

The European Composer and Songwriter Alliance's 10 steps on how to implement the Copyright Directive for a more sustainable music ecosystem

For more than 20 years, the music sector has gone through multiple revolutions and has now fully embraced the digital world. Today, European citizens can access music everywhere as they never did before. Many digital platforms have become richer and more popular, but music creators did not reap the benefits of this digital shift. According to a recent survey with ECSA Members, 74% of music authors cannot live from the income from their artistic profession. This situation is intolerable and must urgently change.

The Copyright Directive¹, which must be implemented before 7th June 2021 in all EU and EEA Member States², can improve this situation and contribute to a more sustainable music ecosystem for composers and songwriters. It can also rebalance the systemic weak bargaining power of authors when they sign contracts and allow them to get a fair share of their creative successes.

These goals can only be reached if Articles 17 to 23 of the Directive are properly implemented. Here are our recommendations for an ambitious and faithful implementation which can deliver concrete improvements for music authors:

Article 17

1) Close the value gap now!

Article 17 provides that certain user uploaded content platforms, must get a license as other competing services do. In most cases, licences will be available in the music sector. As a result, licensing will be encouraged and blocking of content would be marginal for most musical works.

Today, according to recent UK figures, YouTube has an average pay out of £0.0012 per stream, meaning 833 streams are needed to earn a pound, and 7,267 to make an hour's UK minimum wage. And this is when you own all the rights, in the best-case scenario. This is clearly not sustainable.

With Article 17 in place, European citizens can enjoy and share music freely as before, but creators will get a fair share of the value created. **That is why Member States must implement Article 17 as soon as possible to improve the remuneration of creators.**

2) Create a level playing field for all platforms

In order to deliver its benefits and promises, **Article 17 must apply to all significant platforms which are giving access to copyright works.** Definitions

¹ [Directive \(EU\) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC](#).

² The European Economic Area (EEA) includes all EU Member States, the UK, Norway, Iceland and Liechtenstein

of the entities who do not have to seek licences should be kept as narrow as possible. There should be no escape from fairness!

The “SMEs” exception (paragraph 6) should be narrowly crafted and not abused. SME/start-ups who will invoke this exception should be fully transparent regarding their turn-over and their average number of monthly unique visitors.

The notions of “best efforts” and “high industry standards of professional diligence” should establish a high threshold to demonstrate that the platforms do their utmost, in good faith.

3) Exceptions to authors’ rights should not become the rule

The copyright exceptions provided in Article 17 already exist in most EU Member States. **As a result, there is no need to put in place new exceptions.**

Moral rights should be fully respected in the implementation process, both in the context of Article 17 and for the new mandatory exceptions created by the Directive (Articles 3 to 7).

Chapter 3 – Articles 18 to 23 - “Fair remuneration in exploitation contracts of authors and performers”.

4) Be fair to creators – who have very little bargaining power.

Member States should recognise that contractual freedom is most often not a realistic option for authors and therefore they should acknowledge the authors’ systemic weak bargaining power in negotiating their contracts. **In that spirit, Member States should ensure that all those provisions (including Articles 18 and 22) are mandatory and cannot be overridden through contracts.**

5) No buyouts but fair and proportionate remuneration in all contracts

The principle of “appropriate and proportionate remuneration” enshrined in Article 18 enables authors to get a share of the income generated by the exploitation of their works. **This provision should be mandatory for all copyright contracts, whether national/European or international,** in order to prevent the unfair practice of buy-outs and allow creators to get a fair share of the revenues.

6) Authors must be fully and regularly informed on the exploitation of their works...

Without full transparency, authors are not able to assess the value of their works. Transparency on the exploitation of authors’ works and revenues generated enshrined in Article 19 is a pre-requisite for the valuation of the rights transferred/licensed and the basis for Article 20, 21 and 22 to function effectively.

Authors' contractual counterparts should have the responsibility to notify authors when exploitation of the work has ceased. In such cases, authors should be able to revoke their rights under Article 22.

7) ... without any sneaky exceptions for sub-licensees, non-disclosure agreements, or certain categories of works and companies.

To be meaningful, the transparency obligation should fully apply, without exceptions for sub-licensees, or non-disclosure agreements. Article 19 neither provides the possibility to exclude a category of works (e.g. smaller budget) or a category of companies (e.g. based on size) from the transparency obligation.

8) Give authors an adequate share of their successes

Article 20 (contract adjustment mechanism) allows authors to get “additional, appropriate and fair remuneration” in case the initial remuneration is “disproportionately low” compared to all the revenues made from the exploitation of their works. **To function effectively and in a fair manner, the term “disproportionately low” should be understood as “not proportional” and not in a more restrictive manner.**

9) Allow authors to take back their rights in case their works are not properly exploited...

The right of revocation enshrined in Article 22 will benefit music creators as well as European citizens who would have access to many unpublished works – currently unexploited. **Member States should provide that a continuous lack of regular reporting (non-compliance with Article 19) proves as a lack of exploitation in practice. Otherwise, authors would not be able to demonstrate a lack of exploitation.**

10)... with no exception for most creative works.

Member States should not exclude works from the right of revocation which “usually contain contributions of a plurality of authors or performers”. **Excluding those works would result in an empty and ineffective promise, since a wide majority of creative works are in fact works of joint authorship.**