



Society of
Audiovisual
Authors

Implementation of the EU Copyright Directive: Article 18

9th Initiative Urheberrecht Copyright Conference, 22 November 2021

Society of Audiovisual Authors

- ✦ 33 audiovisual authors' CMOs in 25 European countries
- ✦ 160,000 audiovisual authors represented
- ✦ Objectives:
 - ✦ Promote audiovisual authors' rights and remuneration
 - ✦ Develop the collective management of AV authors' rights and remuneration
 - ✦ Provide information on how audiovisual CMOs work and their challenges



Presentation outline

- ✦ Implementation of the Copyright Directive
 - ✦ Timeline
 - ✦ Article 18 and recital 73
- ✦ Trends
 - ✦ Countries with existing mechanisms
 - ✦ Countries with no pre-existing protection
 - ✦ Innovative approaches
- ✦ Resources

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Implementation of the Copyright Directive

Deadline : 7 June 2021 – but most implementation processes delayed by the COVID-19 crisis

Commission sent letters of **formal notice** to 23 MS on 26 July 2021

8 Member States completed transposition (covering Art 18)

Acceleration of process this autumn: draft laws presented in AT, BG, FI, SI, SK

- ✦ The Netherlands (15 Dec 2020)
- ✦ Hungary (28 April 2021)
- ✦ France (12 May 2021)
- ✦ Germany (4 June 2021)
- ✦ Malta (21 June 2021)
- ✦ Croatia (Oct 2021)
- ✦ Spain (2 Nov 2021)
- ✦ Italy (4 Nov 2021)

- ✦ Denmark partially transposed (Articles 15 & 17) in June 2021

Article 18

1. Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, **they are entitled to receive appropriate and proportionate remuneration.**
2. In the implementation in national law of the principle set out in paragraph 1, **Member States shall be free to use different mechanisms** and take into account the principle of contractual freedom and a fair balance of rights and interests.

Recital 73

The remuneration of authors and performers should be **appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights**, taking into account the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work.

A lump sum payment can also constitute proportionate remuneration, but it should not be the rule. Member States should have the freedom to **define specific cases for the application of lump sums**, taking into account the specificities of each sector.

Member States should be free to implement the principle of appropriate and proportionate remuneration through different existing or newly introduced mechanisms, which could include collective bargaining and other mechanisms, provided that such mechanisms are in conformity with applicable Union law.



Countries with existing remuneration mechanisms

The Netherlands

France

Spain

Italy

The Netherlands

- ✦ Notion of '**fair**' remuneration already exists in Article 25c Copyright Act: *The maker is entitled to contractually stipulated fair compensation for granting a right of exploitation.*
- ✦ Article 45d(2) **film works**: *anyone who broadcasts the film work, or who has it broadcast, or who communicates it to the public in any other manner, whether by wired or wireless connection, with the exception of making the film work available in such a manner that the film work is accessible to the members of the public in a place individually chosen by them, **owes the principal director and the screenplay writer** of the film work who has assigned these rights to the producer, **proportional fair compensation**. The right to fair compensation cannot be waived.*

France

- ✦ Principle of '**proportional**' remuneration already exists in the law for authors (Art 18 only transposed for performers): *an assignment of rights shall comprise a proportional participation by the author in the revenue from the sale or exploitation of the work* (Art L131-4 IPC)
- ✦ Transposition law added that it is not possible to derogate by agreement (public order)
- ✦ New Article L.132-25-2 requests that collective professional agreements specify the modalities of remuneration of authors per mode of exploitation
- ✦ Ordinance implementing AVMSD (21 Dec 2020) excludes from the quotas of European works and public financial support the works whose production contracts do not respect the moral rights and right to proportional remuneration of the authors ([standard contractual clauses](#))
- ✦ New Article L.132-24 for music authors of audiovisual works: cannot be deprived of their proportional remuneration by having their contracts subject to a foreign law.

Spain

- ✦ Royal decree transposes Art 18 and its principle of appropriate and proportionate remuneration (Art 74).
- ✦ Pre-existing **remuneration right for audiovisual authors with mandatory collective management** for rental (Art 90.2), theatrical exhibition (Art 90.3), broadcasting and online/on-demand exploitation (Art 90.4)
- ✦ [CISAC/SAA case study](#) on how the recognition of remuneration rights for audiovisual authors has proven effective in ensuring their fair remuneration and supportive of Spain's industry growth.

Italy

- ✦ Art 107 (Legislative decree) transposes Art 18 and its principle of appropriate and proportionate remuneration “without prejudice to the right to remuneration provided for by Art 46-bis”.
- ✦ Art 46-bis: **equitable remuneration rights for AV authors** for any communication to the public via air, cable or satellite and any other use (includes online/on-demand) paid by the operators (not producers) and managed by SIAE on voluntary mandates from authors.
- ✦ [CISAC/SAA case study](#) demonstrates the effectiveness of the statutory remuneration rights for AV authors and the related growth of the Italian audiovisual sector over recent years.



Countries with no pre-existing protection

Hungary

Malta

Hungary

- ✦ Explanatory Memorandum accompanying the bill: notion of '**proportionate**' remuneration already exists in the law.
- ✦ Article 16.4 Copyright Act: *the remuneration due to the author against the licence he has given for the use of his work shall be **in proportion to the revenue** earned by the use of the work.*

Malta

- ✦ Verbatim transposition of Article 18
- ✦ Article 17 decree of 21 June 2021: *Where authors or performers licence or transfer the exclusive rights for the exploitation of their works, or other subject matter, they are entitled to receive **appropriate and proportionate remuneration**. In the absence of agreement on the remuneration payable under this sub-regulation, the amount of such remuneration shall be determined by the Board: Provided that in determining the appropriate and proportionate remuneration to the actual or potential economic value of the licensed or transferred rights, account shall be taken of the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work.*



Innovative approach

Germany

Germany

- ✦ Explanatory Memorandum: right to **'equitable' remuneration** already exists in the law (Article 32 UrhG: (2) *Remuneration shall be equitable if determined in accordance with a joint remuneration agreement (Article 36). Any other remuneration shall be equitable if at the time the agreement is concluded it corresponds to what in business relations is customary and fair, given the nature and extent of the possibility of exploitation granted, in particular the duration and time of exploitation, and considering all circumstances*)
- ✦ Addition: *a lump sum remuneration shall ensure that authors receive an appropriate share of the expected total revenues generated by the use of the work and must be justified by the specificities of the industry.*
- ✦ Separate implementation law for Art 17 provides for an **unwaivable right to remuneration with mandatory collective management** to authors for the communication to the public of their works by the platforms, the newly introduced exception for caricatures, parodies and pastiches, uses presumably authorized by and minor uses.

SAA's resources

Implementing Article 18

- ✦ Recordings of SAA's online events
- ✦ Academic work and legal studies
- ✦ Presentations on existing remuneration schemes
- ✦ Case studies





Thank you for your attention!

c.despringre@saa-authors.eu
[@CDespringre](#)