Society of Audiovisual Authors
Société des Auteurs Audiovisuels

European Commission's Green Paper on the online distribution of audiovisual works: opportunities and challenges towards a digital single market

SAA Contribution

November 2011

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 main objectives are:

- To defend and strengthen the economic and moral rights of audiovisual authors (screenwriters and directors);
- To secure fair remuneration for audiovisual authors for every use of their works;
- To develop, promote and facilitate the management of rights by member societies.

SAA welcomes the publication of the Green Paper on the online distribution of audiovisual works in the European Union and the consultation process it opened. It gives the opportunity for a specific debate focused on the audiovisual sector, in particular the opportunities and challenges of the online distribution of audiovisual works. It comes at a very timely moment when digital technology and the internet are rapidly changing the way in which audiovisual works are produced, marketed and distributed to the audience, under the pressure of consumers increasingly expecting to be able to watch anything, anywhere, anytime, and on any device.

In this context, the SAA would like to congratulate the European Commission for having identified and recognised the lack of fair remuneration for audiovisual authors for the online exploitation of their works among the current problems of the audiovisual sector. The SAA White Paper on Audiovisual Authors' Rights and Remuneration in Europe[1] published in February 2011 aimed at presenting the situation of these authors in Europe, highlighting the existing problems and suggesting solutions based on the experience and know-how of SAA members. We are pleased that our voice has been heard and our proposals taken seriously.

With its contribution, SAA will therefore focus on the remuneration of audiovisual authors in order to advance more arguments and further convince decision-makers of the need to enact European legislation to better protect audiovisual authors. We will also address the digital single market questions of the Green Paper as these aspects are also important.

As a preliminary remark, when talking about audiovisual authors, the SAA contribution will only address screenwriters and directors' rights and leave aside the music composer whose

[1] http://www.saa-authors.eu/dbfiles/mfile/1900/1913/SAA_white_paper_english_version.pdf

Numéro de registre des représentants d'intérêts de la Commission européenne : 99336382936-11
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rights, in spite of also being a co-author of the audiovisual work, are managed differently. Indeed, the rights of the composer of the original music of an audiovisual work are managed with other music rights through music collective management societies. The situation of screenwriters and directors, however, can vary, but is characterised in many EU countries by a contractual licence or transfer of exclusive rights to the producer who is then responsible for the most significant part of the remuneration due to the authors. The only exception to this is rights that are collectively managed, whether through collective management societies or unions.

THE DIGITAL SINGLE MARKET FOR AUDIOVISUAL MEDIA SERVICES

1. What are the main legal and other obstacles – copyright or otherwise - that impede the development of the digital single market for the cross-border distribution of audiovisual works? Which framework conditions should be adapted or be put in place to stimulate a dynamic digital single market for audiovisual content and to facilitate multi-territorial licensing? What should be the key priorities?

When an author creates a work, he has exclusive rights over it, without borders. He can then, in principle, licence the exploitation of the work without borders too. However, the usual practice in many EU countries is that authors are obliged to assign their rights to producers. The producer then concentrates the exploitation rights in his hands and licenses them for different modes of exploitation and territories, depending on the exploitation capacity of the licensees.

Moreover, because films and audiovisual programmes are expensive works to produce, many European producers, in addition to seeking funding through Member States' support schemes, pre-sell exploitation rights to certain territories and particular types of exploitation in order to finance the production. They are then tied with these pre-sold rights which prevent them from developing an independent cross-border strategy at the exploitation stage.

Having said this, European producers are very concentrated on the production stage and indeed have little direct involvement in the exploitation. They usually mandate distributors who have a good knowledge of the different markets to look after this.

We can therefore see that 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. These practices are today challenged by new borderless modes of distribution of audiovisual works. Here are some leads to help market operators address the digital single market for audiovisual works:

- Investment in production: one simple and very effective way to stimulate the borderless online distribution of audiovisual works is for the companies operating these services to invest in the production of the works and pre-buy worldwide online distribution rights to secure their supply in films.

- Consumer demand for direct cross-border access to works: the freedom to provide cross border services set out in Article 56 of the Treaty is a fundamental freedom which is central to the effective functioning of the EU internal market. However, a freedom is not an obligation. It would be very interesting for the Commission to carry out a study on the effective consumer demand for direct cross-border online services of audiovisual works and on which conditions.

- Rights aggregation and information on the exploitation rights' holder: for existing films financed through the traditional mechanisms, the acquisition of rights for cross-border

online distribution could be facilitated by rights aggregators of European films specialised in cross border online distribution and an 'information platform' gathering European producers and distributors to facilitate the identification and access to the licensors.

- Reduced VAT rate for on-demand audiovisual works: only cinema tickets and broadcasting can benefit from a reduced VAT rate so far. When delivering the same audiovisual works on VOD and catch-up TV (and on DVD), audiovisual media services can't apply a consistent reduced VAT rate. It is essential to allow Member States to apply a reduced VAT rate for all audiovisual works independently of their delivery mode and in particular in the online environment. Such a reduced rate would boost the online market twofold: by competing on price with physical products and by drawing consumers away from illegal services.

- Fight against piracy: legal platforms can only develop if illegal consumption of audiovisual works is countered. Some Members States (France, UK, Spain for example) have taken initiatives to address this problem, but they will necessarily have to be comforted and complemented by European ones in the context of a revision of the 2004 IPR enforcement Directive (see SAA contribution to the 2004/48 Directive consultation[2]).

- Authors' remuneration: European legislation is needed to ensure that audiovisual authors are remunerated for the online distribution of their works, independently of the country of production and exploitation. With such a level playing field, authors' collective management societies, entrusted to manage the making available remuneration of audiovisual authors could develop one-stop-shops to offer a single licence or entry point to online operators for the remuneration due to all the European audiovisual authors of the films of their catalogue. This must be a priority for the Commission to ensure that audiovisual authors are remunerated for the on-demand exploitation of their works (see the second part of this contribution focused on audiovisual authors' remuneration).

2. What practical problems arise for audiovisual media services providers in the context of clearing rights in audiovisual works (a) in a single territory; and (b) across multiple territories? What rights are affected? For which uses?

The Audiovisual Media Services Directive distinguishes two categories of audiovisual media services: television broadcasting and on-demand audiovisual media services. Broadcasters today operate both services while many on-demand service providers concentrate their activity online.

