

AUDIOVISUAL AUTHORS' RIGHTS AND REMUNERATION IN EUROPE

SAA WHITE PAPER



Society of Audiovisual Authors

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SOCIETY OF AUDIOVISUAL AUTHORS

The Society of Audiovisual Authors (SAA) was established in 2010 by European collective management societies to represent the interests of their audiovisual authors' members and, in particular, screenwriters and directors.

The establishment of SAA was prompted by a perceived need to enforce the legal position of writers and directors and to fight for a fair, transparent and harmonised system to remunerate European audiovisual authors for the digital use of their work. Such a system should ensure that all authors are fairly remunerated in line with the success of their films and programmes and, at the same time, allow for easy distribution and access of works. This can only be achieved through the collective management of audiovisual authors' rights and remuneration.

The society has two distinct aims:

- To secure an unwaivable right of authors to remuneration for their online rights, based on revenues generated from online distribution and collected from the final distributor. This entitlement should exist even when exclusive rights have been transferred and would secure a financial reward for authors proportional to the real exploitation of the works.
- To ensure that the administration of this remuneration is entrusted to collective management societies. This will guarantee that audiovisual authors are paid and establish a direct revenue stream between the market place and audiovisual authors.

SAA is committed to working with all interested parties to establish an effective system for the collective licensing and pan-European management of audiovisual authors' rights and remuneration. This will not only benefit authors but also provide a clear and transparent framework for content providers and users.

In this white paper SAA will set out the current reality of audiovisual authors' rights and remuneration in Europe in order to highlight the existing discrepancies and offer solutions.

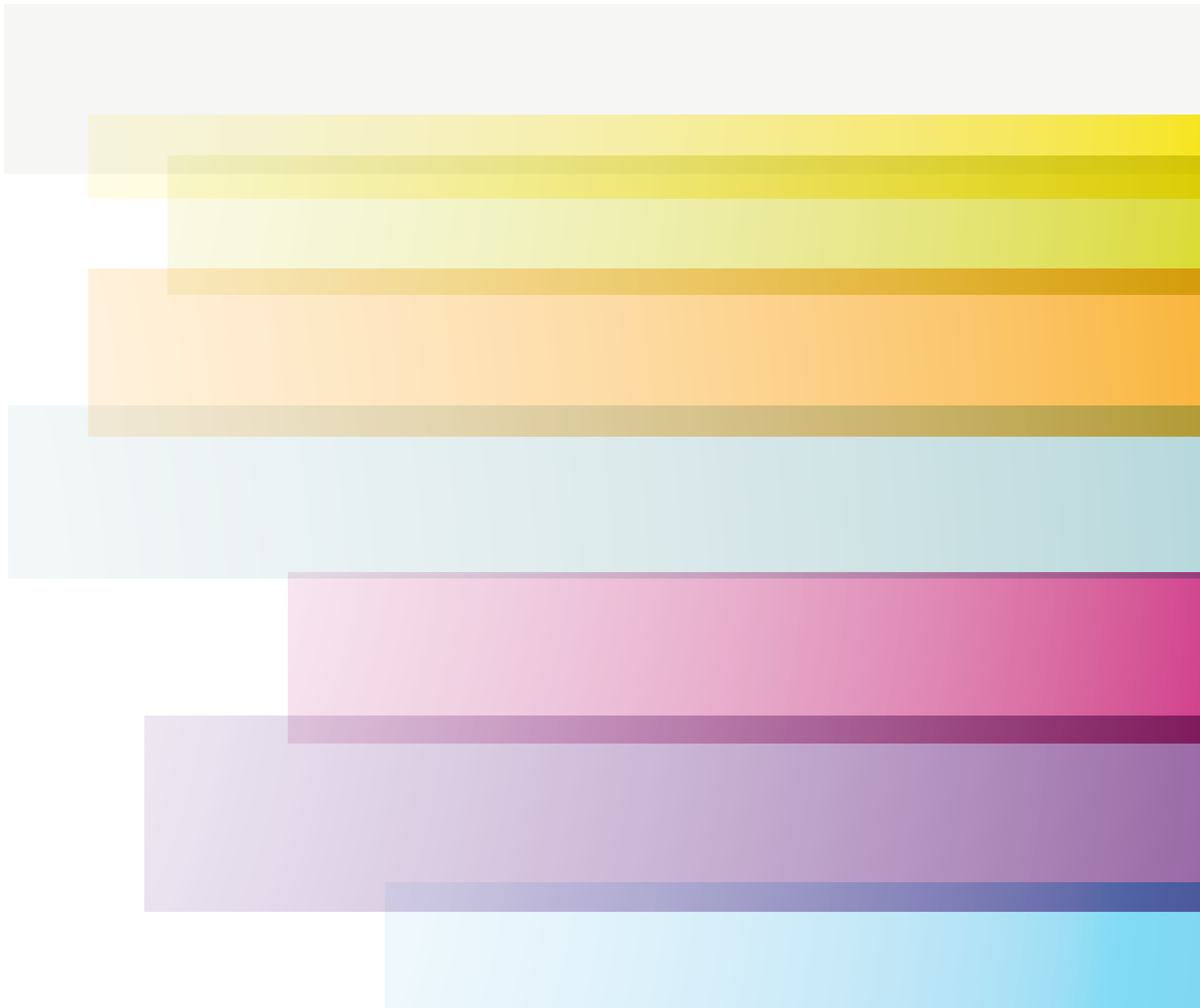


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PREFACES

PROF. DR. GERHARD PFENNIG
Managing Director of VG Bild-Kunst, Germany
Chairman of the SAA Board of Directors



© SAA

SAA represents 24 European audiovisual collective management societies: societies who collectively represent over 118,000 screenwriters and directors, including the most respected European names.

The collective management of the rights and interests of film directors and screenwriters has a long tradition in Europe. Collective management societies have enabled authors, by working together, to more efficiently and effectively manage their rights.

Today collective management societies are more necessary than ever. In many (but not all) Member States they collect and distribute fees for screenwriters and directors for the copying of their work by the general public from broadcast channels, the transmission of broadcasts via cable systems and the renting of audiovisual works on DVD. In a number of EU Member States, societies are able to also manage primary rights (e.g. Television broadcasting rights) on behalf of their members. This facility has been long-established in France, and more recently in Italy, Spain and Portugal.

Digitisation creates new challenges for authors and their collective management societies. Whilst societies are actively addressing the demands of new distribution platforms they also need the support of legislative protection at European and national level to ensure that authors continue to benefit financially for the use and access of their works. New technologies should benefit users, the cultural industry, the communication networks – and also the creators.

