

AUDIOVISUAL AUTHORS' RIGHTS AND REMUNERATION IN EUROPE

EXECUTIVE SUMMARY

SAA WHITE PAPER

About SAA

The Society of Audiovisual Authors (SAA) is the grouping of Audiovisual Authors' Collective Management Societies in Europe. Through its 25 members in 18 countries, it currently represents over 120,000 screenwriters and directors of films, TV programmes and other audiovisual works. The organisation's objectives are:

- to defend and strengthen the economic and moral rights of audiovisual authors (screenwriters and directors);
- To develop, promote and facilitate the management of rights by member societies;
- To secure fair remuneration for audiovisual authors for every use of their works.

SAA was established because of a perceived need to strengthen the legal position of audiovisual authors (screenwriters and directors) and to lobby for a fair, transparent and harmonised system of remuneration for the digital use of films and other audiovisual programmes.

The audiovisual industry relies on creativity and talent

The reputation and success of European film and television production relies on the creative talents of its authors. However, individual contractual negotiations with producers too often result in 'buy-out' payments, as authors' contracts are first in the production process and negotiated at the point where the most risk is being taken and the least money is available.

Organisation of audiovisual authors' rights and remuneration in Europe

There is currently only limited harmonisation of audiovisual authors' rights and remuneration in Europe and considerable discrepancies exist in the amounts paid to screenwriters and directors from one country to another.

In many countries, rights are dealt with in the production contract but as these tend to be individually rather than collectively negotiated individual screenwriters and directors are usually forced to accept a single 'buy-out' payment for all rights. The implementation in contracts of the 'making available right' granted by the 2001 Information Society Directive has proved difficult and rarely results in authors receiving additional remuneration for on-demand exploitations. On the contrary, rights and remuneration ensuing from collective management are guaranteed to all audiovisual authors and help them making a living while developing their next project.

The collective administration of audiovisual authors' rights

Many secondary rights are administered by collective management societies:

- European legislation has provided for the mandatory collective management of the cable retransmission right.
- Private copying compensation is also collectively administered in countries where levies exist.
- On a country by country basis, other secondary rights like rental and public lending rights, video sales and educational uses are collectively administered.

- More than half of SAA members collect and distribute TV broadcasting rights to audiovisual authors. These can generate significant revenues.

In some countries (e.g. Spain, Italy and Poland) the final distributor of an audiovisual work is considered by law to be responsible for payments to the authors. These are issued through their collective management societies. This system is the most favourable to authors as the law provides that, notwithstanding the contract with the producer, the final distributor is obliged to a) pay the authors for each use of their work and b) do this through a collective management society. This is a very effective solution to ensure that, irrespective of nationality, audiovisual authors are fairly remunerated in line with the success of their works.

The challenges of the digital revolution

The audiovisual sector worldwide is witnessing a period of dramatic change. The emergence of a wide range of new digital distribution platforms for films and other audiovisual works offers both opportunities and challenges. To maintain and increase European production in the digital world, filmmakers (creators, production companies and distributors) will depend on sustained financial support and incentives. It is particularly important at this time that the contribution of authors' is recognised and financially acknowledged. A firm commitment at both national and European level to support the industry and its creators as well as maintain production levels is essential.

A future-proofed solution: increased collective management of audiovisual authors' rights and remuneration

The European digital single market cannot ignore audiovisual authors. SAA strongly believes that there is an urgent need for harmonisation of the economic rights of these authors - the creators of content on whose shoulders the future of the European audiovisual sector rests.

SAA proposes the following solution:

- The introduction of an unwaivable and inalienable right to remuneration of audiovisual authors for their 'making available' right, based on revenues generated from online distribution and collected from the final distributor;
- The collective administration of this right to remuneration.

Experience shows that where authors' rights have been recognised at EU level, authors have benefitted from greater legal protection and transparency of their rights, and economic reward, without detriment to the market.

Conclusion

SAA believes that 'buy-out' payments as they exist in many countries should cease. Information and Communication Technologies now allow for the establishment of new systems of remuneration based on revenue streams from the exploitation of films and other audiovisual works.

An improved system of payments to audiovisual authors for the exploitation of their works should therefore be a priority of the European Commission. It will unlock the potential of the European audiovisual sector and develop a sustainable remuneration system for audiovisual authors. It will also provide clarity and certainty for users and consumers about the rights and uses licensed throughout Europe.