For broadcasters, who have a long experience in clearing rights in audiovisual works both as producers of programmes and as broadcasters of acquired programmes produced externally, online activities are additional activities to their core business, even if these activities are essential to their visibility and global operations.

In the field of audiovisual authors' rights, broadcasting rights are collectively managed by a majority of SAA members, whether by law or general agreements[3]. In these countries, broadcasters are usually satisfied with collective management of audiovisual authors' rights and look for the extension of their agreements with authors' societies to cover their online activities, whether limited to the country of origin or without borders. These audiovisual

[2] http://www.saa-authors.eu/dbfiles/mfile/1500/1570/SAA_Contribution_2004_Directive_IPR_Enforcement.pdf

[3] See table of rights administered by SAA members on page 18 of the SAA White Paper mentioned above.

authors' societies are committed to working with broadcasters to include all types of online activities of the broadcasters in their agreements (half of SAA members have already done so).

However, there are still too many EU countries in which audiovisual authors' broadcasting rights are not collectively managed. In these countries, the authors' remuneration is very much limited to the making of the film (writing/directing) and does not associate authors to the exploitations of the works, except for limited secondary exploitations which are collectively managed by law such as cable retransmission and private copying. .

As far as pure on-demand service providers are concerned, the lack of experience in the field of audiovisual works' rights clearance and of know-how in collective agreements for authors' rights makes it difficult for them to understand the full challenges of services based on intellectual property protected works. It has to be noted that despite the efforts of SAA members, general agreements for the remuneration of audiovisual authors for the on-demand distribution of their works with pure internet players are currently rare.

SAA's proposal for European legislation establishing a remuneration right for the audiovisual authors' making available right collectively managed and paid by the on-demand services providers would simplify the understanding of these operators of which rights are involved and who should pay for what. With the SAA's proposal (please see the second part of this contribution), they would have to get an individual licence from the producer or the distributor (or their representatives) of a chosen film while they would be able to pay all the audiovisual authors' remuneration for the European films of their catalogue through a single agreement with an authors' collective management society.

3. Can copyright clearance problems be solved by improving the licensing framework? Is a copyright system based on territoriality in the EU appropriate in the online environment?

We have already given several leads to improve the copyright licensing framework in answers to questions 1 and 2. In addition, we could imagine that distributors of audiovisual works experiment new distribution schemes based on language versions instead of territories, as is the case in the book sector. This could help the multi-territorial online distribution of audiovisual works.

4. What technological means, for example individual access codes, could be envisaged to enable consumers to access "their" broadcast or other services and "their" content, irrespective of their location? What impact might such approaches have on licensing models?

Innovation to answer consumers' expectations and to develop new usages in the audiovisual sector is developing very quickly. The audiovisual sector is going through tremendous changes with new services using new technologies (conditional access possibilities, multi-device interoperability approaches, cloud computing, etc.) emerging every day. Offering audiovisual works seems to be the basis for these innovative services, setting up audiovisual works as the king content.

However, we are concerned that the proliferation of such services might generate less money, in a contradictory move between the increased consumption of audiovisual works and the declining revenues of the sector. This would be instead of providing additional revenues to the audiovisual sector, both for the remuneration of rights holders (in particular authors), and the investment in production.

5. What would be the feasibility, and what would be the advantages and disadvantages of, extending the "country of origin" principle, as applied to satellite broadcasting, to online audiovisual media services? What would be the most appropriate way to determine the country of origin" in respect to online transmissions?

The country of origin principle for the broadcasting of programmes by satellite is different to the country of origin principle set out in the Audiovisual Media Services Directive and the two should not be confused.

The Audiovisual Media Services Directive provides in Article 3 that *Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.* This freedom of reception is the consequence of the obligation of each Member State to ensure that audiovisual media service providers established under their jurisdiction comply with the rules of law applicable in that Member State in the fields which have been coordinated by the Directive (which does not address copyright issues). The Directive also provides rules to counteract the possible circumvention of some national rules by establishing the premises in another Member States but targeting the first one.

The country of origin principle for satellite broadcasting is very different. It refers to the definition by the 1993 Cable and Satellite Directive of the act of communication to the public by satellite which is recognised as an author's exclusive right.

Article 1.2(b) of the directive provides that *the act of communication to the public by satellite occurs solely in the Member States where, under the control and responsibility of the broadcasting organisation, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards earth*. This means that the reception and individual viewing of programmes are not distinct acts of communication requiring a copyright authorisation.

This provision has been adopted to address the legal uncertainty regarding the rights to be acquired which was impeding cross-border satellite broadcasting and to avoid the cumulative application of several national laws to one single act of broadcasting according to recital 14. However, recital 17 notes that for the amount of the payment to be made for the rights acquired, the parties should take account of all aspects of the broadcast such as the actual audience, the potential audience and the language version.

When it comes to online transmissions of protected works, The 2001 Copyright Directive did not transpose this sort of special exhaustion principle to the making available right. On the contrary, Article 3 of the Directive expressly provides 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*.

Introducing the exhaustion of the making available right would not only require the modification of the EU Copyright Directive and of national laws of implementation, but it would probably run against international treaties as it would deprive authors from an essential element of their exclusive making available right. What was acceptable for satellite broadcasting, due to its limited impact, in 1993 and still nowadays, would override basic principles of copyright protection when it comes to online transmissions as they already are and will become an increasingly important mode of transmission of works.

It therefore appears that this is not a good proposal for the future. It is better to recommend that online audiovisual media services work with right holders more at the origin of the

production and distribution of works in order to secure online exploitation rights for cross borders services.

Audiovisual authors' collective management societies have already offered their services to broadcasters and online service providers to improve the rights clearance models for audiovisual authors. However, as already said, new legislation is required to ensure the full capacity of audiovisual authors' collective management societies to perform this task all around Europe.

6. What would be the costs and benefits of extending the copyright clearance system for cross-border retransmission of audiovisual media services by cable on a technology neutral basis? Should such an extension be limited to "closed environments" such as IPTV or should it cover all forms of open retransmissions (Simulcasting) over the internet?

The extension of the cable retransmission right and its mandatory collective administration provided by Articles 8 and 9 of the same 1993 Cable and Satellite Directive to other similar retransmission services (whether cross border or not) on a technology neutral basis looks more feasible and desirable.

