

SAA Council of General Policy meeting

29 June 2022, Brussels

Draft minutes

Participants

Vianney BAUDEU, La SCAM
Valentin BLANK, SUISSIMAGE
Jochem DONKER, LIRA*
Lars GRÖNQVIST, Copyswede
Ricardo GOMEZ, DAMA
Elizabeth LÓPEZ GÓMEZ, SGAE*
Andy HARROWER, Directors UK
Barbara HAYES, ALCS
Hrvoje HRIBAR, DHFR
Géraldine LOULERGE, SACD
Maria MATEO OROBIA, SGAE
Manon MONTROUGE, SACD
Teresa NAVAJAS, DAMA
Elena BARRERA OCON, SGAE*
Carmen PACHECO, DAMA
Maria PALAUROVA, Filmautor*
Guillaume PRIEUR, SACD
Patrick RAUDE, SACD
Victor ROMANO, DAMA

Jürg RUCHTI, SSA
Gernot SCHÖDL, VDFS
Dominik SKOCZEK, ZAPA
Robert STAATS, VG WORT
Gregor STIBERNIK, AIPA
Kinga SZELENBAUM, ZAPA
Jana VOZAROVA, LITA
Mattias ÅKERLIND, Copyswede

Cécile DESPRINGRE, SAA
Annica RYNG, SAA
Evangelos CHATZOULIS, SAA
Tracey FLYNN, SAA
Lina BECELLA, SAA

Guests

Pauline DURAND-VIALLE, FERA
David KAVANAGH, FSE

**Participated remotely*

1. Welcoming address by Barbara Hayes, Chair of the board of directors

B. HAYES welcomed SAA members and thanked the SAA team for putting together a lovely reception. She expressed her delight to have been re-elected together with P. RAUDE as chair and vice-chair of the board and pointed out that today's meeting is all about sharing information.

2. Adoption of the agenda

B. HAYES noted that item 6 on the agenda about the WG on Diversity and Equality will be presented after item 3.

3. Adoption of the minutes of the Council of General Policy meeting of 26-27 October 2021

The members adopted the minutes of the CGP meeting on 26-27 October 2021 unanimously.

4. WG on Diversity and Equality

B. HAYES had been acting as interim Chair since the departure of F. BUENAVENTURA and reported on the work of the WG since its establishment in October 2020. The WG has had two successful meetings in March and October 2021. A next meeting was scheduled in May, but it was postponed to give the opportunity to authors to participate in.

B. HAYES reported that at its meeting yesterday following the elections, the SAA board proposed that M. MATEO OROBIA from SGAE become the new Chair of the WG on Equality and Diversity. M. MATEO OROBIA agreed and will work with A. RYNG to organise the next meeting as soon as possible.

5. WG on the implementation of the Copyright Directive

A. HARROWER introduced his report referring to the situation in the UK and how Directors UK had been negotiating about fees for TV programmes. He claimed that more data on the exploitation of audiovisual works was needed for these negotiations with broadcasters and streamers. While it was unlikely that the UK will implement the Copyright Directive, the provisions on contract adjustment mechanism, transparency obligation, and the right to remuneration, unwaivable and collectively managed, would help balance the situation.

A. HARROWER reported that the WG met in December and April and had the opportunity to hear from many members about their implementation process. In addition, the case study of Poland's audiovisual sector had been presented. He thanked E. CHATZOULIS for his valuable mapping of Member States' implementation, showing that 15 Member States have fully transposed the Directive.

D. SKOCZEK informed that a new draft law implementing the DSM and SatCab II Directives had been published in Poland the week before. Article 18 was introduced with a statutory and unwaivable right to remuneration for authors for the making available uses with mandatory collective management (for audiovisual works only). Article 17 on OCSSP uses was introduced with an extended collective licensing mechanism (ECL). For SatCab II implementation, direct injection was considered a type of retransmission and that came with mandatory collective management. As a result, ZAPA will support the law proposal. However, CMOs have no tool to claim remuneration to foreign streaming entities that do not have any subsidiaries in the EU. In addition, ECL mechanisms being new for ZAPA, D. SKOCZEK expressed interest in hearing from other SAA members' experience.

