## Keep it simple - independent music companies' message on the proposed Copyright Directive

### The aim is to clarify the copyright situation of platforms & rebalance negotiations (Article 13)

To achieve its purpose, the directive needs to be **future-proof**. The best approach is to keep it **simple** and **avoid over-complication.** The key points to clarify are:

- Online content sharing service providers perform an act of communication to the public and have an obligation to conclude **licensing agreements** with rightholders.
- For agreements to function, appropriate and proportionate **measures** are needed.
- In the absence of agreements, **duty of care** is required to prevent the unauthorised use of works.

There is a lot of talk about the need for mitigation. When it comes to applying measures, it makes sense to have mitigation, but we **must avoid a new safe harbour**. That means saying **no to any attempt to introduce a new exemption from liability regime,** based on whether a service applies measures or whether a rightholder gives notification. It also means refusing to link communication to the public with these concepts. That would weaken the current acquis, in contravention of international copyright law. The good news is that **it is possible to mitigate the circumstances in which measures need to be applied, without interfering with copyright and liability**.

The same would happen if the definition of services covered is too narrow. The scope should include all **services that store and provide access** to copyrighted works as regards whether they communicate to the public. There is **no rationale for carving out** entire services based on their size (e.g. SMEs) or "main purpose". That would again breach international copyright rules.

We must also be careful not to fix the value gap and then re-open it. An **exception for user-generated content**, for example, would **set the market back ten years and harm the relationship between citizens and artists' work**. We have fully embraced the user-generated model – 80% of our revenues on upload platforms come from user-generated content.

### Contract adjustment mechanism and transparency provisions need balance (Articles 14 and 15)

We support reasonable transparency and contract adjustment provisions for featured artists, but the wording of Articles 14 and 15 is very broad. These articles should be for the benefit of those who make a '**significant contribution**' to a work. Without that, the burden on SMEs would be disproportionate. For the same reasons, transparency obligations should apply only to **direct contractual relationships** where there are **ongoing payments**.

These provisions are very important to **independent music companies**: small, micro and medium-sized companies, who account for over **80% of the contracts** signed with artists in Europe today.

### We fully support proper remuneration but oppose calls for a new unwaivable right for performers

We have done a lot of work on remuneration, with the WIN Declaration for example, but a new right would be **counter to investment and diversity**. We should not burden services with an additional set of collecting society negotiations when the rights are already paid for. It would add **complexity** and **double payments for services** who would pass that on to us. If there is an issue with remuneration, it should be addressed where the contractual relationship is, and this is already in Articles 14-16.

### A right of revocation is not appropriate

There has been **no impact assessment** on this. A rights' reversion clause would cut across our rights and the shelf life of the works we've invested in. It would make it much more **difficult to get a return on investment**. That in turn would make it harder to raise the finance needed to take more risks in new works, particularly for smaller actors. Again, this is important as **99% of independent music companies are SMEs** and would be the most exposed, accounting for 80% of all new music releases.