First, Article 8 provides that Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and related rights are observed. There is no exhaustion principle as is the case for satellite broadcasting, which would limit the right holders' ability to grant or refuse authorisation. The sole limit to the exclusive right is the mandatory collective management of the right as set out in Article 9. Such an arrangement regarding the management of rights is compatible with international treaties and doesn't seem to be a problem when it comes to the extension of this copyright clearance system to other similar retransmissions. On the contrary, it would ensure a clear copyright clearance system for all possible retransmissions on a technology neutral basis and avoid cable operators feeling discriminated when negotiating agreements.

7. Are specific measures needed in light of the fast development of social networking and social media sites which rely on the creation and upload of online content by end-users (blogs, podcasts, posts, wikis, mash-ups, file and video sharing)?

There is no need for legislative change to address social networking and user generated content. The 2001 Copyright Directive already offers Member States the possibility of implementing exceptions for parody, pastiche, quotes, etc.

Social media networks, websites and their end-users have to respect the economic and moral rights of audiovisual authors as any other users. These networks and sites should develop efficient mechanisms to detect illegal making available of works and avoid their reappearance when taken down.

They should in addition have an interest in offering their end-users the clearing of rights of the protected content the end-users use on a non-commercial basis. It would also be interesting for the rights holders to deal directly with these networks and platforms rather than with the multitude of end-users. To achieve such agreements, it is necessary to develop and adopt technical means to identify the protected works used.

8. How will further technological developments (e.g. cloud computing) impact upon the distribution of audiovisual content, including the delivery of content to multiple devices and customers' ability to access content regardless of their location?

The notion of access has become primary in the audiovisual services offered online. This multiple access ability should be valued financially and result in additional remuneration for authors.

Cloud computing covers a variety of services, including those based on protected content – such as audiovisual works. This is a market that will grow in the coming years with the advent of "locker" services. It is essential that such services develop in full respect of authors' rights.

We would distinguish 2 types of services. Those which store one copy for all users (hence operating a service to users) and those where users copy their own files to a locker (making private copies). The former has to be authorised by rightsholders, while the latter does not as it is an exception to authors' rights (provided that copies are not shared with third parties beyond private copying exception limits). It does require fair compensation for authors, however. The 2001 Copyright Directive and the European Court of Justice's jurisprudence authorises Member States to establish a 'private copying levy' for the purposes of financing fair compensation. This must be paid not by the end consumers, but by the manufacturers, importers or service providers of a copying facility (*Padawan* paragraph 46).

In both cases, an additional problem relates to the copying by users of illegal files from their library to the service. Cloud services should not have the capacity to "legalise" these illegal files without due negotiation with rightsholders. Cloud services related to protected works must respect the IP rights attached to them and conform with the law.

9. How could technology facilitate the clearing of rights? Would the development of identification systems for audiovisual works and rights ownership databases facilitate the clearance of rights for online distribution of audiovisual works? What role, if any, is there for the European Union?

In a world of multiple exploitations of audiovisual works on different media in different countries, work identification systems are an absolute necessity. That is the reason why audiovisual authors' collective management societies have collaborated on the development of ISAN, the International Standard Audiovisual Number[4]. It is a voluntary numbering system and metadata scheme enabling the identification of any audiovisual work, including films, shorts, documentaries, television programs and their related versions. ISAN provides a unique, internationally recognised and permanent reference number for each audiovisual content registered. ISAN is being used in production and distribution systems, facilitating interoperability and information exchange that contributes to improving rights management. ISAN is key to content tracking and monitoring, and has been integrated in several watermarking and fingerprinting technologies.

Collective management of rights relies on identification systems and databases. ISAN is progressively integrated in the databases of the audiovisual authors' collective management societies containing information on the works, their authors and other rights holders. Audiovisual authors' societies have also developed IDA (International Documentation on Audiovisual Works)[5], a worldwide audiovisual rights management system and online database that authors' societies consult to get accurate information on audiovisual works and rights owners. This global repertoire manages original productions, versions and adaptations in other languages and formats. Each work registration contains a minimum set of information: original titles, foreign titles, subtitles, production companies, year and country of production, shooting languages, rights owners, ISAN number, IPI (Interested Party Information)[6], exploitation purposes and a unique IDA code.

[4] www.isan.org
[5] www.ida-net.org
[6] www.ipisystem.org

The authors' societies use IDA to identify the transmitted audiovisual production and rights-owners, retrieve and treat the information before distributing the royalties to the identified sister organisations. The sister organisation itself will transfer these royalties to their authors. The unique IDA code is used between societies when exchanging information on an audiovisual work. Before IDA, authors' societies sent requests by e-mail or mail to sister societies, meaning paperwork and rather long identification processes. IDA facilitates their identification and the exchange of documentation between societies and accelerates the transfer of payments between societies. Such a data base is built for the specific needs of audiovisual authors' societies but uses the existing tools such as IPI and ISAN in order to avoid the duplication of efforts. It represents an important investment for these societies which will deliver benefits in the long term.

IDA is today a CISAC tool (the International Confederation of Societies of Authors and Composers[7]) and is a part of the CISAC Professional Rules and the Binding Resolutions for audiovisual societies, rules that aim to improve transparency and quality of service for all CISAC members.

As we can see, audiovisual authors' societies have developed tools to fulfil their royalty distribution tasks. What might be lacking today is a portal giving some public information and visibility to these tools and how they work together. The European Union could help in building such a portal.

10. Are the current models of film financing and distribution, based on staggered platform and territorial release options, still relevant in the context of online audiovisual services? What is the best means to facilitate older films which are no longer under an exclusivity agreement being released for online distribution across the EU?

Answers to this question have already been given in the answer to question 1: nothing prevents online audiovisual services from inserting themselves into film financing and distribution models. These models are flexible and in fact tailor-made for each individual film depending on the financiers the producer has been able to convince to invest in the production and distribution. As we have seen recently, Netflix in the US has spent significant amounts of money to secure its supply of films and TV series.

As far as older films are concerned, we also proposed in answer to question 1 to facilitate rights aggregation and information on the exploitation rights' holder to help online distribution services identify and access licensors.

All these efforts to facilitate online distribution of audiovisual works should result in fair remuneration for audiovisual authors through a secured payment system as SAA proposed and which will be detailed in the second part of this contribution.

11. Should Member States be prohibited from maintaining or introducing legally binding release windows in the context of state funding for film production?