The focus of the development of the information society has to be on the authors of audiovisual works, the true content providers. Their interests are maintained by their societies, and SAA is the platform on which their common interests are formulated, discussed and represented.



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MARCO TULLIO GIORDANA
Screenwriter and director, Italy
Member of the SAA Board of Patrons

Because cinema is both an art and an industry, the artistic expression of audiovisual authors is not always easy. It's very difficult to do something new. Not something revolutionary, just something new, because the market tends to require authors to repeat the success of the previous season. Therefore we must fight to impose new ideas and visions.

I have been very lucky in my career because my first film 'Maledetti Vi Amero' was selected by the Cannes Film Festival in 1980. This has given a big impulse to my international career and certainly helped me to make films more easily, because the inflow of foreign capital facilitated the raising of funds in my home country. Being a European filmmaker requires to understand this, and also to integrate these opportunities and constraints into your work. This is why it is so important to create meeting opportunities in Europe, in order to share projects, problems or just imagining together the future of this universal language called cinema.



© Jean-Marie David

COSTA-GAVRAS
Screenwriter and director, France/Greece
Member of the SAA Board of Patrons

It is very important to find ways to distribute European films to all European countries. The European Union should, above all, be oriented to education and culture - and cinema is an important part of both. Politicians' support hasn't been sufficiently active in that direction. In order to achieve change it is important to make collective efforts and in this context, the agenda of SAA is an important one. Concerning cinema, one of the biggest problems that needs to be addressed immediately is piracy. I believe in the importance of the internet, but I don't think that we live in a society that can afford to have free films. Therefore the European Union should do as much as it can in order to reduce online piracy. Of course it would be great to get everything for free, but apparently society is not organised in this way. Piracy threatens to destroy cinema production. We should educate young people. They have to understand that if nobody pays to watch movies then one day we won't be able to make movies.

INTRODUCTION

The audiovisual industry makes a vital contribution to Europe both economically and culturally. There are currently approximately one million people directly working in the European audiovisual industry, an industry with more than €108 billion of gross revenues in 2009, 1,192 feature films were produced, box office receipts were at an all time high of €6.08 billion and a staggering 7,528 television channels and more than 700 on-demand platforms were offering access to audiovisual content¹.

These are early days for the digital economy and as it continues to develop the demand for audiovisual works will grow exponentially. To satisfy that demand **the industry depends on the talents of the creative community** – in particular screenwriters and directors.

The time has come to value the contribution of these authors. The danger for the future is that they will be left behind when it comes to a fair reward for work. SAA was founded in 2010 by European collective management societies to ensure that screenwriters and directors remain at the heart of the digital economy and are fairly remunerated in line with the financial success of their work.

¹ Figures from the European Audiovisual Observatory - www.obs.coe.int

AUDIOVISUAL AUTHORS

An **audiovisual work** is the product of the collaboration and creative input of a number of individuals. Based on the originality of their work, some of these individuals are recognised under national legislations as being authors, with intellectual property rights in either the completed work or their contribution to it.

The collective management societies of SAA represent two key author groups – screenwriters and directors. But under various legislations music composers, cinematographers, designers, editors and, in the case of common law countries, even producers can also be considered authors. There is currently only limited harmonisation of **authorship in audiovisual works** at European level so the definition and identification of authors can vary from country to country.

Limited harmonisation of authorship in audiovisual works

All the European Union (EU) Member States now recognise **the principal director of a film** or audiovisual work as being an author of that work thanks to the 1992 Council Directive on the Rental and Lending Right².

Article 2.2

For the purposes of this Directive the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

A further Directive in 1993 harmonising the term of protection of copyright³ fully establishes the authorship of the director as a general principle in European authors' rights provisions.

Article 2

Cinematographic or audiovisual works

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.
2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last surviving of the following persons to survive, whether or not these persons are designated as co-authors: **the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.**

² Council Directive 92/100/EEC of 19 November 1992 on rental and lending right and on certain rights related to copyright in the field of intellectual property.

³ Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights (codified by Directive 2006/116/EC of the European Parliament and of the Council on 12 December 2006).

Member States free to designate other co-authors

The need for a provision allowing Member States to designate other co-authors in addition to the principal director highlights the significant differences that existed from one country to another.

Some national legislations specifically identify the individuals who should be considered authors whilst others do not provide for a hard and fast definition but remain open to any collaborator of an audiovisual work who can demonstrate an original, creative contribution.

Examples:

The **French Intellectual Property Code** (Belgian law follows the same principles) provides that authorship of an audiovisual work shall belong to the natural person or persons who have carried out the intellectual creation of the work. Unless otherwise provided the joint authors are:

- The author of the script
- The author of the adaptation
- The author of the dialogue
- The author of a musical composition specially composed for the work
- The director

If the work is adapted from a pre-existing script or work the author of the original work shall also be included as an author.

The **UK and Irish Copyright Acts** on the other hand, recognise the producer (ie. the production company, not a natural person) and the principal director as co-authors. Writers and composers are authors of their underlying works.

The **Estonian Copyright Act** identifies the director, scriptwriter, author of the dialogue, the composer of specially written music, the cameraman and designer as joint authors, whilst the **Czech Copyright Act** states that the director of an audiovisual work is its author, although this doesn't prejudice the rights of authors of works used within the audiovisual work.

It is not an easy thing to create a sensation of homogeneity amongst people who express their creativity in such different ways.

Tom Tykwer

Screenwriter and director, Germany

Table 1

Who is an audiovisual author?

in the 17 countries where SAA has members

	Director	Scriptwriter	Music composer	Some creative technicians by law	Creative technicians can be accepted by contract	Producer
Austria						
Belgium						
Czech Republic						
Estonia						
Finland						
France						
Germany		*				
Italy						
The Netherlands						
Poland						
Portugal						
Romania						
Slovakia						
Spain						
Sweden						
Switzerland						
United Kingdom						
Author of the audiovisual work						
Author of a pre-existing or separate work						

* According to the leading opinion

The audiovisual industry relies on creativity and talent

Authors make a unique creative contribution to a cinema or television work, a contribution that can vary from genre to genre: from fictional work to creative documentary, from film intended for cinematic release to an episode of a drama series for television, from animation to video games, etc.

