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German authors' and literary translators' organisations will not join protest against Article 12 (DSM COM/2016/0593)

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The German authors' organisation VS (around 3,900 members) and the literary translators' association VdÜ (some 1,250 members; both including all literary genres) do not join the protest against Article 12 risen by some European writers' organisations.

We strongly support that Article 12 gives way for different national solutions and offers a legal opportunity to publishers to claim a fair share in Reproduction Rights Organisations' (RRO) revenues.

Still, Article 12 should only be valid according to the conditions described in No (36) of the explanatory introduction to the Proposal of the relevant Directive. According to this No (36) the EU Member States shall only be allowed »to determine that ... publishers are entitled to claim a share ...« when »there are« already existing »systems in place to compensate for the harm caused by an exception or limitation (...)«.

Our experiences with the German Collecting Society for authors and literary translators, the VG Wort, our national RRO, jointly founded and managed by authors and publishers, show the great advantages of a common RRO of both authors and publishers, within which a fair share for the publishers is ensured:

- Together, we are a strong stakeholder when it comes to negotiations with internet platforms and other powerful players of the digital world. This is more important than ever (if this RRO VG Wort didn't exist already, we'd have to invent it now and ask the publishers to join forces with us authors).
- This applies also to negotiations with the big producers of copy machines, computers and so on. The fees paid by them are an important part of the RRO's revenues. The stronger we are in these negotiations, the higher these revenues are, for both authors and publishers.
- Our VG Wort is the institution where both sides deal as equal partners and find equitable ways to act in our mutual interest; it often shows how to solve conflicts between both parties. Its democratic structures give equal weight to each group concerned (authors and translators of fiction, non fiction – including journalists –, science, publishers of the different genres).
- One RRO is much more efficient and generates less costs than two or more such organisations acting in one country.



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Nota bene:

In our view, the author's rights remain with the author even after having made a contract of rights cession with a publisher. The latter then does not own any original author's rights, just the right to use/exploit the author's work. Still, the fact that the publisher produces and distributes our work is, as we see it, a sufficient justification for ceding him a share of the revenues collected by a RRO and for regulating this by national law.

Ideally, the publisher's share is determined within the RRO itself by its democratic structures as it is the case in the German VG Wort.

We're convinced that publishers producing and distributing our work are entitled to a share of the mutual RROs' revenues, thus we welcome that Article 12 of DSM COM/2016/0593 («Member States may provide ...») gives the member States of the EU the possibility:

- to legally ensure a fair share of the RROs' revenues is allotted to the publishers,
- to legally ensure joint RROs of authors and publishers (on these two points we are unanimous with the German publishers' and booksellers' association *Börsenverein des Deutschen Buchhandels*),
- to legally ensure specific national structures of RROs,

but this only in States, where this has already been possible, and to the extent it has been possible – that is how we understand No (36) of the explanatory introduction to the Proposal of the relevant Directive.

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