Audiovisual authors' societies are very aware of the dependence of European film production on state funding. In this context and taking into account different sources of investment in film production, it is important that any state funding conditions be discussed with professional organisations. This is the aim of article 8 of the Audiovisual Media Services Directive (consolidated version): "Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with

[7] www.cisac.org

the rights holders". Such discussions and arrangements would help ensure the best possible financing and exploitation conditions for the films.

12. What measures should be taken to ensure the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service providers?

The 2010 Audiovisual Media Services Directive (codified version) addressed this issue when the scope of the former Television Without Frontiers Directive was extended to include on-demand audiovisual media services. Article 13 states:

> *1. Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.*
>
> *2. Member States shall report to the Commission no later than 19 December 2011 and every 4 years thereafter on the implementation of paragraph 1.*
>
> *3. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraph 1, taking into account the market and technological developments and the objective of cultural diversity.*

Member States have until the end of the year to report to the Commission on the implementation of Article 13.1 which requests on-demand audiovisual media service providers to promote European works not only through the prominence of European works in their catalogue, but also through a financial contribution to the production and rights acquisition of European works.

As far as the share and/or prominence of European works in catalogues are concerned, it appears that the sole presence of European works in the catalogues is not sufficient. Active promotion is as essential online as off-line. Marketing, editorialisation, recommendation and visibility of European works are key elements to the success of these works online.

13. What are your views on the possible advantages and disadvantages of harmonising copyright in the EU via a comprehensive Copyright Code?

A European Copyright Code harmonising copyright in the EU is a long and difficult way forward. To realise such a comprehensive project, all aspects of copyright issues must be addressed (including moral rights for example) and compromise provisions found where issues are dealt with differently in the Member States, which is the case in many respects.

Despite the 2001 Copyright Directive, the most comprehensive piece of legislation since the beginning of the harmonisation process in the 1990s, such differences, due to different legal traditions (British copyright v. continental authors' rights) and approaches, should not be underestimated, both at the level of general principles and for sector-specific issues (audiovisual, music, book, visual and plastic arts). It is uncertain that such a negotiation

could go further than what was achieved in the 2001 Copyright Directive, which left Member States important room for manoeuvre at the implementation stage.

From an authors' perspective, such a project could only aim at a high level of protection of authors' rights. It should not lower the high level of protection authors enjoy in some countries. It would therefore only be acceptable if it would increase the protection of authors to the best level.

In these circumstances, it appears that such an idea relates more to a long term academic project than to the solution to existing and immediate problems. Existing problems such as the remuneration of audiovisual authors for the online distribution of their works need immediate action. The harmonisation process of copyright in the EU has developed along the lines of a pragmatic approach with the identification of problems and the adoption of solutions which resulted in a series of Directives addressing specific issues. This approach has proved successful and still looks adapted to the current challenges.

14. What are your views on the introduction of an optional unitary EU Copyright Title? What should be the characteristics of a unitary Title, including in relation to national rights?

SAA does not see the need for an optional unitary EU Copyright Title. This proposal to use Article 118 TFEU in the field of copyright was first made by the Commission in 2009 and then repeated in several documents but the Commission never explained the need for and the use of such a title. The only information delivered in the Green Paper is that "authors or producers of audiovisual works would have the option to register their works and then obtain a single title that would be valid throughout the EU". This (overly) brief presentation raises two questions: the registration condition and the nature of the title.

In terms of copyright protection, the Berne convention prohibits any formality such as registration as a condition for the enjoyment and exercise of rights. Authors are very much attached to this prohibition which guarantees their rights in all circumstances as far as their creation is original and therefore deserves protection. Consequently, authors are very reluctant to see any system based on registration as it endangers their authorship of works.

From a practical point of view, to pursue such a proposal, the Commission should then either undertake to revise the Berne convention or to define the nature of the title out of the copyright sphere.

Because of the formality prohibition, such titles do not exist in the copyright sphere. The only existing registries in the audiovisual sector have limited scope and impact which do not affect rights' protection and exercise (for example the necessary work declaration to an authors' society for an author to receive related payments, or the French cinema public registry which offers the statutory publication of certain contracts).

Such a proposal for a title has an obvious patent or trademark inspiration as in Article 118 TFUE. If there is a need identified in the audiovisual sector (of which we are not aware), the lead to explore for the Commission might therefore better go in the patent or trademark direction or explore a sui generis right. Be that as it may, "the feasibility, actual demand for and the tangible advantages of such a title, together with the consequences of its application alongside existing territorial protection must be thoroughly examined"[8], prior to any additional consultation on the issue.

[8] Green Paper, page 13.

RIGHTS HOLDERS' REMUNERATION FOR ONLINE EXPLOITATION OF AUDIOVISUAL WORKS

15. Is the harmonisation of the notion of authorship and/or the transfer of rights in audiovisual productions required in order to facilitate the cross border licensing of audiovisual works in the EU?

In its White Paper on Audiovisual Authors' Rights and Remuneration in Europe, SAA has highlighted the limited harmonisation of authorship in audiovisual works in the EU with only the director being fully recognised as an author of the audiovisual work in all Member States since the 1993 Directive on the harmonisation of the term of protection of copyright (Ireland, Luxembourg and the UK had to change their laws to implement the Directive).

However, it appears that in spite of no further harmonisation, not only the director but also the screenwriter and the composer of the original music are unanimously recognised as authors of the audiovisual work (or of a pre-existing or separate work for screenwriters and music composers in some countries)[9].

As a third layer, a number of countries accept other contributors such as creative technicians (directors of photography, editors, costume designers, etc.) whether by law or by contract.

When discussing the possible need for further harmonisation, the 2002 Commission report on the question of authorship of cinematographic or audiovisual works in the Community concluded: "There is still a continuing disparity as to who may or may not be considered as author or first owner of rights in a film in the various Member States. However, the considerable differences do not seem to cause major difficulties in practice. The different national solutions as regards ownership of rights in audiovisual works were in practice overcome by contractual solutions and do not seem to have created obstacles to trade which would impede the effective exploitation of rights across Member States."[10]

When preparing its White Paper, the SAA reassessed the situation almost 10 years later and came to the same conclusion: for the functioning of the internal market there is no need to further harmonise the notion of authorship. Since the 1993 Directive which corrected a flaw in some countries' legislations, the authorship in audiovisual works is stabilised around the director, the screenwriter and the composer of the original music, with some national differences mainly related to creative technicians. It is therefore more a matter of sharing authors' royalties (that collective management societies address easily), than a possible problem for the licensing of audiovisual works as all contributors in an audiovisual work, whether authors or not, have (or should have) a contractual relationship with the producer which defines their status, contribution and rights.