G. ŠTIBERNIK asked if ZAPA could provide a written summary of the implementation draft law. D. SKOCZEK replied that they would provide such.

J. VOZAROVA informed that in Slovakia, Article 17 was implemented with an ECL, but no negotiations have taken place yet.

B. HAYES mentioned that the upcoming SAA expert seminar on ECL will be useful for all to learn.

C. DESPRINGRE reported that Belgium implemented the Directive on 16 June, including a non-transferable and unwaivable right to remuneration, collectively managed, for both video-on-demand and Article's 17 OCSSP uses. Belgium is the first country to implement the DSM Directive with the mandatory collective management of a remuneration right for both VOD and online uses.

G. ŠTIBERNIK informed SAA members that Slovenia had not implemented the Directive yet. The first draft was very promising, the second draft deleted some provisions, and they are now waiting for the third draft as the government changed in between. The new government wants to speed up the process. G. ŠTIBERNIK hoped that he will have some good news in a couple of weeks.

R. STAATS informed that in Germany the DSM Directive was implemented a year ago with an unwaivable right to remuneration, collectively managed for authors and performers for Article 17 uses. Now they had been discussing its enforcement. There must be a licence between the producer

and the platform for the right to remuneration to apply. In the absence of such a licence, authors and performers do not have a right to remuneration. There are not many licences as producers do not want to license platforms like YouTube. Only the right to remuneration related to the exception for caricature, parody and pastiche do not require a licence, but these uses are difficult to define. For this exception, CMOs have been discussing joint solutions like for private copying. In addition, they have been thinking of solutions for what users upload, such as extracts, but there is no CMO in the position to license collectively extracts of films on producers' side. There might be more opportunities for trailers as they are usually licenced in Germany.

L. GRÖNQVIST informed about Sweden's implementation process. The draft has been reviewed and should be presented to the Parliament after summer, but there will be general elections in September, so the implementation process will probably be delayed. Overall, Copyswede had been disappointed with Article 18. It was too narrowly connected to the contract and the relation between the author and the producer. As it is not the producer that makes the main revenues in the exploitation chain, the provision was not good enough to secure remuneration. For Article 17, it has been expected that the general ECL will be expanded to cover OCSSP uses but is not clear yet how it will work in the audiovisual field.

G. ŠTIBERNIK expressed the concern that even big countries have problems concluding contracts with streaming platforms. He mentioned that the performers have been handling this by putting all their repertoires together in SCAPR, who will be the one negotiating with streaming platforms. He noted that this was an idea for the SAA to consider in the next years. In Slovenia and Croatia, they have been working together in this spirit, and later other countries like North Macedonia might join.

P. RAUDE told that negotiating with US based platforms was sometimes tough, but SACD had contracts with all of them due to their strong mandate. Disagreements may have happened on financial matters, but not on the principle of a licence. For Article 17, the law ensured that OCSSPs must have contracts with French CMOs. Before the DSM Directive implementation, SACD already had an agreement with YouTube and started negotiating with Meta and TikTok later. In some cases, SACD had common negotiations with CMOs from other countries like SSA in Switzerland.

A. HARROWER concluded with stressing the importance of thinking differently and collectively especially for small territories to get away from the excuse of platforms regarding fragmentation of the European market.

6. WG on Retransmission

C. DESPRINGRE reported on behalf of the Chair F. YOUNG who could not join. Currently 16 Member States have implemented to directive. Since the last CGP meeting, the WG had one meeting in February when they discussed burning issues of SatCab II Directive, such as the retransmission of domestic channels. In Austria and Finland there are exceptions for public or all domestic channels regarding retransmission's payment obligation because it is considered that the retransmission in national territory is included in the initial transmission.

