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## **Statement on the negotiations of the EU and the U.S. for the conclusion of an agreement on a Transatlantic Trade and Investment Partnership (TTIP)**

### **ORGANISATIONS INVOLVED IN THE INITIATIVE URHEBERRECHT (COPYRIGHT INITIATIVE)**

Allianz deutscher Designer (AGD)  
Arbeitsgemeinschaft Dokumentarfilm (AG DOK)  
Berufsverband Kinematografie (BVK)  
Bundesverband Bildender Künstlerinnen und Künstler (BBK)  
Bundesverband der Film- und Fernsehregisseure (BVR)  
Bundesverband der Film- und Fernsehschauspieler (BFFS)  
Bundesverband Filmschnitt Editor (BFS)  
Bundesverband freiberuflicher Kulturwissenschaftler (BfK)  
Bundesverband Freie Fotografen und Filmgestalter (BFF)  
Bundesverband professioneller Bildanbieter (BVPA)  
Composers Club (CC)  
Deutsche Journalistinnen- und Journalisten-Union in ver.di (dju)  
Deutsche Orchestervereinigung (DOV)  
Deutscher Designertag (DT)  
Deutscher Gewerkschaftsbund (DGB)  
Deutscher Journalisten-Verband (DJV)  
Deutscher Komponistenverband (DKV)  
Deutscher Künstlerbund  
Deutscher Textdichter-Verband (DTV)

Deutscher Tonkünstlerverband (DTKV)  
Dramatiker Union (DU)  
FREELENS  
: Freischreiber  
Genossenschaft Deutscher Bühnen-Angehöriger (GDBA)  
Illustratoren Organisation (IO)  
PEN-Zentrum Deutschland  
Spiele-Autoren-Zunft (SAZ)  
Syndikat  
Union Deutscher Jazzmusiker (UDJ)  
Verband der Berufsgruppen Szenenbild und Kostümbild (VSK)  
Verband Deutscher Drehbuchautoren (VDD)  
Verband deutscher Schriftsteller (VS) in ver.di  
Verband deutschsprachiger Übersetzer literarischer und  
wissenschaftlicher Werke (VdÜ)  
Vereinigung Deutscher Musik-Bearbeiter  
Vereinigung deutscher Opernhöre und Bühnentänzer (VdO)  
Vereinte Dienstleistungsgewerkschaft (ver.di)  
Wissenschafts-Pressekonferenz (WPK)

The Initiative Urheberrecht (Copyright Initiative) represents the copyright interests of the members of 37 creative artist organizations, associations, and unions and is therefore following the discussion on the TTIP with great interest: We believe that this Agreement will be of great importance in defining the future role of culture and, in particular, in shaping EU/U.S. relations with regard to copyright.

The Initiative Urheberrecht does not categorically reject the conclusion of such an agreement, which is obviously desired by many sectors of the economy, but we do see several significant deficits in the process to date that urgently need to be addressed.

#### **1. Creating transparency**

The Initiative Urheberrecht calls on the contractual parties to immediately establish full transparency: regarding the competencies of the negotiating parties, the subject of negotiation, the impact of the negotiations on culture in the EU Member States, and the situation of creative artists and the cultural economy as a whole.

We would like to point out that all statements concerning the expected increase in jobs and economic growth are based on pure speculation and fail to take into consideration the possible impact of the agreement on the cultural sector.

The Initiative Urheberrecht welcomes the efforts of the Federal Minister for Economic Affairs to increase transparency, but does not feel that the EU is upholding these endeavors.

The Initiative Urheberrecht therefore supports the efforts in the pre-political and political sectors to end the current negotiations and to attempt a "new start" after thorough clarification of the positions of all involved.

#### **2. No agreement without the involvement of parliaments and governments**

Like the Federal Minister for Economic Affairs, the Initiative Urheberrecht is of the opinion that the TTIP is an agreement that must not be concluded without the agreement of the EU Member States and their parliaments ("mixed agreement"), if not a "double-mixed agreement" in which the German Federal Government is also dependent on the consent of the individual Federal States.

However, we have not been able to conclude to date that the entire Federal Government and the Chancellor share this opinion. The negotiating EU Commissioner, Mr. de Gucht, has so far explicitly expressed the view that no further approval from national parliaments or governments is needed.

