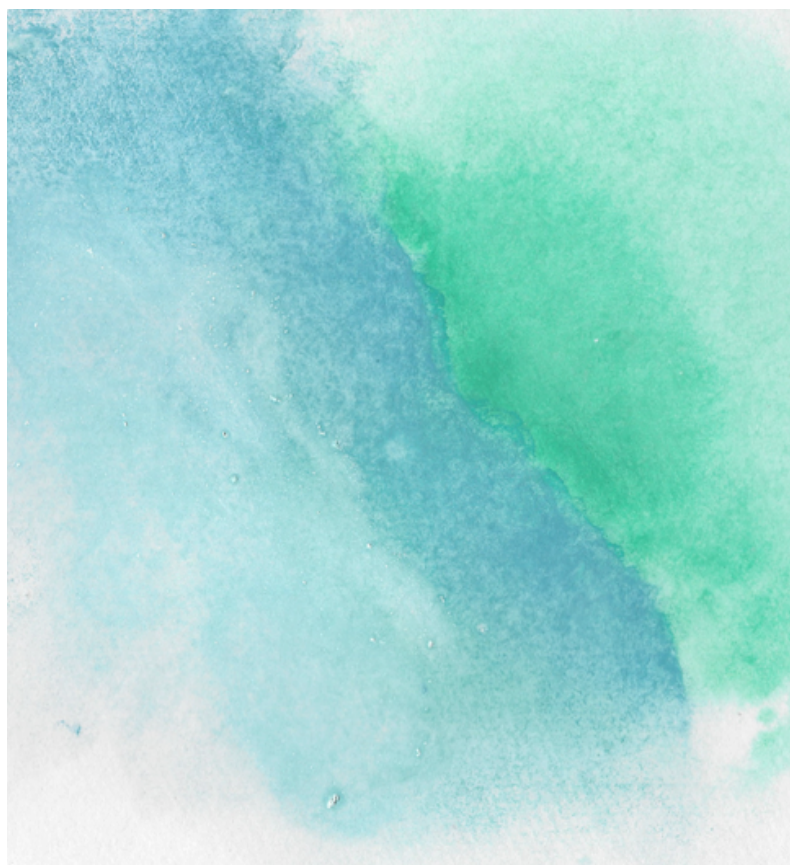


FLASHBACK DOCUMENT

Conference on the
implementation of the
2019 EU Copyright Directive

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Prepared by :

The European Composer and
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composeralliance.org



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Picture: Philippe Molitor

Together with the European Writers' Council (EWC), the Federation of European Screen Directors (FERA) and the Federation of Screenwriters in Europe (FSE), ECSA organised a conference on the implementation of the Directive on Copyright in the Digital Single Market (CDSM).

The conference took place on 23 June 2022 at La Maison européenne des Auteurs et des Autrices (MEDAA), in Brussels. It gathered around 45 participants in person and more than 1300 views on our Youtube channel. You can watch or rewatch the conference on our Youtube channel.

Nina George (President of the European Writers' Council, EWC) opened the conference by highlighting her personal experience with authors' contracts. She regretted the slow pace of implementation of the 2019 Copyright Directive, pointing out that **"appropriate and proportionate remuneration is still a distant and broken promise"** for European authors. EWC President also called for more agreements between authors and their contractual counterparts. Last but not least, she **welcomed the French Presidency initiative** on the effectiveness of the EU Copyright Framework as a motivating and constructive approach that should be supported by the **forthcoming Czech and Swedish Presidencies**.

First panel: The implementation of Articles 18 to 23 (Fair remuneration in exploitation contracts of authors and performers) of the CDSM Directive

Dr. Ula Furgal (Lecturer in Intellectual Property and Information Law, University of Glasgow) presented her Report on the implementation of Chapter 3 of the CDSM Directive, providing an overview of the ongoing implementation of the CDSM Directive's provisions concerning creator contracts, concluded in Chapter 3 (Art. 18-23).

In her report, she highlighted that those provisions leave considerable **implementation freedoms** to Member States but that those have generally **not taken advantage of those freedoms to the benefit of creators**. She also underlined that it might be advisable to **specify sanctions for breaches** of those provisions to ensure a proper enforcement by national authorities. Finally, she concluded in her report that, “to safeguard the principle of appropriate and proportionate remuneration, it is essential that Member States are **vocal on the issue of lump sum remuneration**, clearly limiting its availability”.

In the discussion moderated by **Pauline Durand-Vialle** (FERA CEO) that followed, Dr. Ula Furgal had the opportunity to exchange with **Marco Giorello** (Head of the Copyright Unit, DG CNECT, European Commission) about the implementation's state of play of the CDSM Directive, which should have been implemented by all EU Member States by 7 June 2021 deadline. However, as noted in Mrs. Furgal report, “only three Member States met this deadline, and to date **only 15 Member States have implemented, at least partially**, the CDSM Directive's provisions.”



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First panel: The implementation of Articles 18 to 23 (Fair remuneration in exploitation contracts of authors and performers) of the CSDM Directive

Marco Giorello asserted that such a situation was clearly not acceptable for the European Commission, which launched **infringement procedures against 14 Member States for non-compliance** with the obligation to transpose the Directive into national law.