Therefore, from the SAA's perspective, such harmonisation would not serve immediate practical needs but aesthetic ones. It would also prove very difficult to agree on a limited number of contributors to be recognised as authors as different traditions have co-existed for a very long time.

As far as the transfer of rights is concerned, it is an important issue which is linked to contractual practices which need to be improved in many countries. Through contractual arrangements, rights which are required for the exploitation of films may be concentrated in the hands of film producers in a manner compatible with basic principles of copyright. Such arrangements can thus be used as an efficient tool for the distribution of cinematographic and audiovisual works. However, in many countries, the contracts proposed or imposed by producers go beyond the needs for the efficient exploitation of the audiovisual work and

[9] See table 1 page 11 of the SAA White Paper.
[10] COM(2002) 691 final, 6 December 2002.

include unfair provisions. Traditionally, some national copyright contract law provisions provide for different mandatory rules for the benefit of authors the purpose of which is to protect the weaker party to the contract. One avenue for the Commission to explore would be to address copyright contract law in order to better protect audiovisual authors in their contracts with producers.

16. Is an unwaivable right to remuneration required at European level for audiovisual authors to guarantee proportional remuneration for online uses of their works after they transferred their making available right? If so, should such a remuneration right be compulsorily administered by collecting societies?

The SAA thanks the Commission for having included this question in the consultation. It is indeed a very important issue related to the online distribution of audiovisual works which SAA identified and advocated for in its White Paper on Audiovisual Authors' Rights and Remuneration published in February 2011.

Contractual practices in the vast majority of European countries deprive audiovisual authors of their rights and prevent them from receiving fair remuneration, in particular for the online distribution of their works. Audiovisual authors in most countries are forced to assign all their rights and receive a one-off fee at the production stage with no further payments linked to the exploitation of the work, except for collectively managed rights such as cable retransmission and private copying. These further payments linked to the exploitation of the work (which takes place for years) are however essential for authors to make a living in between projects. The characteristic of this profession is that it can take years to prepare a film and enter into production.

The SAA therefore proposes to by-pass these unfair contractual practices and to develop a sustainable remuneration system which would secure audiovisual authors' remuneration for their making available right in the digital market, taking advantage of the new technologies.

Such a proposal for European legislation builds on the harmonisation experience in the EU:

- the 1993 Cable and Satellite Directive which provides for mandatory collective administration of the cable retransmission right
- the 1992 Rental Right Directive which provides for an unwaivable remuneration right for the rental.

SAA's proposal makes the most of them: it provides that when an audiovisual author has transferred his making available right to a producer, he retains the right to obtain an equitable remuneration for the making available which cannot be waived, as is the case for the rental right. It also addresses the implementation aspects in order to ensure that the proposal will result in concrete payments to authors.

Two implementation aspects are extremely important and were lacking in the 1992 Directive: who should pay for the equitable remuneration and how it should be administered. Having learned from this experience, SAA's proposal addresses these two aspects:

- The equitable remuneration should be paid by audiovisual media services that make audiovisual works available to the public on-demand;
- Its administration should be entrusted to collective management societies representing audiovisual authors, unless other audiovisual authors' organisations, such as unions or guilds, are in a better position to guarantee such remuneration.

This European legislation is a necessity as contractual practices are unable to guarantee such remuneration to audiovisual authors for the making available of their works. European producers, which are mainly small companies, are very much focused on the production stage and little involved in the exploitation directly. They have therefore not developed

industrial processes and mechanisms to trace and administer payments due to authors for the distribution of their works on multiple platforms. The only entities to do this are authors' collective management societies. They are today ready to invest further in order to address the remuneration due to audiovisual authors for the online distribution of their works.

It does however have to be clarified that the SAA proposal does not interfere with the producer's role. It aims at organising the remuneration due to authors, once the producer has decided to make the work available to the public in such a manner and at the time he chooses. It therefore means that any on-demand exploitation of an audiovisual work will continue to have to be cleared with the producer or with the making available right holder appointed by the producer.

All further questions related to SAA's proposal for European legislation to guarantee audiovisual authors' fair remuneration for the making available of their works are addressed in the Frequently Asked Questions' document annexed to this contribution and which is therefore an integral part of the SAA contribution. This FAQ answers the questions which were raised during discussions undertaken by SAA with many stakeholders following the publication of the White Paper last February.

17. What would be the costs and benefits of introducing such a right for all stakeholders in the value chain, including consumers? In particular, what would be the effect on the crossborder licensing of audiovisual works?

There are two aspects in the question of the costs and benefits of introducing such a right: one related to the internal organisation of the audiovisual sector and one related to the final impact on consumers. However, as long as it is recognised and accepted that authors are entitled to be remunerated for the exploitation of their works during the whole period of this exploitation, it is difficult to say that it would weigh negatively on the economy of the sector.

As far as the internal organisation of the value chain is concerned, it has to be emphasised that the making available right is currently part of the bundle of rights transferred to the producer but not valued separately. It does not result in additional payment related to the on-demand exploitations of the work. No specific payment being currently attached to the making available right, SAA's proposal would establish it, not repeat it.

Such payment would not weigh on the production budget as it is proposed to delay it to the exploitation stage. This aspect of the proposal is very important to show the commitment of European audiovisual authors not to impede the development of the production. The debtors of the making available remuneration would therefore be the audiovisual media services who offer audiovisual works to the public on-demand as a business. The main operators are video-on-demand (VOD) services which make catalogues of works available to the public (either to rent or to own) at the request of an individual, independent of the technology used (internet, cable, IPTV, etc.).

The calculation of the remuneration due to audiovisual authors should be based on the revenues of the on-demand services in relation to the actual use of the works. Negotiation should be conducted with authors' collective management societies in charge of the collection of this remuneration on the basis of fair criteria and clear principles for calculation which should take into account the business model of the service (individual payment, subscription, advertising, etc.).

Many of these services work on a revenue sharing basis with producers or distributors who authorise them to exploit the works. It is then a matter of negotiation between authors' organisations, producers and online services how the payments to audiovisual authors would impact existing revenue sharing models.

The introduction of such payments to audiovisual authors might impact the price setting if the current beneficiaries of the revenues generated by the online distribution of audiovisual works do not make room for authors in the existing models. However, if the increase equals the payments to audiovisual authors which were not assumed previously (with a clear indication to the consumers), it can result in a positive impact on the audience. Indeed, many consumers doubt that copyright rules benefit authors and that they receive a fair share for the exploitation of their works. This move can be an argument to take consumers back to legal platforms and divert them from piracy.

