

To the attention of:
The Honourable Bartłomiej Sienkiewicz,
Minister of Culture and National Heritage
The Honourable Andrzej Wyrobiec,
Undersecretary of State
dpaif@kultura.gov.pl

Brussels, 23 February 2024

Subject: Public consultation on the amendments to the Law on Copyright and Related Rights implementing the Copyright Directive (2019/790)

Dear Mr Sienkiewicz,
Dear Mr Wyrobiec,

The [Society of Audiovisual Authors \(SAA\)](#) is the umbrella association of European collective management organisations (CMOs) representing audiovisual authors. Its 33 members in 25 countries manage rights for over 167,000 film, television and multimedia European screenwriters and directors. The SAA's main objectives are: 1) to support and strengthen the economic and moral rights of audiovisual authors; 2) to secure fair and proportional remuneration for audiovisual authors for every use of their works; 3) to develop, promote and advance the collective management of rights by member organisations.

In this capacity, the Society of Audiovisual Authors was involved during the negotiation of the Copyright Directive in the Digital Single Market (DSM Directive) to introduce measures to provide fair remuneration to screenwriters and directors, resulting in Article 18 DSM and the principle of appropriate and proportionate remuneration for authors and performers. Since the adoption of the Directive, the SAA has closely followed its implementation into national laws, actively promoting proper implementation in the different European countries and meaningful changes for audiovisual authors.

With this letter, the SAA would like to raise its upmost concerns regarding the draft law of 14 February 2024 in respect of the authors' remuneration for the on-demand/ online uses of their works and express its full support to the Polish audiovisual authors regarding the ongoing process of the implementation of the DSM Directive.

As of today, all Member States but Poland have fully transposed the DSM Directive into national law. It has been already almost 5 years since the Directive came into force and 3 years since the transposition deadline for the Member States has marched. This would not be an issue if this additional time would have been used to deliver substantial changes strengthening the position of authors as per the objective of Chapter 3 of the DSM Directive. As we say in the SAA, it is better to have a late but effective implementation than an early and toothless one. However, we were surprised to hear that **the draft law of 14 February 2024 implementing the DSM Directive in Poland was lacking the necessary provisions to ensure fair remuneration to authors for the on-demand/online uses of audiovisual works.**

For audiovisual authors, the best solution to implement Art 18 DSM to ensure remuneration is when the law provides for an unwaivable, non-transferable and inalienable right to remuneration for the communication to the public of their works, paid by the operators who exploit the works and managed by the authors' collective management organisations (CMOs). The [Polish copyright law](#) (Article 70 (2¹)) already provides such a solution to the co-authors of the audiovisual work with a right

to proportionate and equitable remuneration for the exploitation of their works by TV broadcasters, for screenings in cinemas and public performances in hotels, restaurants, public transport etc., that must be paid by the exploiters via a CMO. The previous implementation draft law of 16 November 2022 and also the one of 23 March 2023, appropriately extended this right to remuneration and provided a new statutory remuneration right for online uses (Art 70 (2¹), point 5).

It is only by extending Art 70 (2¹) of the Polish Copyright Act to cover on-demand/online uses, that fair and proportionate remuneration for audiovisual authors for the exploitation of their works would be guaranteed. It has been proved by various assessments of existing laws and best practices around the world, that granting a statutory unwaivable, non-transferable and inalienable right to appropriate and proportionate remuneration for all acts of exploitation (offline and online) of authors' works that is paid directly by users and administered by CMOs is the most efficient way to stipulate authors' remuneration. According to eminent Professors of law's recommendations ([Raquel Xalabarder](#), [Bernt Hugenholtz](#)), such a remuneration mechanism needs its ingredients to be provided in the law to be effective: a statutory right, unwaivable, non-transferable and inalienable, paid by the users and collectively managed.

[The practice in Poland but also in other countries](#) has shown that when the statutory remuneration right is regulated with mandatory collective management, CMOs guarantee the effective enforcement, collection and distribution of royalties. Collective management is also a win-win solution for users, securing legal certainty and a lower bureaucratic and economic burden due to the centralisation of the system. The European Commission's "[Report](#) on the application of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market" demonstrates further the effective role of CMOs.

Not extending Article 70 (2¹) to on-demand/online uses would have a detrimental impact on audiovisual authors' remuneration by excluding some of the most prominent modes of exploitation from their remuneration scheme. How to justify that other exploiters of audiovisual works would have to pay remuneration to the authors for the exploitation of their works except on-demand platforms?