The reputation and success of European cinema depends on the creative talent of its authors, and in particular its **screenwriters and directors**, who regularly receive awards at the most prestigious international film festivals. To name just a few:

Fatih **AKIN**, Pedro **ALMODOVAR**, Theo **ANGELOPOULOS**, Bernardo **BERTOLUCCI**, Susanne **BIER**, Jean-Claude **CARRIERE**, Liliana **CAVANI**, Isabelle **COIXET**, Jean-Pierre and Luc **DARDENNE**, Claire **DENIS**, Stephen **FREARS**, Matteo **GARRONE**, Peter **GREENAWAY**, Michael **HANEKE**, Agnieszka **HOLLAND**, Emir **KUSTURICA**, Paul **LAVERTY**, Mike **LEIGH**, Lukas **MOODYSSON**, Cristian **MUNGIU**, Lone **SCHERFIG**, Volker **SCHLÖNDORFF**, Jim **SHERIDAN**, István **SZABÓ**, Bertrand **TAVERNIER**, Agnès **VARDA**, Lars **VON TRIER**, Thomas **VINTERBERG**, Andrzej **WAJDA**, Wim **WENDERS**, etc.



Claude Lanzmann
France

Pourquoi Israël
–
Tshahal



Margarida Gil
Portugal

Clínica Popular
Comunal da Cova
da Piedade
–
Relação Fiel e
Verdadeira



Enrique Urbizu
Spain

Tú novia está loca
–
La vida mancha



**Robert
Alberdingk Thijm**
The Netherlands

Amsterdam Paradise
–
Waltz



Marko Škop
Slovakia

Osadne
–
Other Worlds



Agnieszka Holland
Poland

Europa Europa
–
Angry Harvest



Ben Stassen
Belgium

Fly Me to the Moon
–
Around the World
in 50 Years



Stijn Coninx
Belgium

Koko Flanel
–
Sœur Sourire



Virginia Yagüe
Spain

Arrayán
–
Acosada



Jaco Van Dormael
Belgium

Mr. Nobody
–
Toto le Héros



Gérard Krawczyk
France

Taxi
–
Fanfan la tulipe



Yan Le Bolloc'h
France

Espace détente
–
Caméra Café



**Marco Tullio
Giordana**
Italy

The Best of Youth
–
Once You're Born You
Can No Longer Hide



Rolf Lyssy
Switzerland

The Swissmakers
–
Leo Sonnyboy



Andrzej Wajda
Poland

Katyn
–
Ashes and Diamonds



Anna Davies
United Kingdom

Super Botox Me
–
Live 8: Twenty Years
Ago Today



**Jorge Paixão
da Costa**
Portugal

A Ferreirinha
–
Devolvidos



**Felix
Van Groeningen**
Belgium

De helaasheid
der dingen
–
Steve + Sky



Marion Hänsel
Belgium

Noir océan
–
Les Noces Barbares



Carlo Lizzani
Italy

Banditi a Milano
–
Crazy Joe



Dardenne Brothers
Belgium

Le silence de Lorna
–
La Promesse



Radu Mihăileanu
Romania/France

Va, Vis et Deviens
–
Le concert



Jiří Menzel
Czech Republic

I served the king
of England
–
Larks on a String



Bertrand Tavernier
France

La Princesse
de Montpensier
–
Laissez-passez



Anne Andreu
France

François Truffaut,
une autobiographie



Filip Renč
Czech Republic

Julek
–
Levé Krídlo



Roger Michell
United Kingdom

Notting Hill
–
Persuasion



Costa-Gavras
France/Greece

Z
–
Eden à l'Ouest



Paolo Sorrentino
Italy

Il Divo
–
L'amico Di Famiglia



**Volker
Schlöndorff**
Germany

The Tin Drum
–
The Ninth Day



Fred Breinersdorfer
Germany

Sophie Scholl –
The Final Days



Fien Troch
Belgium

Unspoken
–
Een ander zijn geluk



Joachim Lafosse
Belgium

Élève libre
–
Nue Propriété



Agnès Jaoui
France

Comme une image
–
Le goût des autres



Jan Hřebejk
Czech Republic

Cosy Dens
–
Divided We Fall

RIGHTS AND REMUNERATION

Currently **considerable discrepancies** exist in terms of the level and basis of remuneration paid to audiovisual authors. Rights and remuneration deriving from the contract with the producer are subject to individual negotiation, while rights and remuneration ensuing from the collective administration are guaranteed to all audiovisual authors.

Fees and intellectual property rights

Audiovisual authors' income can be from two sources:

- The fee for the script or for services as director
- Income based on their intellectual property rights

The vast majority of authors are freelancers. The nature of their work and the practices of the industry are such that much of what they do can be unpaid, in particular at the development stage. A writer of a feature will often work for months developing an idea into a script, only to be paid if and when a producer negotiates to buy the right to exploit it and funding is secured. The director will work on the development of a production, advising on style, locations, casting to create an attractive package for potential investors – without any guarantee of payment for the time they have invested.

Audiovisual authors, therefore, rely on income from finished works to sustain unpaid time spent developing the next film or programme. This makes it doubly important that they share in the rewards of success. Any income from the exploitation of finished works allows authors to **make a living** while developing their next project.

Individual negotiation too often results in buy-out payments

In most European countries audiovisual authors transfer their economic rights to the producer. Fees are individually negotiated in the contract between the author and the producer resulting in many audiovisual authors receiving a **lump sum payment** for the writing and/or directing of the film. In some countries they receive no further payment from the producer no matter how commercially successful the film. This situation reflects the weakness of individual authors and/or their representative bodies and the dominant position of powerful producers and broadcasters in the individual contractual negotiation.

Although in some countries standard contracts exist, in practice most contracts are individually negotiated. Even when authors sign contracts which respect their economic interests and provide for additional remuneration after the recoupment of costs, they rarely receive any payment automatically from the producer, whatever the success of the film.

They may, however, in some instances be entitled to payment through their collective management society in respect of their intellectual property rights but, as will be shown, the level and nature of payment varies widely from one country to another.

European initiatives to harmonise intellectual property rights have accepted the importance of authors' rights and have sought to protect and reward them. However, there continues to be considerable disparity.

Additional remuneration from collectively managed intellectual property rights

Secondary rights

Most of the time, secondary payments come from intellectual property rights collectively managed. The two major rights that are collectively managed which result in payments for audiovisual authors in Europe are **cable retransmission** (as a result of harmonisation of rights in Directive 93/83/EEC) and **private copying** in the countries where levies exist. On a country by country basis, other secondary rights like the rental and public lending rights are collectively administered and result in additional payments for audiovisual authors (see Table 2).

