

## EC Green Paper on the online distribution of audiovisual works

### Summary of SAA Contribution

The Society of Audiovisual Authors (SAA) is the association of European collective management societies representing audiovisual authors' rights. Its 25 member societies in 18 European countries manage the authors' rights of over 120,000 European film and television screenwriters and directors.

SAA's contribution only addresses screenwriters and directors' rights and not the music composer whose rights, although also a co-author of the audiovisual work, are managed differently.

#### THE DIGITAL SINGLE MARKET FOR AUDIOVISUAL MEDIA SERVICES

##### *Questions 1 – 14*

A thriving European digital audiovisual market must be based on fair remuneration for authors (more detail follows in the second section).

##### **Market organisation**

When an author creates a work he has exclusive, borderless rights over it. The usual practice in Europe is that the author then assigns some or all these borderless rights to the producer. However, the production and distribution of European audiovisual works has developed taking into account the financing constraints and the cultural and linguistic characteristics of the different markets. This means that the original borderless rights are often broken up at pre-production stage into territorial rights to secure financing and the best exploitation of the finished work.

##### **Cross border exploitation**

There are a number of ways to improve the cross-border availability of works. For example, platforms who want to make works available worldwide could invest in the production of new works and pre-buy worldwide online distribution rights. Alternatively rights on existing works could be re-aggregated for licensing to international platforms. It would be interesting for the European Commission to conduct a study on the real cross border demand for audiovisual works (from foreign platforms rather than locally based platforms). Other support for the online market could come from a reduced VAT rate for on-demand audiovisual works and further countering the effects of piracy.

##### **Clearing of rights**

In terms of rights clearance, new operators are often not familiar with, or used to, the processes and interlocutors required to make the necessary deals to run protected content based services. Broadcasters, who already have a long experience of such agreements are often more able to extend their current agreements to cover their online activities. SAA's proposal, explained in the second section, would simplify the understanding of new operators as to which rights are involved and who should pay for what.

##### **The country of origin principle**

The consultation looks at the possibilities of applying the country of origin principle to the making available right. Introducing the exhaustion of the making available right (as outlined in the 1993

Cable and Satellite Directive for satellite) would require the modification of the EU Copyright Directive and of national laws and would probably run against international treaties as it would deprive authors from an essential element of their exclusive making available right. As such the extension of the country of origin principle does not seem to be a good proposal for the future.

### **Extension of the cable retransmission right**

The extension of the cable retransmission right (and its mandatory collective administration) as provided for in the 1993 Cable and Satellite Directive, to other retransmission services, such as online services on the other hand, seems much more feasible and desirable.

### **Social networking, user generated content (UGC) and the cloud**

SAA does not believe legislative changes are necessary to address social media and UGC. The 2001 Copyright Directive already provides for a number of exceptions. Social media should have an interest in clearing the rights on copyrighted works used on a non-commercial basis. This would also bring efficiency with rightholders dealing directly with services rather than their many end-users. Further technological developments, such as cloud computing, must also develop with full respect of the IP rights (including authors' rights) attached to works they give access to. As a market set to grow in the coming years, and with the notion of access becoming primary in the audiovisual services offered online, multiple acts of access should be valued financially and result in additional remuneration for authors.

### **Identification and databases**

In a world of multiple exploitations of audiovisual works on different media in different countries, work identification systems are an absolute necessity. Audiovisual authors' collective management societies have collaborated on the development of ISAN (International Standard Audiovisual Number). This is used in combination with IDA (International Documentation on Audiovisual Works – a CISAC tool) and IPI (Interested Party Information). Audiovisual authors' societies have developed these tools to fulfil their royalty distribution tasks but there may be a need for a portal giving public information and visibility to these tools and explaining how they work together. The EU could help in building such a portal.

