Audiovisual Authors' Remuneration

An unwaivable right—12 Myths

1. An unwaivable right deprives the authors of choice.

The making available right was created in the 2001 Copyright Directive as a new exclusive right that would enable authors to value the online exploitation of their works.

However, in the audiovisual sector, contractual practices haven't changed. The making available right joined the bundle of other rights transferred to the producer, generally, for a lump sum payment.

While authors do not benefit from their new online right, the sector has continued to develop positively with the online market growing well.

Some may prefer a buyout, but more likely is that authors have no choice and are offered a take-it-or-leave-it deal with no valuation of their making available right. An unwaivable right prevents this kind of abusive practice.

2. An unwaivable right would make free licences (e.g. creative commons) impossible.

The unwaivable remuneration right would only apply when an author transfers their exclusive rights to a producer. Most, if not all, creators who choose to make their work publicly available for free do not transfer their exclusive rights to a producer so the remuneration right does not apply.

An unwaivable right already exists in five EU Member States with no negative impact on creative commons licences in those countries.

3. A remuneration right means double payments.

The fact that the making available right has not been valued in contracts since its creation means the unwaivable right will enable a payment for exploitation, not a double payment.

It is two payments, for two different things. Once for the contribution to the production, and then for the exploitation, on the basis of how successful your work has been.

Producers themselves are well-used to receiving multiple payments for the different exploitation licences they conclude. Why should this be a problem for authors?

4. Authors will get less money up front, with no guarantee of any further remuneration.

Authors will get the same money up front as the making available right is not valued in contracts.

The value of the making available right will be established at the exploitation stage.

Authors are prepared to take the risk. It is supposed to be a reward for success, and this is not guaranteed.

5. An unwaivable remuneration right will interfere with contractual freedom.

Usually freelancers, authors are in a weak negotiating position in an extremely competitive market.

Most contracts are take-it-or-leave-it. Authors don't freely negotiate on a level footing with producers.

Contractual freedom is usually an argument advanced by those who do not wish to have to negotiate at all, but rather would simply prefer to impose their terms on the other party.

If the parties were of equal bargaining power then this provision might not be necessary. The parties are far from equal in power resulting in real unfairness and abuse that this provision is designed to correct.

6. Authors don't take financial risk like producers.

Yes they do, and increasingly so. They initiate many projects that they develop on their own before a producer gets interested in investing and increasingly directors are asked to defer negotiated fees.

Screenwriters and directors often agree to adapt their remuneration to the production budget (as do producers who pay themselves a percentage of the production budget).

7. Such a system would make it harder for new online services to develop.

The proposed system already exists in established markets (France, Belgium, Spain, Italy and Estonia) with no negative impact on production or the development of online services.

In these countries CMOs have concluded agreements with iTunes, Netflix and other VOD platforms so that screenwriters and directors are remunerated for the online exploitation of their works.

8. Such a system would increase the cost of services to consumers.

Services that already exist across multiple markets in the Euro area do not charge different prices based on whether the country already has an unwaivable right to remuneration. The remuneration of authors is not a defining element of services' prices to consumers.

9. Collective management organisations won't distribute the money to authors.

Since the 2014 Collective Rights Management Directive, CMOs are subject to strict transparency and accountability requirements, much stricter than those applicable to authors' contractual partners.

Authors' CMOs were created by authors for authors and act in their interests.

10. The transparency triangle in the current Directive Proposal is enough.

The transparency requirement and contract renegotiation mechanism are for authors and performers from all sectors. Due to the nature of their industry, audiovisual authors need an additional, sector specific solution for on-demand exploitation.

The unwaivable right to remuneration ensures that screenwriters and directors will retain an economic link if and when their works are successful online, without going to court.

11. It is not possible to have a sector specific solution.

The Directive proposal includes provisions for press publishers on the one hand and the music sector on the other. A solution specific to the audiovisual authors would have its place in the final Directive.

12. There is no need for EU-level action.

Authors' protection can no longer be left to national laws when authors and their works circulate across the continent.

The lack of harmonisation of the remuneration mechanisms for screenwriters and directors across Europe is damaging the development of the Digital Single Market.