Primary rights

In a few countries (eg. France, Belgium, Bulgaria) collective management societies representing audiovisual authors are contractually entitled to collect on behalf of their members for the TV broadcasting of their works. In some other countries (eg. Spain, Italy, Poland) the final distributor, usually the broadcaster, is considered **by law** to be responsible for payments to the author. These are also paid through a collective management society.

The latter system is more favourable to authors who, in principle, benefit from payment guarantee as the law provides that, notwithstanding the terms of the contract between the author and the producer, it is the final user who is obliged to pay the author for each use of the works through a collective management organisation. In these countries, audiovisual authors benefit from an unwaivable and inalienable remuneration right.

There is no evidence that such a system has ever hindered the production of feature films and audiovisual works. It can be cost effective for producers who do not have sufficient means and infrastructure to monitor the works on behalf of the audiovisual authors and ensures that the latter receive remuneration proportionate to each use of the works.

These legal regimes have progressively appeared over the last twenty years. As a result, in these countries, audiovisual authors are being **rewarded proportionately for the exploitation of their works**.

Even on a film like "Notting Hill"⁴, my contract precluded me from sharing in the massive financial success the film has enjoyed since it was released in cinemas. Nor have I seen a single cent from video or DVD sales. This is creative accounting of the very highest order!

Roger Michell
Director, United Kingdom

⁴ Worldwide theatrical box office gross of "Notting Hill" was \$363.89 million, nearly 9 times the cost of the film's production. International television distribution, DVD and video sales generated further sums.

What about the making available right?

Current disparities are heightened in the digital era.

The **2001 Information Society Directive** gives a “making available right” to audiovisual authors (right of making available to the public of their works, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them). However, as with other rights, its implementation in contracts with producers has proved difficult and rarely results in additional remuneration for audiovisual authors for on-demand exploitations.

Article 3

Right of communication to the public of works and right of making available to the public of other subject-matter

1. Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

In some countries, solutions have been found to guarantee authors are paid for the **online/on-demand exploitation** of their works (Table 2). However, in most European countries, audiovisual authors are not as yet receiving any payment for the online/on-demand accessing of their work.

The online/on-demand distribution of works will, in the future, become an increasingly important means of dissemination and consumption. It would be unacceptable for authors to be left behind by this digital revolution.

SAA believes collective management organisations representing audiovisual authors must collaborate with all interested parties to ensure authors receive fair remuneration for the online/on-demand distribution of their works.

Pan-European licensing for copyright, one-stop shop for collective rights management, online settlement of disputes, very high speed, security, interoperability, etc. As authors we must take ownership of these issues so that our creations won't get swept away by the digital tsunami.

Alok b. Nandi

Multimedia writer and director, Belgium

THE COLLECTIVE ADMINISTRATION OF AUDIOVISUAL AUTHORS' RIGHTS IN EUROPE

Variations in the rights administered by collective management societies within Member States result in significant differences in the value of rights from one country to another and, by extension, the value of an author's contribution.

The value of music rights vs. audiovisual rights

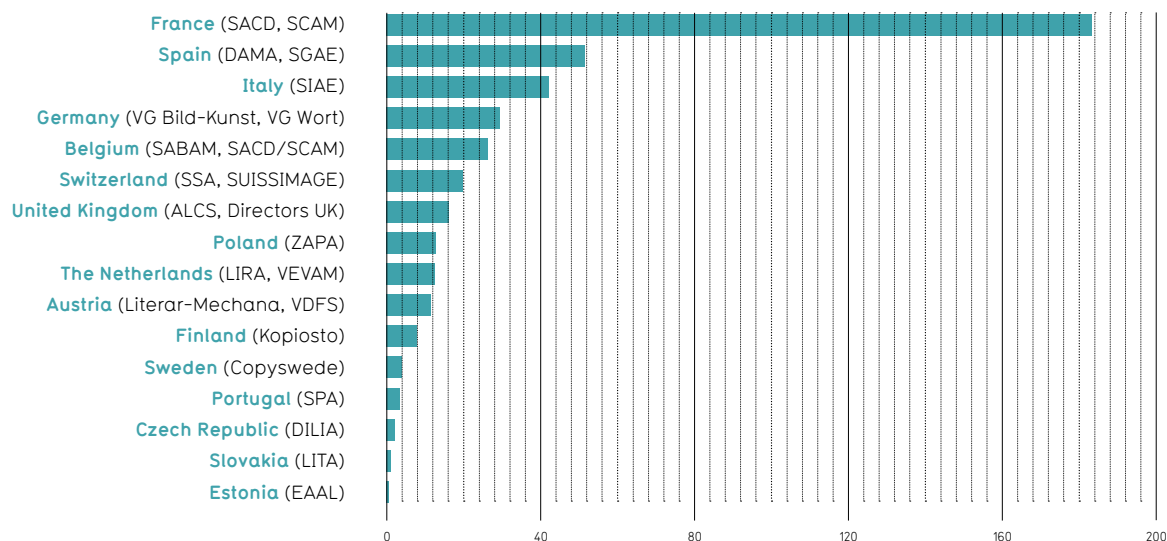
In 2008, the total collection of authors' rights royalties by CISAC⁵ members was in excess of €7 billion, of which €415.5 million was for the audiovisual repertoire (5.9%). The same year Europe, which is the main area of collection for creators' royalties, generated €3.7 billion for the musical repertoire, compared to €380 million for the audiovisual repertoire (8.43% of the European overall royalties collected)⁶.

Variations in the value of authors' rights are highlighted by the level of audiovisual collections of SAA member societies in the different European countries.

Figure 1

SAA members' audiovisual collections (2009)

in millions of euro



In 2009, the 24 SAA members collected more than €423 million for audiovisual authors.

⁵ Confédération Internationale des Sociétés d'Auteurs et Compositeurs / International Confederation of Societies of Authors and Composers - www.cisac.org

⁶ Figures from CISAC.

Wide variations in the representation of rightsholders and repertoires

There is **no single model** for collective management societies administering audiovisual authors' rights. However, there is a common factor in that all societies emerged as a result of the desire of audiovisual authors to group together so their rights and repertoires could be collectively managed. Here are the main features of SAA membership:

- In **Nordic countries**, Copyswede and Kopiosto are umbrella organisations for several rightsholders' organisations and repertoires and administer rights on their behalf and through extended collective licenses⁷.
- SIAE in Italy, SGAE in Spain, SPA in Portugal and SABAM in Belgium represent **authors from all repertoires**, including both audiovisual and music.
- SACD and SCAM in France and Belgium, DAMA in Spain, SSA in Switzerland and EAAL in Estonia represent both **screenwriters and directors**, whereas in the United Kingdom and the Netherlands screenwriters and directors' rights are administered by two organisations (Directors UK and VEVAM for directors only and ALCS and LIRA for all categories of writers).
- Some collective management societies representing writers and screenwriters also represent **book publishers**. This includes VG Wort in Germany and Literar-Mechana in Austria.
- Suissimage in Switzerland and ZAPA in Poland represent audiovisual authors and **producers**. In Germany, VG Bild-Kunst represents both audiovisual authors and **visual artists** and in Austria, VDFS represents directors and **actors**.

