

Article 17, streaming platforms and the future of music authors' issues in the EU

9th Conference on Authors' Rights, 22 November 2021

ECSA



- → ECSA represents over 30,000 professional composers and songwriters in 27 European countries.
- → With 59 member organisations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music.
- → ECSA's main objective is to defend and promote the rights of music authors on a national, European, and international level.

ECSA Members in Germany

- ➔ Composers Club
- ➔ DEFKOM Deutsche Filmkomponisten im Deutschen Komponistenverband
- ➔ DTV Deutscher Textdichter-Verband e.V
- ➔ FEM FachGruppe E-Musik im Deutschen Komponistenverband
- ➔ VERSO Vereinigung Songwriter im Deutschen Komponistenverband

Article 17

- ➔ Article 17 clarifies the liability of online platforms when they use copyright protected works. While previously users of online platforms were liable, article 17 now specifies that platforms must acquire licenses for copyright protected works uploaded by users.
- ➔ The European Commission (EC) published its **guidance on Article 17** on 4th June 2021.
- ➔ Not a step in the right direction, since it tends to encourage safe harbours (“likely infringing” and “unlikely infringing”) and exceptions + excludes the right of reproduction from its scope.

Article 17 and its implementation

- → Germany's implementation has raised concerns: it expanded certain copyright exceptions (so called minor and presumably permitted uses) **allowing for use of 15 seconds of music without compensation to the author.**
Such uses are still subject to the remuneration obligation through platforms and can be prevented by authors through takedown procedures in the event of personal rights/moral rights violations.
- → Many EU Member States **implemented Article 17** (such as France, Denmark the Netherlands, Spain, Italy and Croatia) **in a positive manner, close to the wording of Article 17** and not the European Commission's guidance.
- → Harmful implementations also presented in Finland and Austria and might appear in other countries, especially in those which were opposed to the Directive

The Digital Services Act (DSA)

- ➔ The overall intention of the Digital Services Act is to increase the responsibilities and oversight of online platforms and to promote ex-ante rules for large platforms acting as gatekeepers.
- ➔ The DSA should be coherent with the Copyright Directive (especially Article 17) and the AVMS Directive and not intend to modify them. The DSA should lead to stronger liability regime for online platforms rather than creating more safe harbors.
- ➔ However, the latest discussions in the European Parliament and Council move away from that goal and would mean a missed opportunity and even a step backwards. ECSA together with other cultural stakeholders signed a letter to call on the EU policy makers to stay true to the original objective of the DSA and ensure due diligence for platforms.

The future of music authors' issues-

Music Streaming

- → ECSA Position Paper "Music streaming and its impact on composers and songwriters – Why we should fix streaming now".

Today, it is almost impossible for an author to get decent revenues from streaming.
 - → Looking at safe harbours/value gap, how to restore the value of songs (authors' rights VS recording), the way streaming works (e.g, user centric), transparency and music data.
- The 2019 Copyright Directive is a key improvement but will not solve many music streaming issues.

The future of music authors' issues- Music Streaming



- ➔ UK DCMS report on 'Economics of music streaming' published in July 2021.
 - BrokenRecord + Fixstreaming campaigns led by the Ivors' Academy and the Musicians' Union = Report on the economics of Music streaming of the UK's Parliament's committee on Digital, Culture, Media and Sport (DCMS).
 - Implement copyright reform similar to Articles 17-22 of the Copyright Directive.
 - Tackle the disparity between song and record rightsholders (from the CD era).
 - Undertake a review of music metadata.
 - The report also supports a right to equitable remuneration for performers.

- ➔ Competition / Dominance of the 3 Music Majors: In October, the **UK Competition and Market Authority (CMA)** announced that it will launch a **market study on music streaming**.

The future of music authors' issues- Buyout contracts



- ➔ Report « **ECSA's vision on how Europe can prevent buyout contracts**» – Published in May 2021
- ➔ Focus on audiovisual composers and based on an extensive survey
- ➔ Explains the main characteristics of buyout contracts and puts forward recommendations to prevent them (Article 18 of the Copyright Directive, Collective Bargaining Agreement)

In 2021...



53 %

of ECSA members have experienced buyout contracts



63 %

of ECSA members have experienced a growth of buyout contracts in the last 3 years



66 %

of ECSA members have been offered contracts which forced them to sign away partial rights such as synchronization and mechanical rights



+ 21 %

Revenues generated by global OTT, TV and video platforms in top markets increased by 21 % (source: DigitalTV Research)

WHAT IS AT STAKE

USUAL CONTRACTUAL PROVISIONS

- A commission fee covers the period (sometimes several years) during which the composer creates and develops the film score or original songs
- The royalties covering the composers' participation to the revenues generated by the audiovisual work: which can be several years apart, royalties represent an essential revenue for music composers.

THE NEW UNFAIR CONTRACTUAL PRACTICES OF BUY-OUTS

- A one-time payment to compensate, now and forever, composer's contribution to the work, against the transfer of all rights for the duration of copyright.
- In parallel to the lump-sum provision, the composer may be required to accept that his or her contribution will be qualified as a "work made for hire", pursuant to the provisions of a non EU law, for example the US copyright law

The European Commission has recognised that buyout practices raise a challenge for creators, as they impose an extra-territorial application of foreign law in contrast with the Copyright Directive & national copyright laws.

ECSA urges EU Member States to:

- → implement Article 18 (Principle of appropriate and proportionate remuneration) in a mandatory manner and ensure it applies to all copyright contract.
- → implement Article 19, which requires authors' contractual counterparts to provide transparent information regarding the exploitation and revenues generated by the works.

ECSA also urges the European Commission to act, notably by ensuring that competition law does not prevent collective bargaining agreements between authors and their contractual counterparts.

Recent updates

3 recent European Parliament reports express strong concerns against buy-out contracts and ask the Commission to take action.

MEPs also ask the European Commission to assess the role and impact of streaming services - both VOD platforms and music streaming services.

They also call for EU Member States to speed up the implementation of the Copyright Directive and ensure access to collective bargaining.