### **Release windows and promotion of European works**

The impact of online on areas such as release windows and the promotion of European works require careful consideration. Any discussions on release windows need to be held in full consultation with rights holders to ensure the best possible financing and exploitation conditions for films. The prominence of European works is included in the 2010 Audiovisual Media Services Directive which includes on-demand audiovisual media services (see Article 13). This clearly requests that European works are not only given a prominent position within a catalogue but also that a financial contribution is made to the production and acquisition of the rights of the works. Merely presence in an online catalogue is insufficient, active promotion of European works is key to any success.

### **Pragmatic harmonisation or a unitary copyright title?**

Any global harmonisation of copyright in the EU will be a long and complicated process. The current process of developing harmonisation with a pragmatic approach in the fields where it appears necessary has proved successful and still looks adapted to the current challenges. In this context, SAA does not see the need for an optional EU unitary copyright. Unaware of any demand from any actor within the sector for such a title, SAA would also like to remind the European Commission that the Berne convention expressly prohibits any formality such as registration as a condition for the enjoyment and exercise of rights.

## RIGHTS HOLDERS' REMUNERATION FOR ONLINE EXPLOITATION OF AUDIOVISUAL WORKS

Questions 15 – 20

### Authorship

SAA does not feel that harmonisation of the status of audiovisual author is necessary. SAA's research suggests that there is a de facto harmonisation of the role of the screenwriter as an author which was not the case for the director (EU harmonisation was therefore necessary). That other creative professionals are recognised as authors in certain Member States does not seem to cause major practical difficulties in the sector.

### Authors' remuneration is not secured by individual contracts

Contractual practices in most European countries deprive audiovisual authors of their rights, preventing them from receiving fair remuneration, particularly for the online distribution of their works. Contracts typically involve full rights assignment for a one-off fee at the production stage with no further payments linked to exploitation whereas these further payments provide essential income to authors between projects.

### Collective agreements are needed to ensure fair remuneration

To remedy this, SAA, in its *White Paper on Audiovisual Authors' Rights and Remuneration*<sup>1</sup> (published in February 2011) and subsequent FAQ<sup>2</sup>, proposed the creation of a collectively managed unwaivable remuneration right for the online exploitation of audiovisual works. The proposal takes inspiration from the 1992 Rental Right Directive and the 1993 Cable and Satellite Directive to guarantee that audiovisual authors are fairly remunerated for the online exploitation of their works. The payment would be due from the online services directly. This proposal does not interfere with the role of the producer in authorising the exploitation of works and also demonstrates a commitment from audiovisual authors not to further weigh on the initial production budget.

The level of remuneration would be based on the revenues of the on-demand services in relation to the actual use of the works. Collective management organisations could act as a one stop shop for the remuneration of all the European audiovisual authors of their catalogue.

The SAA calls on the European Commission to look into contract law and contractual practices within the sector in order to better protect audiovisual authors in their contracts with producers.

## SPECIAL USES AND BENEFICIARIES

Questions 21 - 22

### Film heritage

In SAA's opinion, there is no need to amend European legislation for film heritage institutions to carry out their public interest missions. The 2001 Copyright Directive already provides for carefully crafted exceptions.

The SAA also calls for the Orphan Works Directive to provide for the systematic remuneration of authors and enable member states to implement their own mechanisms, particularly collective management agreements, to deal with these issues. The Commission should facilitate and encourage the conclusion of agreements between film archive institutions and audiovisual authors' organisations as have been successfully agreed in France (with the INA), Switzerland, the Netherlands and the Nordics.

<sup>1</sup> [http://www.saa-authors.eu/dbfiles/mfile/1900/1913/SAA\\_white\\_paper\\_english\\_version.pdf](http://www.saa-authors.eu/dbfiles/mfile/1900/1913/SAA_white_paper_english_version.pdf)

<sup>2</sup> [http://www.saa-authors.eu/dbfiles/mfile/1900/1908/FAQ\\_SAA\\_White\\_Paper\\_Nov\\_2011.pdf](http://www.saa-authors.eu/dbfiles/mfile/1900/1908/FAQ_SAA_White_Paper_Nov_2011.pdf)