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INFORMATION NOTE

From: General Secretariat of the Council
To: Council
Subject: Current case-law on joint exercise of rights by publishers and authors
- *Information from the German delegation*

Delegations will find in the Annex information from the German delegation on the abovementioned subject, which has been added to the agenda for the meeting of the Education, Youth, Culture and Sport Council on 30 and 31 May 2016.

Current case-law on joint exercise of rights by publishers and authors

Recent developments: Ruling of 21 April 2016 by Germany's Federal Court of Justice on publishers' share of statutory remuneration rights: Germany's highest competent court has recently ruled that the collective management organisation VG WORT has no right to pay out a flat-rate amount, usually equal to half of the revenue, to publishers. This has called into doubt the existing approach whereby publishers and authors exercise their rights jointly, and has caused great concern among publishers, authors and the collective management organisation. New legislation is needed to ensure that publishers receive their share in future too. In practice, it will be impossible to allot any funds to Germany's publishers from June 2016. This is also a particular - and impending - problem for small and medium-sized publishers. It is compounded by the issue of repayment claims that publishers may face.

A similar course was taken in spring by the Court of Justice, in the judgment it handed down in the *Reprobel* case. Together with Federal Minister Maas, whose ministry has lead responsibility for copyright matters, Minister of State Grütter contacted Günther Oettinger, the competent Commissioner, as long ago as 19 February to work towards a Union-law solution to these problems that would provide legal certainty. However, the Commission has signalled that this would take time and that work would be needed to achieve a political consensus.

After the *Reprobel* judgment, it would be difficult or even impossible to come up with a separate national solution compliant with European law, at least until a European framework is put forward to act as a reference point.

For that reason, Germany wishes to raise awareness of this issue among the other ministers for culture and the media at the forthcoming Council meeting, and to expressly call for a swift European solution in the presence of Commissioner Oettinger, whose responsibilities include copyright.