Contractual mechanisms that some video-on-demand platforms announced could only supplement statutory solutions. Statutory solutions deliver remuneration to the European authors whose works are exploited by these platforms, while contractual remuneration only applies to some of the authors of the works produced by the platforms. In countries where only contractual agreements are in place, like in some Nordic countries and Germany, the authors are strongly dissatisfied. By addressing only the platforms' own productions, these contractual agreements discriminate among the audiovisual authors whose works are produced or acquired, contrary to the other modes of exploitation for which Polish law provides for indistinct remuneration schemes. Moreover, the remuneration due to the authors would not be appropriate and proportionate according to Article 18 DSM, as the authors would receive additional remuneration only in cases where a given film or series would achieve a certain threshold of commercial success.

Poland, even though delayed, can still take advantage of this once in a decade opportunity and transpose the DSM Directive in a positive and effective way addressing audiovisual authors' needs, aligning with the current technological developments and the massive expansion of video-on-demand platforms. There is an urgent need to update the legislation to ensure audiovisual authors are paid for the exploitation of their works on all media. The transposition of the DSM Directive offers this unique occasion to extend the Polish remuneration mechanism for audiovisual authors to on-demand/online uses, which will match the reality of the consumption of their works.

Therefore, we ask you to reconsider the draft law in a spirit that seeks to deliver solutions that are factually beneficiary for audiovisual authors like the ones that exist in Spain (Art 90 of [Spanish copyright law](#)), Italy (Art 46bis of [Italian copyright law](#)), Switzerland (Art 13a of [Swiss Federal](#)

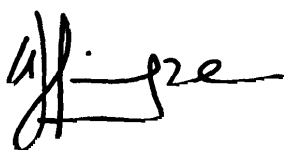
[Copyright Act](#)) **France** (Article L131-4 [Intellectual Property Code](#)), **Belgium** (Art XI.228/11 of [Law of 16 June 2002](#)), **Slovenia** (Art 107 of [Slovenian Copyright Act](#)), **Lithuania** (Art 11(3) of [Copyright and Related rights Law](#)) and **Estonia** (Art 14 (6) of [Estonia's copyright law](#)). In most of these countries the remuneration right for on-demand uses, administered through mandatory collective management was in place many years before the adoption of DSM Directive, meaning that payments to authors were distributed through CMOs upon emerging platforms like Netflix or Amazon on these markets. The SAA would welcome that Poland joins these European countries and regulates this field in an efficient way.

Raising the popularity of the Polish cinematography and audiovisual production is essential for Europe's creative sector. However, the audiovisual market in Poland may easily cease to grow without effective enforcement of authors' rights in the field of online exploitation. **Without royalties for on-demand/online uses, Polish audiovisual authors will remain in a disadvantageous position compared with their colleagues in other countries.** Not only will they be deprived of some part of their revenues, but they will also be victims of even greater disparity on the international market, eventually ending up in worse living and creating conditions than the ones of their foreign colleagues. This would also lead to an unbalanced situation as regards the functioning of the collective rights management system worldwide. Polish audiovisual authors, thanks to the appropriate regulations introduced or strengthened by the implementation of the DSM Directive across Europe (but also for example in Chile or Argentina), may benefit from the adequate and proportional remuneration when their repertoire is exploited by video-on-demand platforms abroad, while there is no reciprocity with this regard towards foreign authors, whose audiovisual works are exploited by the video-on-demand platforms in Poland.

For all the above reasons, on behalf of SAA and over 167,000 European screenwriters and directors, we respectfully ask you to **amend the draft bill to extend the existing statutory right to remuneration for audiovisual authors to the on-demand/online exploitation of their works.** Any other proposal would fail to adjust authors' remuneration to the modern modes of distribution of works and technological developments, including video-on-demand platforms, which was the objective of the directive. We call on the responsible authorities in Poland to take a pro-active approach and transpose the DSM Directive providing for efficient mechanisms that ensure audiovisual authors a right to appropriate and proportionate remuneration for the exploitation of their works and performances on all media and for every use.

Poland must now implement the DSM Directive in the right way, allowing audiovisual authors the obvious: to be able to make a living out of their works. We remain at your disposal to share with you our European experience of audiovisual authors' rights and remuneration further if needed.

Yours sincerely,



Cécile Despringre
Secretary General