As far as the cross-border licensing of audiovisual works is concerned, SAA's proposal is neutral: it organises the remuneration of audiovisual authors, not the licensing by producers. However, it would offer VOD platforms the possibility of concluding a single arrangement for the remuneration of the audiovisual authors of the European works of their catalogues with a one-stop-shop service which would then distribute the money to audiovisual authors.

It is also neutral regarding the territorial scope of a VOD service: it would apply both to VOD services offering audiovisual works in a single territory and to VOD services operating on a multi-territory basis.

A group of SAA members is currently working on a possible pan-European model to address the specific needs of multi-territory audiovisual media services which could be addressed by audiovisual authors' societies in the current state of their missions and if they were entrusted with the administration of the making available remuneration right. In order to do so, the said group is essentially considering the models that are already known by the Commission and to which it has not opposed, such as the OLA model.

18. Is an unwaivable right to remuneration required at European level for audiovisual performers to guarantee proportional remuneration for online uses of their performances after they transferred their making available right? If so, should such a remuneration right be compulsorily be administered by collecting societies?

This question should be primarily answered by audiovisual performers and their representatives as they are the ones with the most knowledge of their situation and needs. However, as far as SAA is concerned, we would support such a remuneration right to be conferred to audiovisual performers if granted to audiovisual authors and if they are convinced that such a mechanism would solve their problems. If audiovisual performers face the same type of difficulties as audiovisual authors, the compulsory collective administration of a remuneration right is probably the only way to effectively enforce it too.

19. What would be the costs and benefits of introducing such a right for all stakeholders in the value chain, including consumers? In particular, what would be the effect on the crossborder licensing of audiovisual works?

If audiovisual authors and performers would benefit from the introduction of a remuneration right for the making available of their works and performances on the conditions proposed by the SAA, their representative organisations, in particular collective management societies entrusted with the administration of such remuneration, would have to work together to develop the most efficient mechanisms of collection of the remuneration from audiovisual media services making audiovisual works available to the public.

It would certainly be in their common interest to develop a common framework for the administration of such remuneration and to avoid giving the impression of multiple layers of claims.

Clear European legislation on the beneficiaries of the remuneration right and voluntary coordination between these beneficiaries would certainly limit the transaction costs for both authors and performers' representatives and audiovisual media services and guarantee the legal and economic security of such mechanism for all stakeholders.

20. Are there other means to ensure the adequate remuneration of authors and performers and if so which ones?

The ideal situation would be European audiovisual authors being in a position in all EU countries to exercise their exclusive making available right, whether individually or through collective bargaining arrangements, with a right to remuneration when secondary uses take place. This situation exists in some countries and should be absolutely preserved and extended whenever and wherever possible. It has to be reiterated here that SAA's proposal does not aim to replace or weaken it.

SAA's proposal aims at giving audiovisual authors who are not in a strong negotiating position vis à vis producers a chance to exercise their rights. In most EU countries audiovisual authors transfer their exclusive rights to producers with little guarantees as they are neither in the position to refuse nor are they properly protected by law. SAA's proposal would protect them from a transfer of the making available right with no guarantee of remuneration as European legislation would provide that they retain a right to obtain an equitable remuneration. This right should not be able to be waived by contract in order to prevent waivers being imposed for the signature of a contract.

Such a provision would not undermine the audiovisual authors who, in countries such as the UK and the Nordic countries, exercise their exclusive rights through their guilds or extended collective agreements. In such cases, the right to equitable remuneration would not apply either because there is no transfer of right to the producer or because they already benefit from separate payments for their making available right through other collective mechanisms. These audiovisual authors would therefore be able to maintain or develop such arrangements for the remuneration of their making available right if they consider them to be more effective.

SAA's proposal aims at offering an equal opportunity to audiovisual authors who are not in a position to refuse the transfer of a right to a producer and thus achieving a level playing field in terms of remuneration for all audiovisual authors in Europe.

Such a proposal does not replace a necessary improvement of contractual practices between audiovisual authors and producers. The important work that is done throughout Europe to strengthen the contractual situation of audiovisual authors is clearly supported by SAA and many SAA members are committed to this job. However, this does not overlap with SAA's proposal as the improvement of contractual practices will not necessarily achieve the remuneration level playing field for the making available right that SAA's proposal is targeting.

Contractual practices are very different from one country to another depending on the degree of professionalisation of the industry and its organisation, the existence of representative authors' organisations able to negotiate model contracts, the acceptance and use of these models by producers, and the degree of awareness of authors about their rights. In addition, contracts deal with many issues other than the making available right such as the other economic rights, creative and moral rights, working conditions, etc.

Many authors' organisations, including collective management societies, are working on the improvement of different aspects of the contractual practices in their country. However, it is long and hard work, which in the end does not necessarily mean European convergence as local specificities are important.

SPECIAL USES AND BENEFICIARIES

21. Are legislative changes required in order to help film heritage institutions fulfil their public interest mission? Should exceptions of Article 5(2)(c) (reproduction for preservation in libraries) and of Article 5(3)(n) (in situ consultation for researchers) of Directive 2001/29/EC be adapted in order to provide legal security to the daily practice of European film heritage institutions?

SAA is of the opinion that there is no need for further adaptations of the European legislation for films heritage institutions. The 2001 Copyright Directive provides for carefully crafted exceptions addressing the needs of publicly accessible libraries, educational establishments, museums and archives:

- In respect of specific acts of reproduction of works in their collections which are not for direct or indirect economic or commercial advantage (not limited to preservation purposes as such)
- For communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of their establishments of works not subject to purchase or licensing terms which are contained in their collections.

If fully implemented these exceptions allow film archive institutions to fulfil their public interest missions. It has to be noted that some of the problems encountered by these institutions are very much linked to an incomplete or deficient implementation of these provisions, which European legislative changes would not solve. These problems have to be addressed at national level.

Beyond the 2001 Copyright Directive, the Commission has proposed a Directive on certain permitted uses of orphan works on 24 May 2011 which is currently being discussed both by the European Parliament and the Council. The SAA has expressed some reservations on this proposal due to the fact that the scope of the Directive is not limited to books and other published writings, but also applies to cinematographic and audiovisual works whereas no analysis of the need for such action for the latter categories has been carried out in the impact assessment.