The whole idea behind this new organisation is to bring European collecting societies together and help them exchange the rights from one country to another.

Volker Schlöndorff

Screenwriter and director, Germany

⁷ See Annex 1.

Rights administered by SAA members

Table 2

Country	SAA member	Cable	Private copying	TV broadcasting	Video sales	Online/ on demand uses	Educational uses	Video rental	TV archives	Video lending	Cinema / Public performance
Austria	Literar-Mechana										
Austria	VDFS										
Belgium	SABAM										
Belgium	SACD / SCAM										
Czech Republic	DILIA										
Estonia	EAAL										
Finland	Kopioisto										
France	SACD										
France	SCAM										
Germany	VG Bild-Kunst										
Germany	VG Wort										
Italy	SIAE										
The Netherlands	LIRA										
The Netherlands	VEVAM										
Poland	ZAPA										
Portugal	SPA										
Slovakia	LITA										
Spain	DAMA										
Spain	SGAE										
Sweden	Copyswede										
Switzerland	SUISSIMAGE										
Switzerland	SSA										
Utd. Kingdom	ALCS										
Utd. Kingdom	Directors UK										
	TOTALS	23	22	15	13	12	11	10	8	7	5
	Percentage	95.83%	91.67%	62.50%	54.17%	50%	45.83%	41.67%	33.33%	29.17%	20.83%

Table 2 reflects the situation of the collective administration of authors' rights in the **audiovisual sector**. Here are the main features:

- The **cable retransmission right** is administered by all SAA members, except in Italy where there is no broadcasting retransmission by means of cable. This situation is the result of the mandatory collective administration of the cable retransmission right provided by the 1993 Directive.
- **Private copying** levies are in place in all SAA members' countries, except United Kingdom. However, British audiovisual authors benefit from the private copying of their works collected in the other EU countries.
- Whether by law or general agreements, **TV broadcasting rights** are collectively managed by a majority of SAA members. As primary rights, TV broadcasting rights generate an important source of income for audiovisual authors and many SAA members see the introduction of collective management of this right as being a priority.
- **Online/on-demand uses** cover both the online transmission of broadcasting and new on-demand services. Together they represent the fifth group of rights administered by SAA members. This group of rights mirrors TV broadcasting rights so it has been possible for SAA members to adapt their general agreements with broadcasters to include the online uses of programmes. However, despite the efforts of collective management societies, general agreements with internet players are currently rare and any money collected for audiovisual authors for this group of rights is very low.
- The **rental right** which is subject to an unwaivable right to equitable remuneration according to the 1992 Directive is administered by less than a half of SAA members. The Directive didn't provide for the mandatory collective administration of this right.
- **Theatrical exhibition** is only collectively administered in Spain and Poland. In Table 2, this right has been grouped together with performances in public spaces (broadcasting in hotels, bars, etc.) although they are distinct rights.
- **Other secondary rights** like lending right, educational uses and archives are collectively managed in a small number of countries.

Collective management societies work together to identify the audiovisual authors whose works are used under the agreements they administer and to distribute remuneration whatever their country of residence. Through **bilateral agreements** royalties are transferred between societies and distributed to rightsholders.

A common framework at EU level which would guarantee a right to remuneration for audiovisual authors for all the exploitations of their works would greatly assist this process.

To ensure that audiovisual authors are fairly remunerated solutions have to be found

To create an **equitable European internal market** it is essential that current disparities are addressed – and solutions found to ensure that authors of audiovisual works are fairly remunerated whenever and wherever their films and programmes are screened, distributed, transmitted and accessed.

It is only by doing this that creativity will flourish and be sustained.

Since 1991 the European Union has adopted seven Directives harmonising certain aspects of authors' rights and related rights, to establish the **acquis communautaire**. The most significant directives for audiovisual authors' rights are:

2004 Enforcement Directive

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

2001 Information Society Directive

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

1993 Cable and Satellite Directive

Council Directive 93/83/ECC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

1993 Term of Protection Directive

Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version)

1992 Rental and Lending Rights Directive

Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)

If we can improve the way in which we as artists get rewarded for the work we do that would help towards making our industry more sustainable.

Roger Michell
Director, United Kingdom

Further legislation is now necessary to protect audiovisual authors

- When the European Commission published a **Communication on Creative Content Online in the Single Market** on 3 January 2008, Commissioner Reding in charge of the Information Society and Media said: *“We have to make a choice in Europe: do we want to have a strong music, film and games industry? Then we should give industry legal certainty, content creators a fair remuneration and consumers broad access to a rich diversity of content online.”*
- The European Commission **Reflection Document on Creative Content in a European Digital Single Market: Challenges for the Future** of 22 October 2009 recognises that easier access to creative content will have to be combined with adequate protection for authors, in order to furnish a growing and more diverse content market. Amongst possible EU actions it proposes an extended or mandatory collective management system for the administration of the “making available right” of authors and the provision of an additional unwaivable right to equitable remuneration. *“These suggestions could have the potential to create more effective protection and stronger position for creators in their negotiations with their production companies”⁸.*
- More recently, the European Commission Communication on a Digital Agenda for Europe adopted on 19 May 2010 announced the preparation of a **Green Paper addressing the opportunities and challenges of the online distribution of audiovisual works** in 2011. This Green Paper will have to address the key challenges of the European audiovisual sector, in particular the remuneration of audiovisual authors.

European collective management societies representing screenwriters and directors are, through their representative body SAA, committed to supporting the establishment of a strong European single market for the digital dissemination of audiovisual works, subject to authors receiving fair remuneration for each use of their work. Collective management societies are the only organisations representing audiovisual authors that can develop the necessary mechanisms to clear the rights for digital media uses. They are ready and willing to work with all parties to achieve this.

We will not compromise on the protection of copyright for European creative artists over their own works.

Michel Barnier

European Commissioner for the Internal Market and Services⁹

⁸ Page 20 of the Document.

⁹ Hearing before the European Parliament, 13 January 2010.

