

SAA Contribution Summary - EC Copyright Consultation

Putting Authors Back at the Heart of Copyright Policy

March 2014 - The legitimacy of the European copyright system depends on reconnecting it to its authors. A key part of the solution to current criticism that it is not fit for the digital era and mainly favours major entertainment companies is rebalancing European copyright policy in favour of authors with an unwaivable remuneration right for audiovisual authors, compulsorily negotiated and collected on a collective basis from commercial users.

The continued modernisation of collective management organisations (CMOs) combined with the implementation of the Collective Rights Management Directive gives Europe the infrastructure it needs to tackle both the remuneration of audiovisual authors and the circulation of European audiovisual works across Europe.

Fair Remuneration of Authors – the key to the future

Consumers need to know that by buying creative works, they are remunerating the authors behind them. While SAA supports the improvement of contractual practices (e.g. banning buyout contracts), we acknowledge that this will not solve all of the issues faced by audiovisual authors today, most notably the issue of their remuneration. SAA therefore proposes by-passing existing unfair contractual practices and developing a sustainable remuneration system which would secure audiovisual authors' remuneration for their making available right in the digital market. This would be done through the introduction of an unwaivable remuneration right for the online exploitation of works which would be collected from commercial users. SAA's proposal does not interfere with the producer's role of deciding how and when to make works available to the public.

Private copying – relevant and vital compensation in need of modernisation

Consumers now make more copies than ever before, transferring songs and videos from computers to hard drives to phones to tablets to online lockers and back again in order to save and access their personal libraries whenever and wherever they want. All of these processes are undeniably acts of private copying covered by the exception on the condition that authors receive fair compensation. The drop in the collection of such financial compensation in recent years (from € 648 million in 2010 to € 328 in 2012) is therefore only due to attacks by manufacturers and importers of media and devices (whose products are mainly manufactured outside the EU) who no longer accept to participate in the system and are forcing it into obsolescence.

SAA believes that private copying is justly accompanied by compensation for rightholders, and that the most efficient way to collect this is via a levy at the manufacturer/importer level. The system could be modernised and improved by defining common principles for the devices that are levied and the way the tariffs are calculated. In addition, the levy should be clearly visible for consumers and could well apply to some cloud services. The recent European Parliament [resolution](#) supports all these positions. SAA has produced a detailed [infographic](#) explaining our vision of the private copying system.

Cable Retransmission Right – technological neutrality and enforcement required

SAA calls on the Commission to clarify the technology neutral nature of the Satellite and Cable Directive (93/83/EEC) and recognise that new media operators which carry out retransmissions of TV programmes should be subject to the same rules as cable operators. In addition, leading cable operators should not be able to escape responsibility simply by arguing

that transmissions via new media platforms do not amount to retransmissions under the SatCab Directive.

IP Rights and the Single Market – where copyright and business models meet

The authors' rights in a work, at the moment of creation, are borderless and could, in theory, be licensed on a borderless basis. However, in the audiovisual sector, the practical financing and distribution of (expensive to produce) works relies on the territorial sale of rights and thus territorial exploitation. Even [the European Commission's own studies](#) have underlined the small consumer demand for cross-border pay-per-view TV as most consumers request services in their own language. SAA agrees with the [De Wolf & Partners study](#) that the country of origin approach is not a suitable solution as it would dramatically dry up the funding sources. We would rather encourage online audiovisual media services to work with rightholders at the origin of the production and distribution of works in order to secure online exploitation rights for cross-border services.

Audiovisual authors' CMOs are currently unable to provide multi-territory licenses to digital service providers due to a lack of a harmonised framework for audiovisual authors' remuneration, competition issues and tax treaties for royalties. In addition to addressing these issues, the European Commission should encourage the circulation of works online by implementing a reduced VAT rate for on-demand audiovisual works.

The scope of the making available right – The scope of this is clear but the making available right itself should be clarified by introducing an unwaivable right to remuneration for the authors' making available right. This would guarantee financial reward proportional to the real exploitation of their works.

Identifiers – SAA [supports](#) broader adoption of the ISAN identifier for audiovisual works and would welcome any action to accelerate the use of the ISAN standard by all operators in the audiovisual sector.

Registration – Any compulsory registration system would contravene the Berne convention. Any voluntary registration system would be extremely costly, time consuming and unlikely to be reliable.

Limitations and Exceptions – already optional, extensive and sufficient

The SAA particularly opposes the introduction of a "fair use" provision in the EU. It provides no legal certainty as issues can only be resolved in the courts. Anything outside existing exceptions should be dealt with via simple licensing solutions with license costs that are proportionate to the use made of the works. Internet platforms, as beneficiaries of the success of user-generated-content (UGC), should also need licenses.

Audiovisual heritage - SAA actively contributed to the adoption of the [statement of principles and procedures for the digitisation and access to European cinematographic heritage works](#) which demonstrates what is possible without further exceptions. SAA would welcome European Commission support for an initiative to make broadcasters' archives available.

Respect for Rights – essential to the development of legal services

SAA does not support legislation that would decriminalise "non-commercial infringements". This would provide a readymade defence for structurally-infringing websites. National court decisions are progressively clarifying the role of intermediaries in the IP enforcement infrastructure and cooperation between rightholders and intermediaries is a key component. SAA strongly encourages the Commission to improve the 'notice and takedown' mechanism in order to prevent infringing content from reappearing on the internet after having been taken down.

A single EU Copyright title – an unclear and unnecessary proposal

SAA does not see the need for "an optional unitary EU Copyright Title". Authors are reluctant to see any registration system as it endangers their authorship of their works.