

SAA contribution to the UNESCO consultation on the Status of the Artist

The SAA submitted its contribution to the UNESCO consultation on the implementation of the 1980 Recommendation on the Status of the Artist on 14 November 2022. The responses will be presented in a report to the 42nd session of the UNESCO General Conference in November 2023. The consultation will guide future interventions in this area, enabling it to develop tailored tools and programmes to support the implementation of the 1980 Recommendation.

More than 40 years ago, the [UNESCO Recommendations on the Status of Artist](#) stated that Member States should take necessary measures to ensure that “the artist is remunerated for the distribution and commercial exploitation of his work”, that a system should be provided for that is “guaranteeing the exclusive moral and material rights of artists”, and that those “cultural industries benefiting from technological changes” should “play their part in the effort to encourage and stimulate artistic creation” by, among other activities, providing “payment of royalties” to artists.

This is a consolidated version of the SAA’s response to the consultation, highlighting some of our key points.

1. Legal and regulatory frameworks

On the European level, there have been several consultation processes on the status of artists in the recent years. On 20 October 2021 the European Parliament adopted a [resolution](#) on the “Situation of artists and the cultural recovery in the EU” and the European Commission “Voices of Culture” dialogue in 2021 was dedicated to the “[Status and Working Conditions of Artists and Cultural and Creative Professionals](#)”. The SAA contributed and participated in these processes.

At national level, it is particularly important that Member States ensure that all players are invited to be heard when public policies are being elaborated. Organisations representing authors, artists and collective management organisations (CMOs), should be carefully listened too. Audiovisual authors in particular are in a weak position to negotiate their rights, and therefore need the support of their CMOs to represent them, collect and distribute their royalties.

2. Fair remuneration and access to financing

The main income of audiovisual authors derives from their production contract which commissions them the writing of a script and/or the filming of a film, TV series or other audiovisual programme. The challenge is that their production contract provides a license of their exclusive intellectual property rights to allow the exploitation of the work by the producer. Unfortunately, in too many countries and situations, this contract buys out all the authors’ rights for a lump-sum payment and deprives the authors of their fundamental right to receive fair remuneration on the exploitation of the work on different media (read more in [FERA/FSE study](#)). The issue of buy-out contracts has been successfully tackled in some countries by protective legislation that forbids such contracts and/or provide for an unwaivable and untransferable right to remuneration to be paid by the users of the works and collectively managed (examples: Spain, Italy, France, Belgium, Switzerland, Poland).

The 2019 [EU Directive on Copyright in the Digital Single Market](#) recognised for the first time that authors and performers, due to their weak bargaining position, need additional legal protection. However, the directive leaves it to Member States to decide how to implement such a right. The best

mechanism is for the law to provide for an unwaivable and untransferable right to remuneration paid by the users and collectively managed. [Read more](#) (resources and best practices) and learn about the most significant [European Directives](#) for audiovisual authors.

3. Social and economic rights

Audiovisual authors are in their vast majority freelancers with little to no access to social benefits. Their income is low and unstable due to their systemic weak position in negotiating their individual contracts. The EU Directive on Copyright in the Digital Single Market set out harmonised rights to achieve fair remuneration in exploitation contracts of authors and performers and pointed to collective bargaining as an essential tool to exercise them efficiently. Recently the European Commission [clarified](#) that EU competition law cannot be used to avoid collective negotiations between authors and their contractual counterparts: this will facilitate the conclusion of more collective agreements, better terms and legal certainty between authors and their contractual counterparts across Europe.

Poland is an example where most filmmakers are freelancers, operating out of social security mechanisms. They are not covered by compulsory social security or health insurance, which means they are not entitled to receive pensions, and they must use private health services for health matters. Parents are also not eligible for maternity or paternity leave after the birth of their child. For this reason, the Polish Ministry of Culture and National Heritage presented a proposal for a draft Act on Professional Artists, which aims to bring artists under the social security system and improve their living situation. The draft is awaiting approval by the Council of Ministers.

4. Digital environment

The main challenge for audiovisual authors in the digital environment, is the increased role played by US on-demand services in the European market, which threatens the European model of authors' rights. These services try to impose their practice of work-for-hire contracts in relation to the audiovisual authors and to bypass the ongoing remuneration on the exploitation of works provided by collective management organisations.