CHALLENGES

The audiovisual sector worldwide is witnessing a period of dramatic change. The emergence of a wide range of new digital distribution platforms for films and television programmes promises both opportunities and challenges.

Impact of the digital revolution

The traditional distribution chain for films (theatrical release, DVD sales/rentals and exploitation by television) is facing radical revision. The worldwide DVD market is in decline, both in terms of volume and profits, and is being replaced by still developing and currently less profitable video-on-demand platforms.

Television, a traditionally important medium both economically and culturally, is discovering and developing **innovative ways of engaging with audiences**. New delivery systems mean that content can be shared in ways unimaginable even a few years ago. For broadcasters the golden age when programmes were made for viewing by a mass audience in a single country on a particular night at a specified time has long gone. Catch-up services and on-demand streaming has, for many, become the default method of viewing. Although this shift, at first sight, appears to offer unheard of benefits to an audience it brings with it new challenges for traditional broadcast funding models.

The European Commission has committed itself to making Europe's audiovisual industry more competitive by building a strong internal market supporting digital services as well as promoting cultural diversity throughout Europe.

Audiovisual works will be key to achieving this and ongoing support for European audiovisual production will be vital.

New technology enables young directors to observe, record and distribute cheaply. I'm very optimistic about the future of cinema. There are still some dinosaurs who think that the only viable films are cynical, commercial and heavily financed. But they're wrong, for the films of the future will capture the real world.

Mike Leigh

Screenwriter and director, United Kingdom

The economic and cultural value of audiovisual works

Audiovisual works represent significant economic and cultural value.

With 980 million admissions in 2009, gross box office takings in the European Union were around €6.08 billion, the highest level on record. 1,192 European feature films were produced in 2009 and the average budget per film was around €4 million¹⁰.

The European television market has a turnover of €84.4 billion and appears to be back on a growth path after a year of stagnation due to the economic crisis. Until 2008, advertising was by far the primary means of funding for the television industry worldwide, generating about 47% of the sector's revenue. This compares to nearly 44% for pay television and 9.4% for public funding. In 2009/2010 pay television accounted for 48% compared to 43% for advertising¹¹.

Threatened by the internet, the social networks and by the changing in consumption behaviour of the young generation, television is still fighting its corner. The average daily viewing time in Europe was 3 hours and 42 minutes in 2010¹². Audiences have never been so high and the new technologies offer viewers more possibilities.

Support for European film and TV

Maintaining and increasing the level of production will depend on sustained financial support and incentives for filmmakers (creators, production companies and distributors) through subsidies, preferential tax measures, loan guarantees and financial aid generally. It is only with these support measures that the industry can flourish and the European film industry can become a strong and sustainable market force.

Whilst in 2009 the level of European film production reached an all-time high it should be noted that the market share of European films of total box office admissions declined in 2009 from 28.3% in 2008 to 26.7%. The market share of US films, however, increased from 65.6% to an estimated 67%, the highest level since 2003¹³.

A firm commitment to **support and promote European production** at national and Community level is essential if this trend is to be halted and reversed.

Cinema is the only art that needs so much money to exist. The European Commission can be of great help in that direction.

Costa-Gavras

Screenwriter and director, France/Greece

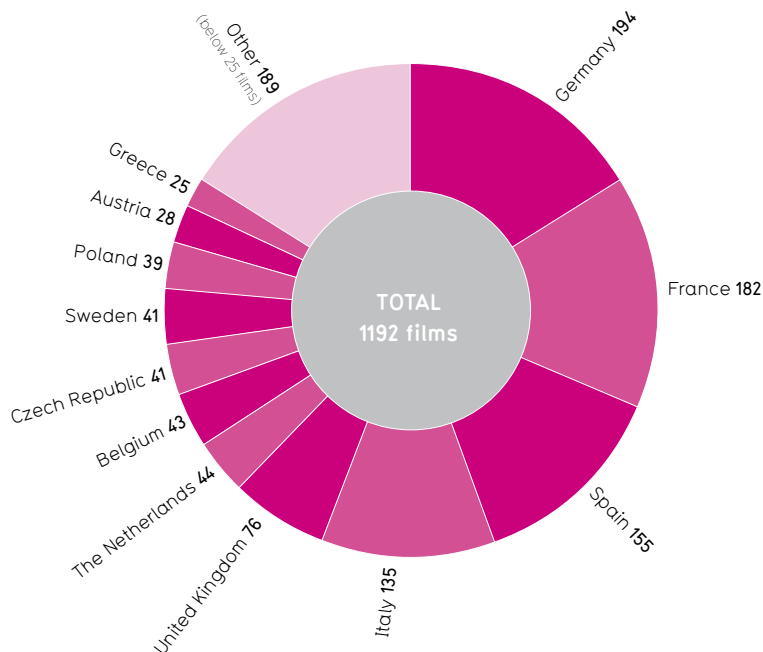
¹⁰ Figures from the European Audiovisual Observatory.

¹¹ Figures from IDATE - www.idate.org

¹² Eurodata TV Worldwide - www.eurodatatv.com

¹³ Figures from the European Audiovisual Observatory.

Figure 2
Feature films produced in the EU (2009)



Country	Feature films produced in 2009
Germany	194
France	182
Spain	155
Italy	135
United Kingdom	76
The Netherlands	44
Belgium	43
Czech Republic	41
Sweden	41
Poland	39
Austria	28
Greece	25
Ireland	24
Hungary	23
Denmark	23
Portugal	21
Finland	20
Romania	15
Bulgaria	14
Latvia	12
Slovakia	9
Estonia	7
Lithuania	6
Luxemburg	6
Slovenia	4
Malta	3
Cyprus	2

Source EAO yearbook 2010

In addition to continued support for the audiovisual industry the introduction of effective measures to **counteract illegal accessing of copyright protected works** has to be a priority for European institutions. The declining income from DVD sales needs to be replaced by increased revenue from video-on-demand platforms. This won't be possible whilst films and programmes can be acquired illegally.

The study conducted by TERA Consultants in March 2010 for the International Chamber of Commerce shows that the core creative industries in the EU27 are estimated to generate almost €560 billion in 2008, which represent a contribution of **4.5% of the total EU GDP**. In terms of employment, the core creative industries account for 8.5 million of jobs in 2008 or 3.8% of the total workforce. A principal goal of the study was to evaluate the economic consequences of digital piracy on the creative industries. It estimates that approximately €10 billion and more than 185 000 jobs were lost in Europe in the creative industries due to piracy in 2008¹⁴.

If there's nobody to invest in films because of piracy, there will be no films in the future.