In the case of a subject of negotiation of such far-reaching importance, this position, whether justifiable by EU law or not, is not acceptable. The agreement will have a significant impact on living conditions in the German Federal States and therefore requires the approval of the parliaments and governments to achieve democratic legitimacy.

### **3. Investment protection**

The TTIP negotiations are predicated on the idea that investors whose interests are violated will have the opportunity to call on arbitration courts. The notion that such private arbitration courts, which meet in secret and make non-verifiable decisions, should take the place of state courts in the U.S. and the Member States of the EU is contrary to our concept of a constitutional state.

We note that the EU has currently suspended negotiations temporarily to carry out a consultation. However, we do not expect much from this consultation, given that the previous tradition in the case of free trade agreements makes it unlikely that the EU Commission will move away from its position that arbitration courts are necessary.

The Initiative Urheberrecht also welcomes the clearly renunciatory position of the Minister for Economic Affairs and hopes that the German Federal Government shares and enforces it.

### **4. Culture**

The Treaty of Lisbon amending the Treaty on European Union guarantees the free and inviolable position of culture not only in Germany but throughout the entire EU. Most EU states are obliged by their constitutions to promote culture. This is also the view of the German Federal Government, which the Federal Minister for Economic Affairs and the Minister of State for Culture and Media reaffirmed on May 5, 2014 and May 20, 2014 respectively.

In the documents related to the TTIP known to us, the topic of culture is not addressed at all and cultural diversity is addressed only in passing – only "audiovisual services" are to be excluded from the negotiations; no definition is provided. We see this as a bad sign because at least sub-sectors of the cultural industry have been a subject of the negotiations concerning many other free trade agreements.

Together with many others, we therefore advocate the inclusion of a clarifying and definite list of "exemption areas" in the Preamble to the Agreement, which clearly establishes the disparity between the importance of culture and its promotion on both sides of the Atlantic and exempts it from the terms of the TTIP as an aspect that cannot be harmonized. This is the only way to prevent a situation whereby the small print of a future TTIP agreement will contain regulations that have a negative impact on the guarantees of freedom assured by the constitution and the national systems of cultural promotion.

## **5. Copyright**

For the Initiative Urheberrecht and for all creative people in Germany, copyright plays a special role as the "labor law of creative people". In this regulatory area also - as Commissioner de Gucht emphasized in his statements regarding the Agreement on May 5, 2014 in Berlin - there are fundamental differences between the U.S. and the EU/Europe, particularly with regard to the legal position of the individual originator.

We consider it crucial that the importance of copyright law for creative people in the contracting states is highlighted in the contract to be negotiated. It is self-evident that the Agreement should not question the standards achieved through international treaties negotiated with the aid of the WIPO and through harmonization within the EU.

Indeed we must fear that the U.S. has an interest in making its different, business-oriented system part of the Agreement.

This fear is reinforced by the fact that efforts are being pursued in important fields of activity of the European Commission, particularly under the heading of "Digital Agenda," that weaken the protection of the individual originator in favor of the interests of the digital economy in order to make the content, i.e. the works and achievements of the authors and performers, more "manageable." Initial drafts of the new White Paper of the Generaldirektion Binnenmarkt (Internal Market Directorate General), which were formulated before the evaluation of an extensive survey project, reinforce this assumption.

The Initiative Urheberrecht therefore welcomes the statements of the Minister of State for Culture and Media and the Federal Minister for Economic Affairs, who have emphasized the great importance of copyright also in connection with the TTIP. Whether these positions will ultimately come to fruition in the negotiation process remains to be seen.

## **6. Re-establishing trust**

In addition to the Initiative Urheberrecht, many other social groups have expressed their requirements with regard to the Agreement and their criticism of the negotiation process. If, after the failed start of the negotiations, the negotiating parties do not succeed in regaining the trust of the citizens and creative people for whom we speak, it will not be possible for this Agreement to be concluded: An increasing number of citizens will oppose its conclusion and ultimately bring about the downfall of the Agreement. Clearly, therefore, the best option would be to restart the negotiations under better conditions.

Berlin, May 21, 2014

Prof. Dr. Gerhard Pfennig

Spokesman for the Initiative Urheberrecht