Although collections from digital sources keep on being the fastest-growing income source, it is still a small share of authors' income ([CISAC Global Collection Report 2021](#)). Authors who create for online uses (for streaming platforms, user-generated content platforms such as YouTube) are often not recognised nor protected by IP regulations. However, in the few countries where the online market is regulated and their authors' rights recognised, they receive remuneration when writing and directing for platforms such as Netflix or creating for their own YouTube channels (such as e.g., France).

Additionally, the spread of illegal copyrighted content over the internet has mainly been facilitated by online platforms, who contested for the most part their active role in providing a hosting space for infringements. In these circumstances, the SAA and its members welcomed the adoption of the EU [Digital Services Act](#) to address the role, the liability, and the due diligence obligations of online services. It is also important to foresee new digital technologies, such as the use of artificial intelligence in the creation of audiovisual works, and the implications this may have on authorship and on the use of works to feed AI.

5. Preferential treatment

Thanks to bilateral agreements between collective management organisations in different countries, CMOs collect and transfer royalties between them to make sure that their authors receive remuneration regardless of their country of residence. However, the scope of the collectively managed rights varies per country which means different levels of revenue in each country. Because the market is fragmented, audiovisual authors don't receive royalties on all media and from all European countries. It depends on the country in which their works is exploited. Consequently, this can lead to authors moving to countries where their rights are more protected, draining the country of origin from its talents.

6. Artistic freedom

The SAA defends creative freedom and shares information and actions with other stakeholders. [Freemuse report](#) in 2022 on the state of artistic freedom, examined censorship of film and documented 285 cases of restriction in 51 countries, 87 of those cases took place in Europe. In total 62 actors and filmmakers were detained in 2022. Freemuse wrote: "*National legislation in dozens of countries worldwide requires film approval prior to its release in cinemas or the approval of the script to obtain the licence for shooting. The bodies mandated to grant these approvals – usually referred to as censorship or classification boards - often serve as film censors*".

7. Equality, inclusion, and diversity

Among the female professionals in European film production that the European Audiovisual Observatory reported on in [2022](#), female directors represented 25% and female screenwriters 28%. Across Europe, these figures varied between 7-36% for female directors, and between 14-37% for female screenwriters.

In 2020, the SAA established a Working Group on equality and diversity. Its mission is to share information and good practices about the role CMOs can play in collecting and analysing equality data, to better reflect the diversity of its membership, raising awareness and campaigning. In 2021, the gender breakdown of audiovisual authors among SAA members was 32% for women and 68% for men. In terms of audiovisual authors who received payment in the year, 33% were women and 67% men (SAA Key Figures). In 2022, the SAA aims to conduct a survey among its membership to further map the current situation in terms of diversity and equality within the CMO members of the SAA, their staff and member authors. Based on the survey results, the Working Group will aim to facilitate exchange of good practices and develop recommendations.

8. Responses to COVID-19

Audiovisual production and distribution faced sharp slowdown in filming, higher financial and legal risks when resuming production, and the closure of cinemas. Up until the COVID-19 outbreak, the audiovisual sector contributed with a growth rate of 11% between 2013 and 2019 to the European economy. However, due to the pandemic, the European cultural and creative economy lost almost a third of its activity in 2020 ([EY 2021](#)). Collective management organisations adapted their structure, reduced their fixed costs, accelerated their distribution of royalties, and mobilised their social funds. Collective management proved itself a resilient and indispensable model for culture in general and for creators in particular ([EY 2021](#)). A survey among the SAA members in May 2020 showed that European CMOs rapidly mobilised financial support to screenwriters and directors suffering due to the first COVID-19 wave. A follow-up survey looking at the situation at the end of 2020, demonstrated CMOs' continued efforts and mobilisation of resources to support audiovisual authors through the second wave. Read more about the [SAA survey results](#).

9. Challenges and needs

[CISAC Global Collection Report 2021](#) shows that the audiovisual collections represent a mere 6,3% (€608m) while the collections for music account for 88.6% of the total collections (€8.483m). In other words, audiovisual authors still have a long way to go. Legislators all over the world need to improve their country's legal environment to efficiently protect and remunerate audiovisual authors for the exploitation of their works. This way countries can attract and retain their best authors. It stimulates the creation of original quality work that can compete on a globalized market. Legislation in several European countries demonstrates that, far from being an obstacle, legal recognition of unwaivable remuneration rights to audiovisual authors, with collective management, helps support industry growth. The SAA is playing its part in raising awareness about the challenges and the opportunities for audiovisual authors by sharing the good legal practices across Europe with policymakers on national, EU and international level. However, more efforts are needed to educate about the moral and economic rights of artists.