G rard Krawczyk
 Screenwriter and director, France

¹⁴ http://www.teraconsultants.fr/assets/publications/PDF/2010-Mars-Etude_Piratage_TERA_full_report-En.pdf

European works on digital distribution platforms

New digital platforms have already had a significant effect on European television. Digital distribution now offers greater opportunity for **cross-border distribution** than ever before. European viewers can now access audiovisual works from other Member States online. Making European produced films and programmes widely and readily accessible must be positively encouraged and supported, provided that creators are fairly remunerated.

The role of film and television in the promotion and appreciation of **cultural diversity** across Europe is incalculable. New opportunities offered by digital technology for dissemination of works, promotion of culture and heritage conservation must be embraced and encouraged. Consumers demand access to a rich and diverse online choice of films and audiovisual works, wherever the platforms are located. With support, the choice can include a full range of European-produced works.

The most important thing for European filmmakers is to have their films shown in every European country.

Costa-Gavras

Screenwriter and director, France/Greece

SOLUTIONS

There is currently no single market for audiovisual authors. SAA strongly believes that there is an urgent need for harmonisation of the economic rights of audiovisual authors - the creators of content on whose shoulders the future success of the European audiovisual sector rests.

An unwaivable right to remuneration

SAA supports the introduction of an **unwaivable right of authors to remuneration for their making available right**, based on revenues generated from online distribution and collected from the final distributor. This entitlement should exist even when exclusive rights have been transferred and would secure a financial reward for authors proportional to the real exploitation of the works.

SAA further believes that the administration of this remuneration should be entrusted to **collective management societies** and so establish a direct revenue stream between the exploitation stage and the audiovisual authors.

A successful precedent

Experience shows that in instances where authors' rights have been recognised at EU level as a result of a harmonisation directive, authors have benefited from greater legal protection and transparency of their rights without disrupting the market.

For example, prior to 1998 German screenwriters and directors, unlike some other European authors, didn't receive compensation for the cable retransmission of their works. It was only as a result of the copyright law of 8 May 1998, implementing the **93/83/EEC Directive on cable retransmission**, that the situation changed and they started receiving payment.

The author, as always confronted with questions of creation, is now called upon to consider intensely the realities of diffusion techniques, the concentration of monopoly distribution networks and the methods of financing the creation of tomorrow.

André Buytaers

Screenwriter and director, Belgium

A missed opportunity

The **Rental and Lending Right Directive** of 19 November 1992 (92/100/ECC) provided for an unwaivable right to remuneration for the rental of a work:

Article 5¹⁵

1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.
2. The right to obtain an equitable remuneration for rental cannot be waived by authors or performers.
3. The administration of this right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers.
4. **Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.**

The Rental and Lending Right Directive leaves it to Member States to decide whether or not the right should be administered by collective management societies and from whom the remuneration should be claimed. This **limited harmonisation** has resulted in very few authors ever benefitting directly from the rental of their work. Producers are able to insist that the fee for services includes remuneration for rental, usually with no enhancement of the fee to reflect this. It should be noted that only 10 member societies of SAA are able to administer remuneration for the rental right.

The weakness of the Rental and Lending Right Directive is that it fails to provide for full harmonisation. This failure should not be repeated. The administration of an unwaivable right to remuneration should be entrusted to **collective management societies**.

We are too weak as individual artists. A system needs to be established to ensure we receive money for the uses and exploitations of our works online.

Fred Breinersdorfer
Screenwriter, Germany

¹⁵ Directive 2006/115/EC (codified version).

A solution supported by experts

The current situation of audiovisual authors in relation to the online exploitation of their works is explained in the KEA and Cerna study on multi-territory licensing of audiovisual works in the European Union, commissioned by the European Commission and published in October 2010¹⁶.

SAA is pleased to note that its proposal for an unwaivable and inalienable right to equitable remuneration for the making available right is listed as **the solution to ensure that audiovisual authors are rewarded for their creations** when they are exploited on digital platforms: *"This right would enable the effective implementation of authors' exclusive 'making available rights' that have been granted by the Information Society Directive. Such a solution would come as compensation for the transfer of the 'making available right' to the producer, without interfering with his commercial prerogative. Furthermore, it would enable harmonisation of the exercise of 'making available' rights across Europe and therefore avoid disparities in legislation that hinder the emergence of the internal market for creators"*.

A firm stance now to secure an effective remuneration right for audiovisual authors will send a clear message to the industry that the rights of authors will be both valued and protected in a fast changing marketplace.

Time for a new system of remuneration for audiovisual authors

SAA and the authors its members represent believe that buy-out payments, as they exist in many countries, should cease. Information and Communication Technologies (ICTs) now allow for the establishment of new systems of remuneration for audiovisual authors based on the revenues of the exploitation of the works. Collective management societies representing audiovisual authors are, in cooperation with the online operators, proposing to develop the necessary ICTs to guarantee payments to audiovisual authors.

An improved system of payments to audiovisual authors for the exploitation of their works should, therefore, be a **priority** of the European Commission.

It will unlock the potential of the European audiovisual sector and develop a **sustainable remuneration system** for audiovisual authors. It will also provide clarity and certainty for users and consumers about the rights and uses licensed throughout Europe.

The challenge we are confronted with today is to allow the remuneration of the creation while ensuring its accessibility and its largest possible distribution¹⁷.

Michel Barnier

European Commissioner for the Internal Market and Services

¹⁶ http://ec.europa.eu/avpolicy/docs/library/studies/multiterr/final_rep_en.pdf

¹⁷ Speech at the Intellectual Property Summit on 2 December 2010 (free translation from French).

ANNEX 1: EXTENDED COLLECTIVE LICENSES

Extended Collective Licenses (ECL) are legal provisions giving a wider scope to collective agreements in the field of copyright and related rights.

- The agreements have to be between an end user of protected works and a representative rightsholders' organisation.
- The scope of the agreement should cover specific types of exploitation of protected works in distinct areas.
- The agreement is extended to cover rightsholders who are not directly represented by the contracting organisation (albeit that these rightsholders retain the right to opt-out).

A Nordic model...

The Nordic system of ECL dates back to the early 1960s, and grew out of the need for Public Service Broadcasters to acquire a license covering specific categories of works. Over the years, the system has been expanded to cover new areas, such as reprographic reproduction for educational purposes as well as for internal information in enterprises and simultaneous and unaltered retransmission of radio or TV programmes.

The areas of ECL are stipulated in the law, whilst the terms of use are specified in the agreement. This enables authors and performers, through their representative organisations, to negotiate the terms of use. The ECL system is considered as a way of handling exclusive rights and not as a limitation of rights.

