



Joint Proposal for amendments to the EP draft report on the online distribution of audiovisual works in the European Union

Dear Members of the European Parliament,

As audiovisual authors and performers, we want our works to be enjoyed on all media and fully support every constructive initiative to facilitate their distribution - both offline and online. It is the creative talent of our members that continues to fuel business innovation, employment and exponential growth in the media and ICT sectors - even in these trying times.

Yet, for this virtuous cycle to be sustainable we urge you to take very concrete steps to rebalance the bargaining position between producers/broadcasters on one side, and authors /performers on the other side, so that we can be properly rewarded and continue to create.

Fairness demands that *all* contracts should provide for fair payment for authors and performers for each distinct form of exploitation of their works, including for online exploitation. However, the overwhelming experience is widespread imposition of “buyout” contracts, which, in contradiction with this principle, provide for a single payment covering fees as well as the purchase of authors’ and performers’ rights covering any possible exploitation of our work, present and future.

This unfair practice denies authors and performers the right to benefit from the potential success of our work, and deprives us of personal and independent income to live on during the time it takes to develop new ideas or seek another employment opportunity.

We believe that the best means of guaranteeing decent remuneration for rights holders is through collective bargaining agreements (enforced through standard contracts) between producers, authors and performers, with specific payment provisions for use of our works, including online. In the lack of such agreements, collective management, including extended collective licensing mechanisms, should be provided for to actually guarantee this remuneration.

Our colleagues and partners, the producers, have themselves acknowledged that our demand for fair remuneration is a legitimate one. Many, if not most of you, have also expressed your support for this fundamental principle. But we need you now, as legislators, to make it a reality.

Sincerely yours,

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Joint Proposal for amendments to EP Report on the online distribution of audiovisual works in the European Union (CULT)

RECITALS

B. whereas it is essential to make the European audiovisual sector more competitive by supporting legal online services while also promoting cultural diversity and media pluralism;

C. whereas ~~changes to tools that would implement the current legal framework that would facilitate by aggregating the rights' information on audiovisual works and facilitating the acquisition trading of exploitation rights would encourage the free movement of works in the EU and help to strengthen the European audiovisual industry;~~

Cb. (NEW) whereas ISAN, the ISO standard for the permanent and unique identification of audiovisual works, IDA (International Documentation on Audiovisual Works), the database on audiovisual works developed by audiovisual authors' collective management societies to facilitate documentation and royalties' exchanges, and IPD (International Performer Database) contribute to this objective by improving the exploitation of works and the management of rights in particular in Europe;

Db. (NEW) whereas the Audiovisual Media Services Directive article 13 (1)¹ provides the basis for introducing obligations for on-demand audiovisual media services to fund production and to promote European audiovisual works, as they too should play a crucial role in the promotion and protection of cultural diversity;

E. whereas it is essential to ensure the development of attractive and diverse legal online content services and to make ~~it~~ them easier to use for consumers, particularly as regards payment;

F. whereas consumers are demanding legal access to an ever wider choice of online films regardless of the geographical location of platforms;

¹ Article 13

1. Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

Ga. (NEW) whereas in exploring the development of pan-European licences, due account must be taken of the specificities of the audiovisual sector, including its funding structure and the need to preserve the long-term viability and competitiveness of audiovisual production in the European Union;

H. whereas it is essential to ensure legal certainty with regard to authors' and performers' rights in the European digital area;

J. whereas the introduction of a unified system for identifying and labelling works and right holders would protect right holders, improve their remuneration and ~~restrict unauthorised use;~~ encourage lawful use of their works;

L. whereas there can be no sustainable creation or cultural diversity ~~in the absence of~~ without respect for authors' intellectual property rights that protect and reward creators and promote investment and employment;

N. whereas fairness demands that ~~production~~ all contracts should provide for fair remuneration for authors and performers for all forms of exploitation of their works, including for taking due account of future their online exploitation of their works;

O. whereas it is urgent that the Commission propose a directive on the transparency and good governance the effectiveness of collective management companies needs to be improved by introducing measures aimed at increasing their transparency and good governance in order to improve the trust in, and recourse to, this management tool in the digital age;

RESOLUTION

Legal content and accessibility

1. Stresses the need to make the offer of legal content more attractive and improve the availability of subtitled works;

~~4. Stresses that release windows should be made more flexible for works that are made available exclusively online;~~ COMMENT: If they were made (and funded) exclusively for online use – regular release windows would not apply to them at all.

4. (NEW) Calls on all Member States to urgently implement article 13 (1) of the Audiovisual Media Services Directive in a prescriptive manner² and introduce funding and promotion obligations for on-demand audiovisual media services;

² According to the preliminary final report of the "Study on the implementation of the provisions of the Audiovisual Media Services Directive concerning the promotion of European works in audiovisual media services" on the Implementation of Articles 13, 16, 17 http://ec.europa.eu/avpolicy/info_centre/library/studies/index_en.htm#eurworks (see presentations from Stakeholders Workshop 14 September 2011) only 5 Member States have implemented Article 13 in a prescriptive manner: Belgium (French and Flemish Communities), France, Germany, Spain. There is a "wait and see" policy in most Member States.

Unauthorised use

6. Calls on the Member States to promote respect for ~~authors~~ the intellectual property rights of authors and performers and combat the provision of unauthorised content, including via streaming;

7. Calls for Internet users to be afforded greater legal certainty when using streamed services, but suggests that consideration should be given to how to block access to ~~pay commercial platforms built around the offer of offering unauthorised services~~ unauthorised services content;

Identification

8. Stresses that permanent and unique identification of works and the right holders therein in accordance with the ISAN standard would facilitate ~~their~~ the free circulation of such works and the remuneration of the right holders and calls for that standard to be used systematically;

Remuneration

9. Maintains that it is essential to guarantee authors and performers remuneration that is fair and proportional to the revenue generated by ~~the online~~ all forms of exploitation of their works, including online; calls therefore for EU legislation to prohibit buyout contracts which, in contradiction with this principle, provide for a single remuneration payment covering fees, the purchase of authors' and performers' rights and future exploitation;

9b (NEW) Calls for a rebalancing of the bargaining position between producers, and authors or performers, by asserting the unwaivable right of authors and performers to receive a fair and distinct payment for each form of exploitation of their works, including ongoing remuneration, proportional to use, where authors and performers transfer their exclusive "making available" right to a producer;

Coordination-Licensing

10. Points out that the administration of audiovisual rights for the commercial exploitation of works in the digital age could be made easier if Member States were to introduce effective, transparent and legally certain rights management procedures such as rights' clearing agencies or platforms providing information on who can deliver licences where such procedures are currently lacking;

11. Maintains that the best means of guaranteeing decent remuneration for rights holders is ~~to implement~~ through inter-branch collective bargaining agreements (enforced through standard contracts) between producers, authors and performers, with specific payment provisions for use of their works, including online; further maintains, that in the lack of such agreements, collective management, including extended collective licensing mechanisms, should be provided for to actually guarantee such a remuneration;

Interoperability

12. Calls on Member States to ensure that collective management companies use mutually compatible tools such as IDA (International Documentation on Audiovisual works) for audiovisual authors' collective management societies, IPD (International Performer Database) for performers' collective management societies and ISAN;

For more information please contact:

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