He agreed that this Chapter provides a lot of flexibility to Member States, making it difficult to handle in legal terms at the European level. He added that the main reason was that the **European Commission legislated copyright contracts for the first time** with this Directive. Finally, following the recent announcement from Commissioner Breton, he clarified that the Commission will **look into the impact of buyout contracts** in the context of the European Media Outlook report.



Picture: Philippe Molitor

Tomasz Frankowski (Member of the European Parliament, EPP, Poland) stressed the importance of our **European model of authors' rights**, not only to protect intellectual property but also to provide a fair remuneration to authors, affirming that this “model must be protected against attempts to impose unfair contractual practices to European authors.” He also welcomed the French Presidency initiative on the effectiveness of the European copyright framework, as well the report on the impact of buyout contracts promised by Commissioner Breton. Lastly, he welcomed the European Commission's forthcoming **guidelines to remove the competition law obstacles to collective agreements** between authors and their contractual counterparts across Europe.

“Together with my colleagues in the European Parliament, we will continue working towards a fair remuneration for creators. Because without creators, there is no creativity, no culture and no creative industries.”

In his keynote, **Ibán García del Blanco** (Member of the European Parliament, S&D, Spain) highlighted the key importance of Art. 18-23 to achieve an appropriate and proportionate remuneration for authors and performers. He declared that the “implementation of the Directive is only the **first step to improve the contractual position of authors** and their remuneration”, highlighting that “we need to see **more collective bargaining agreements** between authors organizations and their contractual partners.” He echoed Tomasz Frankowski's position, stressing that “**buyout contracts should not be allowed** across Europe” and thanking the French Presidency for bringing this issue on the EU agenda.

“Appropriate and proportionate remuneration for authors is a cornerstone of the EU authors' rights regime, as reflected in Article 18 of the Copyright Directive. This principle is being seriously challenged by the coercive market practices of non-EU-based VOD platforms that impose buy-out contracts on composers in the EU. Such contracts, which are most often subject to US law and jurisdiction, deprive composers from any royalties based on the use of their works. This is a clear circumvention of EU and national laws in Europe. As EU lawmakers, we cannot accept that the laws we adopt do not apply in the EU or only apply on case-by-case basis.”

Second panel: Identifying and sharing best practices to improve authors' contracts and remuneration

The discussion moderated by **David Kavanagh** (FSE CEO) centred on **authors' contracts and the difficult position** that the majority of authors are confronted with. Although the principle of “appropriate and proportionate remuneration” enshrined in Art. 18 of the CDSM Directive should enable authors to get a share of the income generated by the exploitation of their works, **unfair practices, buyout contracts and the lack of collective agreements** still prevent creators from getting a fair share of the revenues.

Aurélie Champagne (Counsellor for Culture, Audiovisual, Media and Copyright at the Permanent Representation of France to the EU) explained the French Presidency initiative about the effectiveness of the European Copyright framework and presented the main conclusions of the report. She notably highlighted that EU Member States have observed **growing practices to circumvent authors' rights** and impose new models such as buyout contracts, in particular by large international platforms established outside the EU. Those platforms systematically propose **contracts governed by foreign law** (often by US law) accompanied by the jurisdiction of foreign courts, often in contradiction with the mandate or assignment authors have given to collective management organisations (CMOs) to manage their rights. Last but not least, Mrs. Champagne presented several **possible solutions to prevent those practices**.



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Second panel: Identifying and sharing best practices to improve authors' contracts and remuneration

Anselm Kreuzer (Composer, ECSA Board Member) elaborated on buyout contracts and referred to ECSA report on those practices. He also stressed the **key role that CMOs play for the ongoing remuneration of music authors** in accordance with the revenues generated by each work. Janine Lorente (Expert in Copyright and Authors' Rights Legislation) gave some examples of authors' contracts and explained the **differences between the US and the EU practices** in this regard. Finally, she underlined the necessity of strong authors' associations as well as the great **potential of negotiating and signing collective bargaining agreements** to ensure that authors are properly treated and fairly remunerated for their works.



Picture: Philippe Molitor

In her closing speech, **Helienne Lindvall** (President of the European Composer and Songwriter Alliance, ECSA) warmly thanked all the speakers for their participation. She also encouraged all the EU institutions to continue their work to **prevent unfair contracts for authors** and welcomed the announcement of the European Commission to **look into the impact of buyout contracts**. On the issue of **music streaming**, ECSA President called on policy makers and competition authorities to look at the **conflicts of interest between the three music majors** and their **dominance on the music streaming market**, which has very harsh consequences on the remuneration of composers and songwriters. She finally concluded that music streaming must be fixed and put again and again on the political agenda until we have a **functioning industry** that supports those delivering the core product: music.

“Music lovers can enjoy music at a very affordable price and streaming is booming for record companies and streaming platforms. But this does not benefit songwriters and musicians. We need to fix streaming. To do so, it must be put on the political agenda again and again until we have a functioning industry that supports those delivering the core product: music.”

About ECSA:

ECSA represents over 30,000 professional composers and songwriters in 27 countries. With 59-member organisations across Europe and beyond, the Alliance speaks for the creators of popular music, art and classical music, and film & audio-visual music. ECSA’s core mission is to defend and promote the rights and interests of composers and songwriters with the aim of improving their social and economic conditions, as well as enhancing their artistic freedom.

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