

Takeaways from SAA's online expert seminar:

Extended Collective Licensing helps audiovisual authors, state Nordic copyright experts

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On 12 December 2022, [Eleonora Rosati](#), Professor of IP law and Director of the Institute for Intellectual Property and Market Law, Stockholm University, moderated an informative seminar with experts from the Nordic countries and the European Commission about the use of Extended Collective Licensing mechanisms to license audiovisual works and deliver remuneration to their authors.



Extended Collective Licensing (ECL) made its appearance first in the 1960's in the Nordic countries where it has had a longstanding and successful history. ECL was inspired by the Nordic labour agreements and developed parallel to television broadcasting and mass usage of copyright-protected works. EU Member States are transposing the EU Directive on Copyright in the Digital Single Market and so far, although most countries have not had a tradition of ECL, many transposed Article 12 to introduce a legal basis for such licensing mechanisms in their own copyright system.

Guests

Jukka Liedes, Copyright expert, Finland

"I have spent more than 30 years in developing the ECL system in the Nordic countries. During this time, I have seen the interest for ECL growing enormously. (...) For newcomers starting to apply ECL, be in touch with your Nordic colleagues and those experienced, we are used to respond to many complex questions from colleagues across the world about ECL. My advice is, study the system and learn to use it!"

"ECL requires mass usage of works, involving a large repertoire and numbers of rightholders. In order to rely on ECL, you need a well-functioning and representative collective management organisation. However, all rightholders are treated equally, non-represented rightholders also benefit from ECL."

"The system of approval of the ECL by the government and making the decisions publicly available makes the system stronger and more transparent."

Ingelin Skaref, Senior Legal Advisor of Norwaco, Norway

"As the technological developments are faster than the law-making process, a general ECL gives us the flexibility to enter into new agreements or supplement existing ones. What might be the disadvantages of a too general ECL, is that it loses purpose and the signal effect of what it is about, to users and rightholders. In the end, we need both general and specific ECL."

"Norwaco is managing many ECL agreements, approved by the government, for: retransmission/third parties' TV distribution, broadcaster's archives, TV in public places, educational uses, and use of audiovisual productions in libraries and museums. Before the new Copyright Act, we had 3 specific audiovisual ECL that today have been merged into one general ECL."

Norwaco is an umbrella collective management organisation with 36 member organisations, representing authors, performers and producers. Their mandates are given through Norwaco members that authorise Norwaco to go into agreement on behalf of their individual members. Norwaco's members later distribute the payment to the rightholders.

Peter Schønning, Copyright lawyer, Denmark

"In practice, very few rightholders opt-out in the Nordic countries. The core of ECL is about incentives: for the CMO to make good agreements that make all the groups of rightholders content, and for non-represented rightholders to not opt-out. A high level of remuneration and efficiency will ensure this."

"The testimonies that we heard from Helen Blakeman and Peter Payer is exactly what both ECL and Article 18 are about. It is about securing that when you have contributed to an audiovisual work, you should be remunerated when your work is being used, also when third parties are using this work."

"I believe that Article 12 and Article 17 of the DSM directive is a match-made in heaven. When you have the situation of mass uses, millions of videos, and content on online sharing platforms, with a lot of unknown rightholders, the ECL can be a very efficient way of licensing the rights of Article 17. However, for online usage, cross-border issues remain to be solved. Looking at the Orphan Works Directive system of mutual recognition could be a part of a possible solution."

"ECL could play an important role in implementing Article 18 of the DSM Directive. The idea that authors and performers have a right to proportionate remuneration could be secured through reservation clauses for third-party distribution of works in their initial contracts."

Section 35 of the Danish Copyright Act already covered all types of retransmissions, including direct injection, as well as the distribution of the streaming services of broadcasters and other forms of reuse of broadcast content. The implementation of the Copyright Directive expanded section 35 to the distribution of independent streaming services. However, for all types of uses covered by section 35, the licensing of rights and access to remuneration is contingent on reserved rights in the initial contracts.

Emmanuelle du Chalard, Deputy Head of the Copyright Unit, European Commission

"Article 12 is an optional provision allowing Member States to apply ECL for their national territory to facilitate licensing for large amounts of works, ensuring legal certainty and rightholders' remuneration. So far, 19 Member States have transposed the Directive, including 14 EU countries that have implemented Article 12, many whom have not had the system in place previously."

"Historically, before the EU Copyright Directive, there was only one EU provision referring to ECL in the SatCab Directive and short recitals in a few other directives. In other words, ECL was not regulated as a possibility yet. The EU Commission's proposal in 2016 for a Directive on Copyright in the Digital Single Market included a specific provision for out-of-commerce works. However, following a court decision that resulted in legal uncertainty, a general provision for a legal basis was introduced in Article 12."

Authors' testimonies

Helen Blakeman, British screenwriter

"Intellectual property has value, thoughts and creativity have value, and creatives add value to our society. They need to be valued as individuals and be fairly remunerated."

"It is important, as an individual author to belong to organisations that act on our behalf. Not only does it mean an additional source of income, but it also gives us the power of a collective voice. What CMOs and the SAA do is to give policymakers an understanding of the work that we do."



Peter Payer, Austrian director and screenwriter



"You make a film every 5-6 years, so you need an income in between, even if it is not a huge amount, it helps. Besides the economic and financial importance, there is an emotional and moral component to it. If we want to have authentic filmmakers' perspective, we have to respect and pay them."

Note to editors

[Society of Audiovisual Authors](#) 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.

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