



# Proposal for the DSM Directive COM/2016/0593

## Article 12 threatens authors' and translators' copyright remunerations

### Proposed Article 12: Claims for Compensation

*"Member States may provide that where an author has transferred or licensed a right to a publisher, such a transfer or a licence constitutes a sufficient legal basis for the publisher to claim a share of the compensation for the uses of the work made under an exception or limitation to the transferred or licensed right."*

See next page for recent amendments to the article.

## Why the article 12 should not be executed?

### Against the basic principles of copyright

The basic principle of copyright is that the author of a work is always a natural person, i.e. a human being. Copyright belongs to the individual author who has the right to decide which rights to grant. Publishers get all the rights they need through the contracts between the author and the publisher. Creating rights to publishers directly through legislation would be contrary to the basic principles of copyright.

### Limiting contractual freedom in an unprecedented way

The weaker contractual position of the authors is widely recognized and accepted. It is also stated in the proposal, and solutions to it proposed in the articles 14–16. However, article 12 would further weaken the position of the

authors in relation to publishers. Limiting contractual freedom by legislative measures to the detriment of the weaker party is completely unheard of and cannot be accepted.

### Causing serious market disturbance

Article 12 was hastily drafted and its impacts on the book market and the relationships between authors and publishers were not sufficiently studied and assessed. The article would create a very unclear situation legally, and disturb the functioning of the copyright market. It would also weaken the publishers' business opportunities as at least part of authors would become self-publishers.

### Burdensome and costly in practice

In addition, the article would create numerous practical difficulties and cause unbearable administrative costs. Before distributing the remunerations, it should be studied for each



individual work who is entitled to the compensation.

### Destroying functional cultural structures

Accepting an amendment that would remove member state discretion in the implementation of the article, would be very harmful. The member states have very different legislative solutions and basis for the distribution of remunerations, which enable fair livelihood for authors and the development of national culture. These structures have developed to support each country's unique cultural field, and especially in small language areas, it would be fatal to destroy them.

#### Recent amendments and proposals:

The recent amendments to the directive proposal and article 12 are very worrisome. The Committee on Culture and Education (CULT) has proposed removing the member states' discretion from the article 12 and adding some amendments that would transfer more rights to the publishers by virtue of EU legislation.

In the EU Presidency proposal, the scope of the publishers' rights has been broadened and an explicit mention of the Public Lending Right remunerations has been added to the article 12 and the recital 36. There are a great variety of compensation schemes and basis for the distribution of e.g. PLR remunerations in the EU member states. If these amendments are accepted and if the member states' discretion is removed, the publishers would very likely get a share of the remunerations that are now paid for the authors only.



### Article 12 on publishers' right to remuneration should be deleted from the directive:

- The article would constitute a serious and unfounded violation of the basic principles of copyright.
- Limiting contractual freedom by legislative measures to the detriment of the weaker party goes against the basic principles of contract law.
- The article would cause market disruption by creating problems in the relationship between authors and publishers. It would also seriously compromise the livelihood of authors.
- The article would also cause practical difficulties and administrative costs, for example in order to find out the correct rightholder in each case.

**If it is not deleted, member state discretion must be secured.**

European authors have made a petition to remove article 12 from the DSM Directive. The petition has been signed by writers' associations from nine different countries. Read more: [sanasto.fi/en/tag/dsm-directive](https://sanasto.fi/en/tag/dsm-directive)