Another issue was the broadcasters' exception for paying retransmission royalties for acquired rights. The WG looked at the Belgium solution of an unwaivable right to remuneration. The General Council of State confirmed that there is no possibility for this right to be transferred to broadcasters. The SAA supported Filmautor's complaint to the European Commission last year. However, the Commission closed the complaint without engaging in discussions with the Bulgarian authorities.

Direct injection provisions were also discussed. In Belgium direct injection was included in the retransmission scheme and therefore implemented with mandatory collective management. A. TAMMINEN informed the WG that the Highest Court of Finland referred to the CJEU a preliminary ruling regarding Kopiosto's mandate to bring an action for copyright infringement in its own name acting for non-members rightholders (C-201/22, *Kopiosto r.y. v Telia Finland Oyj*). A. TAMMINEN

therefore asked SAA board members about their experience regarding their mandates and the basis of their capacity to bring legal proceedings in Court.

Last, the WG discussed the structure of tariffs. Some SAA members have been facing situations where retransmission operators wanted to exclude sport channels from the repertoire. The solution would be that tariffs for the remaining channels would get higher. The creation of a toolbox where members could share their arguments regarding retransmission operators' claims was discussed and F. YOUNG proposed the launch of negotiation trainings for SAA members on theoretical situations due to competition rules.

P. RAUDE informed that French CMOs won a court case against one important broadcaster on direct injection for the period prior to the transposition of the Cab Sat II Directive in the French law. Since that transposition, the issue of direct injection is behind us as far as the French market is concerned.

7. Follow-up of the surveys on educational uses and public performances and impact on the Key Figures

C. DESPRINGRE commented on the SAA's two surveys, on public performance and educational uses, whose results were circulated in March. These two surveys brought clarification on the applicable legal framework in the different countries, but little information on actual CMOs' collections. The board discussed ways to collect these economic data and proposed to include them in the Key Figures table that members provide every year. The board agreed to add 3 new Key Figures: public performance excluding cinema, cinema exhibition (as a separate line), and lastly educational uses. This collection of data for 2021 will start after this meeting. Members will receive an invitation from T. FLYNN with a deadline end of August to be able to discuss the data at the next CGP meeting.

H. HRIBAR pointed out that it is SAA's strength to collect data. It is very helpful especially for the smaller countries that do not collect in many fields. He also pointed out that right now, we should talk about the transposition of the Directives, not implementation as implementation is when the practice starts and when we see revenues flowing in, which is not the case yet.

8. International activities

Update on the SAA's activities with WIPO

B. HAYES expressed how impressed she was with C. DESPRINGRE's activities and meetings at WIPO meeting in May in Geneva.

C. DESPRINGRE informed that the WIPO Standing Committee on Copyright and Related Rights session in May was hybrid. C. DESPRINGRE was able to organise several meetings with the different regional groups and talked to many people. It was very useful to bring SAA's new international brochure. The producers' perspective had been very strong in WIPO, so it was important that audiovisual authors started being represented in Geneva. Now that we have the French and Spanish translation, C. DESPRINGRE will follow up with the people she met for possible future interest and activities. The Group of Latin American and Caribbean Countries (GRULAC) was particularly interested, added B. HAYES. She also mentioned that it would be interesting to bring something in WIPO's agenda and get involved.

Discussion on cooperation with FESAAL/AVACI

B. HAYES started with saying that we have a lot in common with FESAAL and many reasons to cooperate. She reported on the discussions held with FESAAL at SAA's board level so far. A smaller working group had been established to discuss concrete activities. FESAAL proposed a joint study, while the SAA suggested an international event in November.

J. RUCHTI pointed out that in many Asian countries, directors are not recognised as authors. This is something we can work with FESAAL and W&DW. He however noted that DAC, the Argentinian

CMO for directors, which is the leader of FESAAL, asked last year for termination of their reciprocal agreement without explanation.