... Which strengthens the position of individual rightsholders ...

Within the ECL system, non-members are treated in the same way as the rightsholders who are directly represented by the organisation. This is regardless of the fact that non-members have a right to individual remuneration and, frequently, the right to prohibit the use of their works under the ECL agreement. These safeguards for non-members are vital in order to achieve legitimacy with outside rightsholders.

The ECL system strengthens the position of individual rightsholders by offering licenses that fully cover the public use in question. The fact that the agreement is made between the user and a representative organisation, controlled by the rightsholders themselves, should lead to the best possible terms, for both members and non-members.

... And allows on-line uses in new areas of business.

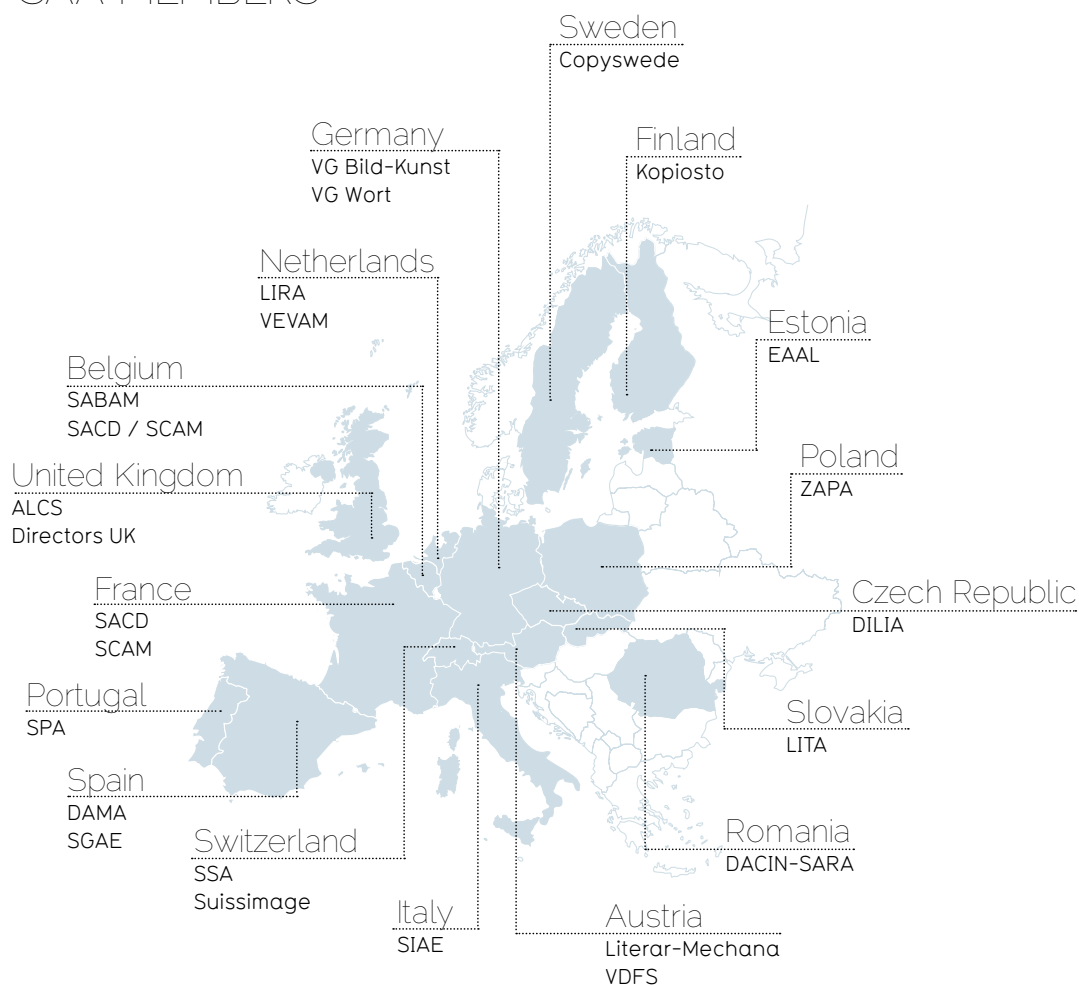
The possibility of obtaining licenses even in complex situations stimulates new areas of business. Users, in an easy and practical way, have the advantage of a license that fully covers all rights subject to actual use - without the risk of committing a copyright infringement. The ECL system already plays an important role in developing new online services in the Nordic countries. The introduction of the ECL system in other European countries, (where practicable) could enable a positive development of new services, whilst at the same time protecting exclusive rights.

ANNEX 2: FACTS AND FIGURES

(source: SAA survey 2010)

- SAA has currently **24 members from 17 countries**.
- SAA associates represent a total of 934,603 members of which **118,968 are audiovisual authors**.
- The total amount of audiovisual collections was **€423 million** in 2009. The smallest audiovisual collections consisted of **€206,090** and the biggest of **€107,500,000**.
- The **rights administered by SAA** members for audiovisual authors are listed in Table 2 in the main text.
- 17 SAA members administer **social and/or cultural funds**. More than **€27 million** have been allocated in 2009.
- The average size of SAA members' administration is **116.7 employees** (full time staff) with a minimum of 1 employee up to a maximum of 1381 employees.
- 18 SAA associates offer **legal services** to their members and 12 societies also provide practical facilities. 11 organisations administer registers of works.

ANNEX 3: SAA MEMBERS



Austria
Literar-Mechana www.literar.at
VDFS www.vdfs.at

Germany
VG Bild-Kunst www.bildkunst.de
VG Wort www.vgwort.de

Slovakia
LITA www.lita.sk

Belgium
SABAM www.sabam.be
SACD/SCAM www.sacd.be

Italy
SIAE www.siae.it

Spain
DAMA www.damautor.es
SGAE www.sgae.es

Czech Republic
DILIA www.dilia.cz

Netherlands
LIRA www.lira.nl
VEVAM www.vevam.org

Sweden
Copyswede www.copyswede.se

Estonia
EAAL www.kinoliit.ee/?163

Poland
ZAPA www.zapa.org.pl
www.sfp.org.pl

Switzerland
Suissimage www.suissimage.ch
SSA www.ssa.ch

Finland
Kopioisto www.kopioisto.fi

Portugal
SPA www.spautores.pt

United Kingdom
ALCS www.alcs.co.uk
Directors UK www.directors.uk.com

France
SACD www.sacd.fr
SCAM www.scam.fr

Romania
DACIN-SARA www.dacinsara.ro



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