

4 ways to improve the AVMS Directive

The SAA's contribution to the European Parliament's implementation report on the Audiovisual Media Services Directive

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About the SAA

The [Society of Audiovisual Authors](#) (SAA) is the umbrella association of European collective management organisations representing audiovisual authors. Its 33 members in 25 countries manage rights for over 160,000 film, television and multimedia European screenwriters and directors.

We support audiovisual authors and promote cultural diversity through policies that enable the dissemination of audiovisual authors' works to the audience. CMOs' role is to give easy, legal access to those works and ensure authors are fairly paid to encourage further creativity for the benefit of society.

Introduction

The SAA welcomes the European Parliament's report on the implementation of the AVMS Directive. It comes at a crucial time of the transformation of the audiovisual sector landscape in Europe, heavily impacted by the growing role of US platforms in the production market, their dominance of the distribution market, and the difficult recovery from the COVID pandemic, with our cinemas struggling to attract the audience back after months of closure.

In these troubled times, fortunately, we have the AVMS Directive that is the landmark legislation for the European audiovisual sector and its main cultural policy instrument.

These are **4 ways** for the EU to ensure that the Directive is reaching its cultural policy objectives and better promote and support audiovisual creators in Europe:

- + A higher minimum quota for European works in the catalogue of VOD services
- + Mandatory measures ensuring the prominence of European works
- + Mandatory investment obligation of service providers
- + Defending the European model of author's rights

1. A higher minimum quota for European works in the catalogue of VOD services

Back in 2018, the 30% minimum share of European works in the catalogues of on-demand services was already reflecting the reality in most Member States. This minimum does not seem to have required any effort by market operators at the implementation stage. As we already proposed in our 2016 contribution, we think that this minimum should be raised to 40% so that more space is available to European works on the platforms serving citizens and people living in Europe.

A 40% minimum quota would reduce the gap with the broadcasters' obligation of 50% and would encourage production and work for European screenwriters and directors. It would have societal benefits, enabling Europeans to learn more about their culture and that of their neighbors.

In addition, we note that the quota of European works for on-demand services of Article 13.1 does not exclude certain types of programmes contrary to the quota for broadcasters (Art 16) that excludes "the time allotted to news, sports events, games, advertising, teletext services and tele-shopping". While on-demand services mainly provided films and series at the beginning, their business model seems to have evolved to include more non-scripted content. It would therefore be appropriate to assess the types of programmes

offered by on-demand services to ensure that the focus of the quota on films and series is not undermined by other programmes being accepted as part of the quota and review the 2020 guidelines on the calculation of European works if necessary.

2. Mandatory measures ensuring the prominence of European works

Facilitating access to the European works in the catalogues should go hand in hand with the quota. However, while ensuring the prominence of European works is an obligation in the Directive, the Directive does not command a specific and clear measure.

According to the 2021 ERGA report on prominence, some Member States got inspiration from recital 35 and implemented specific measures in their legislation (such as a dedicated section for European works on the home page of the service or the possibility to search for European works in the search tool of the service, or European works being promoted with banners, etc.). However, unfortunately, other EU countries do not indicate any criteria or means ensuring such prominence.

Based on a further performance and impact assessment of the most used measures, we believe that the Directive should stipulate mandatory measures ensuring the prominence of European works.

3. Mandatory investment obligation of service providers

Article 13.2 does not oblige Member States to impose investment obligations on service providers. We believe that the next revision of the directive should provide for such an obligation, that with the quota and prominence would become the triangle of the European works' promotional measures.

According to a recent [SMIT University policy brief](#) on *Investment obligations for VOD providers: A fresh look on the regulatory approaches in Europe*, the Directive had a positive impact on increasing the number of Member States requiring VOD providers to contribute financially to the production of European works, but not all Member States have implemented such an obligation.

Media service providers should be obliged in all Member States to contribute financially to the production of European works. This is essential for the European market not being considered by media services only from a consumption/subscription perspective, but also from a production perspective. However, it should remain up to the Member States to choose the type of financial obligation they want to impose (direct contribution to the production and acquisition of rights in European works, a levy to a fund or a combination of them). This would ensure a level playing field by avoiding loopholes in the European territory, while leaving some flexibility to Member States to adapt their measures to the size and characteristics of their local market.

4. Defending the European model of author's rights

The increased role played by US on-demand services in the European market threatens the European model of authors' rights. These services try to impose their practice of work-for-hire contracts in relation to the authors and to bypass the ongoing remuneration on the exploitation of works provided by collective management organisations. There is an urgent need to reaffirm our European model of authors' rights in a sector where bad contractual practices for authors are commonplace.

The 2019 Copyright Directive established the principle of fair and proportionate remuneration for authors and performers and represent a progress. This progress should be reflected in the next revision of the AVMS Directive. The Directive should only promote European works that respect such a principle. France is setting an example by having decided that only works that respect the moral rights and the right to proportional remuneration of the authors can qualify for the quota and receive production subsidies.

Conclusion

These 4 proposals will ensure the AVMS Directive will continue addressing the actual challenges of the audiovisual sector and reaching its overall political objective, which is to place European works, its creators and cultural diversity at the heart of the European audiovisual culture and business.