P. RAUDE mentioned that many CMOs received the same letter of termination of contracts. He pointed out that this confirmed the SAA board decision to cooperate with FESAAL only on advocacy and that business is a completely different matter which should be dealt at CMOs level.

V. BAUDEU noted that La Scam attended AVACI's annual Congress in May in Seoul as an observer. In terms of network and exchange of information it was interesting, as many countries start from scratch as regards the legislation. La SCAM has been taking a careful approach and will continue working with W&DW and CISAC.

H. HRIBAR mentioned that the motives to be curious about the AVACI initiative come from CISAC not delivering enough on audiovisual issues. The Asian audiovisual industry is flourishing, and Africa is growing fast with digital technology. He considered that we should be part of a global structure and AVACI was a try.

D. SKOCZEK confirmed that DAC also terminated its reciprocal agreement with ZAPA and proposed 30% of management fees. Nevertheless, he said that as the SAA we should be in touch with FESAAL and AVACI. D. SKOCZEK expressed that as an audiovisual CMO, ZAPA felt like a second category member of CISAC. ZAPA will probably join AVACI as an observer.

G. ŠTIBERNIK mentioned that in WIPO meetings regarding the development of CMOs, IFPI, SCAPR and CISAC have been leading the process, but CISAC has been focusing on music authors, even though they also represent literary, visual and audiovisual authors. A global organisation that represents authors was needed. Africa is a promising market, and we must be present as representative of audiovisual authors. AVACI may be a tool to achieve that.

P. RAUDE informed that SACD had chosen to invest its resources, both human and financial, in SAA and CISAC for advocacy at the international level and will continue to do so. If we want to dedicate more resources to worldwide advocacy, SACD would prefer to focus on existing organisations. He noted that for the time being AVACI board is mainly formed by DAC representatives whereas in the SAA board, there is strong diversity of CMOs and countries from all over Europe.

B. HAYES concluded that the board agreed on SAA cooperating with FESAAL on advocacy matters. She reminded members that they can of course work with AVACI as they like.

9. Exchange on the impact of streamers' contractual practices with FERA and FSE

B. HAYES welcomed P. DURAND-VIALLE, CEO of FERA and D. KAVANAGH, Executive Officer of FSE for an exchange on the impact of streamers' contractual practices for screenwriters and directors.

FSE

D. KAVANAGH presented examples of provisions that can be found in contracts between European companies working for Netflix and screenwriters, such as "deemed to be work made for hire", "the company is the sole and exclusive owner in perpetuity, for the entire universe, in all media and format", "you agree that the money paid is proportionate", "prohibition to audit for the last 12 months", etc. The only country that has audiovisual works made-for-hire in their law is the US. It means that it is the producer that is considered the author in the US. This seems compliant with the Berne convention. Netflix now proposes these contracts everywhere in Europe, except in France. FSE does not know what to do with it, as it seems to be legal in many countries.

D. KAVANAGH informed that 'Create Denmark', the organisation that grouped authors and performers in Denmark, after not being able to negotiate with Netflix, concluded a collective bargaining agreement with the producers' association. They agreed that what was being paid to authors by streamers, should be as good as what was being paid by public broadcasters. As a

consequence, Netflix, ViaPlay and even TV2, the public broadcaster, said they will stop all productions and development in Denmark.

FERA

P. DURAND-VIALLE explained that the issue of work-for-hire was less an issue for directors than for screenwriters. FERA had no access to individual contracts so did not have any evidence. The question today was how authors can exercise their rights around the world? FERA did not see a way out with the current legal framework but considered it should be addressed with the Directive review in 2026. US colleagues could benefit from the Copyright Directive, but they considered already having what they need in their collective bargaining agreements.