The lack of prior analysis of the specificities of the cinematographic and audiovisual sectors has resulted in a proposal unsuitable for dealing with cinematographic and audiovisual orphan works. In SAA's opinion, these works would have been better dealt with through mechanisms addressing cinematographic and audiovisual works in the collections of cultural institutions, as is already the case in a number of Member States.

SAA's main concerns with the proposed Directive relate to:

- The proposed mechanism which permits cultural institutions to use orphan works looks like a new exception to authors' rights;
- It does not provide for systematic remuneration for authors;
- It does not preserve the possibility for Member States to provide for other mechanisms, in particular collective management agreements, to deal with the cinematographic and audiovisual works in the collections of the cultural institutions irrespective of whether works are orphan or not.

SAA has therefore made some proposals[11] to address these concerns with the aim of adapting the proposed Directive and to make it work for cinematographic and audiovisual works. These proposals are all essential to achieve this objective. If one of these aspects is

[11] http://www.saa-authors.eu/dbfiles/mfile/1900/1985/OW_Directive_SAA_amdts_27.10.2011.pdf

not taken into account, SAA would prefer that cinematographic and audiovisual works be excluded from the scope of the Directive.

22. What other measures could be considered?

SAA members have offered their help to film and audiovisual archives institutions on many occasions to address their needs in relation to the use of the cinematographic and audiovisual works contained in their collections and their related authors' rights. It has resulted in specific arrangements in a number of countries: collective agreements with INA in France, mandatory collective administration of broadcasters' archives in Switzerland, extended collective agreements in Netherlands and in the Nordics, etc.

The Commission should work as a facilitator to encourage film archives institutions and their European representatives to explore the possibility of further agreements with audiovisual authors' organisations whether at national or EU level before claiming any legislative changes.

Society of Audiovisual Authors
Société des Auteurs Audiovisuels

SAA White Paper on the Audiovisual Authors' Rights and Remuneration in Europe

Frequently Asked Questions
November 2011

1. What is the SAA White Paper?

The Society of Audiovisual Authors (SAA) published a White Paper on Audiovisual Authors' Rights and Remuneration in Europe on 21 February 2011. The White Paper presents the situation of European audiovisual authors in terms of their rights and remuneration. It highlights existing problems and presents solutions based on the experience and know-how of authors' collective management societies.

2. What is the main proposal of the SAA White Paper?

Contractual practices in the vast majority of European countries deprive audiovisual authors of their rights and prevent them from receiving fair remuneration, in particular for the online distribution of their works. SAA believes that this cannot apply to audiovisual authors in the digital age. It is time to develop a sustainable remuneration system which would secure audiovisual authors' remuneration, take advantage of new technologies and fit into the digital market.

Therefore, in light of the digital revolution and of the development of on-demand distribution of audiovisual works, SAA proposes the establishment of a European system of direct remuneration of audiovisual authors from on-demand services through authors' collective management societies, based on the revenue streams from the distribution of their works.

The SAA proposal for European legislation would read as follows:

> *When an audiovisual author has transferred or assigned his making available right to a producer, that author shall retain the right to obtain an equitable remuneration.*
>
> *This right to obtain an equitable remuneration for the making available cannot be waived.*
>
> *The administration of this right to obtain an equitable remuneration for the making available shall be entrusted to collective management societies representing audiovisual authors, unless unions' contracts or extended collective licences already guarantee such remuneration to audiovisual authors for their making available right.*
>
> *Authors' societies shall collect the equitable remuneration from audiovisual media services making audiovisual works available to the public in such a way that members of the public may access them from a place and at a time individually chosen by them.*

3. Would such a system undermine audiovisual authors' exclusive right?

SAA's proposal aims at giving audiovisual authors who are not in a strong negotiating position vis à vis producers a chance to exercise their exclusive right. In most EU countries audiovisual authors transfer their exclusive rights to producers with little guarantees as they are neither in the position to refuse nor properly protected by law. SAA's proposal would protect them from a transfer of a right with no guarantee of remuneration as European legislation would provide that they retain a right to obtain an equitable remuneration. This right should not be able to be waived by contract in order to prevent waivers being imposed for the signature of a contract.

Such a provision would not undermine the audiovisual authors who, in a very few countries such as the UK and the Nordic countries, exercise their exclusive rights through agents, guilds or their collective management societies. In such cases, the right to equitable remuneration would not apply to the extent that separate mechanisms deal with remuneration payments for the making available right. These audiovisual authors would therefore be able to maintain or develop such arrangements for the remuneration of their making available right if they consider them to be more effective.

SAA's proposal aims at offering an equal opportunity to audiovisual authors who are not in a position to be able to refuse the transfer of a right to a producer and thus achieving a level playing field in terms of remuneration for all audiovisual authors in Europe.

4. Why a compulsory collective management system?

Collective management makes it possible to enforce the right to obtain an equitable remuneration for the making available of a work.

Providing for an unwaivable right to obtain an equitable remuneration without compulsory collective management (as provided for rental in the 1992 Rental and Lending Right Directive) would leave many European audiovisual authors behind as in many countries they would not be able to enforce it individually.

The result of the Rental Directive, which only provided a limited harmonisation of the rental right, with no enforcement mechanism, was that very few authors ever benefited directly from the rental of their works.

Any level playing field can only be achieved if European legislation ensures that authors' collective management societies are empowered to negotiate and manage audiovisual authors' fair remuneration for the making available right. This is the only way to guarantee that the right to obtain an equitable remuneration will be enforced throughout Europe.

5. Why not leave this issue to contractual freedom and individual negotiation?

The SAA White Paper outlined the contractual practices between audiovisual authors and producers. It showed that these practices result in many audiovisual authors receiving a lump sum payment from the producer for the writing and/or directing of the work and no further payment for the distribution of the work through the many different channels, no matter how commercially successful the work. This is symptomatic of the weak negotiating position of authors.

The on-demand distribution of an audiovisual work today is only one of the many possible distribution channels but it is developing rapidly with many operators building and making catalogues of cinematographic works available to the public. It is here to stay as a means of permanent access to thousands of films while many other distribution channels (cinema, TV,

DVD) are more event-related. It is therefore justifiable to think about new mechanisms which would better associate audiovisual authors to this distribution channel as it will become a central point of access and consumption of films. In addition, new technologies allow for the development of automated reporting and payments well adapted to this mode of exploitation.

