industrial policy that boosts smaller players, gets more investment, provides more exposure for all artists, and then of course quantifies the results. This is what our Action Plan is about.”

Michel Lambot
Co-Founder of [PIAS]
Board member of IMPALA