Compared to music authors who have now been vocal about buyouts, it was not new for audiovisual authors. FERA was interested in what the French Presidency has done on the effectiveness of copyright but did not have any specific action points. However, they did not want buyouts to outshine the implementation of the Directive.

FERA has been involved in a 2-year project with UNI-MEI to provide capacity building activities for their members focused on the implementation of Chapter 3 of the Copyright Directive, working with an academic, U. FURGAL, to track national level implementation. They have been developing a database of the implementation provisions in 10 MS (restricted to FERA, FSE and UNI-MEI members). They also had a database on contracts and another one on collective bargaining. U. FURGAL presented a state of play of her work at the ECSA conference the week before. P. DURAND-VIALLE added that the European Audiovisual Observatory was interested in making a database on the implementation of the Copyright and SatCab II Directives, like the one on the AVMSD.

Exchange with SAA members

R. STAATS mentioned that the German Federal Ministry of Justice is planning a study on streaming practices and platforms' economy, combined with a study on the private copying levy system. Results were expected mid-2023.

P. DURAND-VIALLE mentioned that the European Commission's approach on the buy-out contracts in the Media Outlook will put producers' contracts with streaming platforms in the spotlight, not authors' contracts.

D. SKOCZEK said that streaming services and broadcasters force producers to transfer them all the authors' rights. In Poland, authors were familiar with buy-out contracts, but they have had the right to remuneration to protect them. Now the concept of work for hire was depriving authors from their authorship. ZAPA was concerned that their authors and producers (members) were not interested in any legal or advocacy actions against streamers because streamers have been paying more than local broadcasters (and working conditions are good too). The negative side was that they were no longer considered authors and could no longer provide their cultural perspective as they were creating works that should perform globally. Regarding the transparency obligation, producers did not have enough information from broadcasters and streamers to pass on to the authors and the draft implementation law has not put any obligation on broadcasters and platforms.

P. RAUDE confirmed that the French law prevented such behaviour. SACD has been checking every author's contract working with streamers.

R. GOMEZ mentioned that DAMA was in the legal position to ask for renegotiation, transparency, and analysis of proportionate remuneration even before the Copyright Directive. According to the law, the unwaivable right to remuneration, collectively managed, was applicable to every author regardless of its contract and country of origin. However, in practice, contracts have been very bad and take-it-or-leave-it: If authors were trying to negotiate, they would not do the movie or would not get a second movie. But each time DAMA challenged these contracts in court, they won. R. GOMEZ suggested that we should fight against the mere proposal of these contracts.

J. RUCHTI informed that three months ago Switzerland organised a public referendum on investment obligation and quotas for European content, which were confirmed in the law. More money will be coming to the sector. He noted that with streamers, the producers were the weakest element in the chain, not the authors. He also mentioned that it was not easy to prove that buy-out contracts were unfair.

A. HARROWER remarked that some directors are happy with well-paid buy-out contracts. However, Netflix has been offering less pay nowadays as they were losing subscribers.

D. SKOCZEK asked if we could turn to the European Parliament or the European Commission, as we cannot solve the issue without external intervention on a national basis.

P. RAUDE mentioned that the new EP report on the AVMSD application could be a vehicle to address the issue.

P. DURAND-VIALLE asked SAA members if they think there is a risk that they lose members if authors were being deprived of authorship?

Several SAA members replied that they did not think they would lose members. P. RAUDE added though, that CMOs could risk becoming less relevant if they collect less remuneration. J. VOZAROVA said that a private broadcaster in Slovakia force authors to opt out of CMOs. R. GOMEZ and D. SKOCZEK said that the unwaivable right to remuneration and mandatory collective management protect them.

B. HAYES thanked FERA and FSE for joining SAA members for this fruitful exchange. SAA will continue some of these discussions in the WG on Copyright.

10. Next meeting

B. HAYES thanked all members for their active participation and the SAA team for its work.

The next Council of General Policy meeting will take place on 9 November in Brussels, with a reception on the evening of 8 November.