Taking into account this context, there are three reasons not to leave this issue to contractual freedom and individual negotiation:

- **The author's contract with a producer is signed at too early a stage to measure the on-demand exploitation of the work**

Writers' contracts are the first to be signed by a producer in order to secure the exclusivity on an idea/subject and to develop it into a script. At this early stage, the budget, casting and communication strategy are simply not defined. How could a contract define the author's participation in the on-demand exploitation of the finished work? On what grounds can this value be established?

Keeping the making available right in the initial authors' contracts would be equal to the negation of its value. Today, in most authors' contracts, it is part of the package of rights transferred to the producer for a lump sum payment with no particular value attached to it. This situation can not continue with the development of the on-demand market.

- **Difficulty in harmonising contractual practices**

Contractual practices are very different from one country to another depending on the degree of professionalisation of the industry and its organisation, the existence of representative authors' organisations able to negotiate model contracts, the acceptance and use of these models by producers, and the degree of awareness of authors about their rights. In addition, contracts deal with many issues other than the making available right such as the other economic rights, creative and moral rights, working conditions, etc.

Many authors' organisations, including collective management societies, are working on the improvement of different aspects of the contractual practices in their country. However, it is long, hard and virtually never-ending work. In addition, improved contractual practices don't necessarily mean European convergence as local specificities are important. These specificities are so important that it has not been possible to establish a European model contract so far but only guidelines, handbooks, check lists and best practices. It is therefore impossible, even if they are improved, to achieve European harmonisation through contractual practices.

- **European producers are not equipped to trace and administer payments related to multi-channel distribution**

The European production market is very much fragmented between small and very small companies or even single purpose companies set up with the aim of producing a single film. While this craft production is well adapted to accompanying authors' creativity and is responsible for most of the European "cinema d'auteur" films, it is unable to generate industrial processes and mechanisms to trace and administer payments due to authors for the distribution of their works on multiple platforms.

The contractual chain in between the author's contract with a producer and the exploitation of the work on different channels might be very long and involve many different agents which even makes it difficult for the producer to get feed-back. In this context, European producers are very much focused on the production /making aspects of the film (financing, shooting and first promotion) and less directly involved in the distribution, which is entrusted to sale agents and distributors.

6. Would SAA's proposal interfere with the producers' role?

The SAA proposal does not interfere with the producer's role and activities. The producer remains the main partner of the authors. Good relationships between authors and producers are essential to making good films.

Authors acknowledge and do not question producers' own rights on the works in which they invest. The SAA proposal does not challenge their role and responsibility in the arbitration of the best possible commercial opportunities for the works they produce. It only aims at organising the remuneration due to authors, once the producer has decided to make the work available to the public in such a manner and at the time he chooses.

It means that any on-demand exploitation of an audiovisual work will continue to have to be cleared with producers or with the making available rightholder appointed by the producer.

7. Is there a risk of double payment of the audiovisual authors?

The making available right is currently not valued among the package of rights transferred to the producer in authors' contracts. No specific payment being currently attached to it, SAA's proposal would establish it, not repeat it.

The greater risk would be producers being tempted to lower the initial remuneration of authors in view of the revenue expected from the on-demand exploitation. However, lowering the initial payment would imply that the making available right is currently valued in contracts. Producers would therefore need to demonstrate that initial payments had increased at the time of the first inclusion of the making available right in contracts, which is not the case.

8. Who would be the debtors of such remuneration and how would it be calculated?

The debtors of the making available remuneration would be audiovisual media services who offer audiovisual works to the public on-demand. The main operators are video-on-demand (VOD) services which make catalogues of works available to the public (either to rent or to own) at the request of an individual, independent of the technology used (internet, cable, IPTV, etc.).

The calculation of the remuneration due to audiovisual authors should be based on the revenues of the on-demand services in relation to the actual use of the works. Negotiation should be conducted with authors' collective management societies in charge of the collection of this remuneration on the basis of fair criteria and clear principles for calculation which should take into account the business model of the service (individual payment, subscription, advertising, etc.).

9. How would the system work at EU level?

The foreseen harmonisation of the making available remuneration with an enforcement mechanism through collective management would make it feasible at EU level.

A VOD platform could be offered the possibility of concluding a single arrangement for all the European works of its catalogue with a one-stop-shop service which would distribute the money to audiovisual authors.

However, SAA's proposal is neutral regarding the territorial scope of a VOD service: it would apply both to VOD services offering audiovisual works in a single territory and to VOD services operating on a multi-territory basis.

10. Why authors' collective management societies are the best qualified to administer this remuneration system?

Audiovisual authors' collective management societies are authors' organisations with the professional expertise to both conduct negotiations with on-demand audiovisual media services (which necessitate market and consumption analysis, bargaining power and negociation spirit) and to distribute remuneration to authors (which necessitates accurate databases and standardised report sheets). This expertise designates them as the best qualified to develop and invest in digital automatic processes to organise the collection and the distribution of the said remuneration at the lowest cost.

If entrusted with this new task, these societies will have to operate on a clear and transparent basis towards both audiovisual authors and on-demand audiovisual media services. SAA is open to discussing the inclusion of any possible further criteria which would ensure the efficient and transparent functioning of the mechanism.

In addition, SAA is committed to working with the European Commission, the European Parliament and the Council on the future collective management framework Directive in order to ensure the best credibility of audiovisual authors' collective management societies.

11. Would extended collective licences be an alternative solution?

An extended collective licence is a licensing agreement freely negotiated between a representative collective management society and a user for specific uses, the application of which is extended (generally through legislation) to allow the use of works of non-member rightsholders. As a general trend, non-members are remunerated on the same basis as members and rightsholders can opt out.

Extended collective licences would be able to be developed to enforce the SAA proposal in countries which practice them or as an alternative option where audiovisual authors do not transfer their making available right to producers. In both cases, the intervention of a public authority (legislator) is required for the statutory extension to operate.

However, extended collective licences are not an alternative to SAA's proposal in countries where audiovisual authors transfer their making available right to producers as there would be no grounds for authors' collective management societies to intervene.

Only SAA's proposal which suggests the establishment of a right to obtain a remuneration for the making available of a work whose enforcement is entrusted to authors' collective management societies would grant these societies the ability to intervene throughout Europe, thus ensuring a level playing field across Europe to remunerate audiovisual authors for the making available of their works.