

**European Commission**  
**Directorate-General Information Society and Media**  
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## **EVA submission to the Commission public Consultation on Content Online in a Single Market**

EVA gathers 24 collecting societies for visual authors. The authors concerned are painters, sculptors, photographers, illustrators, designers and other creators of visual works. The EVA members manage copyrights of over 50 000 authors.

For the worldwide licensing of making available to the public works of fine art on websites the EVA societies have founded an International one-stop-shop called OnLineArt. The concept is based on a central pool of mandates on works and not an amendment of reciprocal agreements. All users within the EEA may choose between the societies participating in OnLineArt and receive worldwide licenses on equal conditions.

The tariffs of OnLineArt take due account of changes in the developing market. Only recently a special tariff for archive uses was developed which addresses the market demand for licenses for museum web sites which bring their whole stock of works on websites like in a digital library.

### **Executive summary**

The EVA societies are interested to see the works of the authors disseminated and accessible to a broad public under the condition that the justified financial and moral interests of artists remain protected. They are open towards all possible business models and distribution channels which they are ready to elaborate and install. The successful founding of the multinational One-stop-shop OnLineArt shows their readiness and flexibility to react positively and fast on market demands in a converging world.

The protection of the justified financial and moral interests and rights of authors are a precondition for a flourishing European Culture and essential part of public policies.

DRMs are in principle an interesting option. However, at present they lack important elements for efficiency and corresponding tracking methods for illegal uses in our sector. Our members can therefore not use DRMs at present without excluding that future developments might overcome the obstacles.

Given the strong power of content distributors and ICT industries the authors representatives are in a very weak position and need to be supported in their work by legal measures. The fundamental right of remuneration of authors should be made mandatory for all member countries because it is the only means to ensure that authors will receive their fair share of the developing and converging markets.

This could be for realised by extending existing rules such as the rental and lending right directive (1992).

### **Question1)**

Our societies offer world wide licenses for uses of works of fine art on web sites posted on the world-wide-web through its one-stop-shop [OnLineArt](#). In general our societies do not deal with offering image material online which is traditionally a service provided by picture agencies and archives including museums. These are in most cases also the holders of the rights on the image (photographic work) which embodies the work of art by contractual means from the photographers.

However, several of the collective management societies have started image data bases for the works of their members. This is the case for VEGAP, KUVASTO, COPY-DAN and our observer ADAGP. A future direction of OnLineArt is to offer images together with all rights in a package for online uses.

### **Question 2)**

The categories of works which are represented by EVA members are present in all types of creative content and services which the Commission has detected, i.e. in audiovisual media online, less frequent in games, Online publishing, educational content and other creative online services, for instance cultural information.

**Question 3)**

Our members are constantly observing market developments and new market demands. As concerns the application of DRMs our members are concerned of the lack of efficiency and security gaps. These problems are natural barriers based on particularities of the visual arts category.

The existing tools to monitor and track uses are work oriented. In the fine arts world the building up of complete archives of works created by one author is in most cases an impossible task. Works of art often bear titles which make distinction impossible (works without title or series works like Picasso's numerous sketches of "torros"). The single original works are disseminated after sale to private and public collectors, museums and others.

Watermarks are not efficient because of the ease to scan and digitise from available analogue copies of works, such as post-cards and illustrated books.

Our members can only apply DRMs when and if they can provide security that authors will be rewarded and illegal uses can be tracked.

**Question 4)**

Access to works is provided by our members and the rights of different players need to be in a correct balance. Digitised works can easily be modified and moral rights of authors can be damaged in other ways, which is also against public interest.

**Question 5)**

Interoperability and setting of standards is an important public policy issue because it facilitates the dissemination of works and the improvement of security measures.

**Question 6)**

The European Cultural diversity is of high value and unique in the world. When the authors' rights are watered down to do a service to large multinational industries the effect will be that less content will be available instead of more. Artists are mostly self employed and independent creative people. The rights of the authors are their incomes. Remuneration paid to authors is a positive employment policy in the sense of the Lisbon agenda and maintains the necessary financial basement for the further Cultural diversity.

**Question 11)**

The legal policy framework provided by the EU needs to ensure that authors are adequately remunerated and that the works are not devaluated. The ICT industries and channel distributors have a vested interest that prices for content are low. Their products and services need the content to make sense. It is obvious that their interest is to lower the prices with all their powers.

**Question 12)**

Collective management societies for the visual arts administer primary rights for authors of fine arts and secondary rights for all authors represented. For the first mentioned category the EVA societies have created OnLineArt (see question 1). For secondary uses it depends whether a member country provides for exceptions with remuneration schemes or for contractual models (only in UK, Ireland and Malta). EVA societies are either directly receiving shares for visual works from the parties liable for payment, through other collecting societies, such as RROs or by participating in associations founded by a circle of collective management societies which collectively negotiate remunerations and share between the societies.

Our members prefer an international exchange between visual creators' societies and this is mostly the case. They register automatically important metadata for accurate distribution for instance the information from their licensing of primary uses.

Any improvement of payment systems would need a profound inquiry on the different systems applied in the member countries. Any measures based on superficial analysis risk to become counterproductive.

**Question 13)**

Collective management societies work with tariffs which are approved by the supervisory bodies and published by the societies. Thus, equal treatment and transparency are provided. In all countries measures for users are in place to control tariffs taking due account of the national tradition. Also OnLineArt has a tariff-based pricing system.

**Question 14)**

We can commend you to what was reported before in our replies on OnLineArt. We would also like to draw your attention to the fact that the market for uses of works of fine arts on Internet web sites is a limited one. The concept of OnLineArt might not match with the conditions in other markets.

**Question 15)**

We believe that any new concept should take due account of the author's exclusive rights and the three step test of the Berne Convention. All uses which qualify for remunerations should be remunerated. With ongoing convergence the legislator should only react when new technologies are in place rather than act in advance within a process of an unforeseeable development.

**Question 25-26)**

As explained above, efficient DRMs for visual creators are not yet in place. Due account should also be taken by the fact that a forced phasing out of remuneration schemes would bring huge sources for income to ICT industries which are including the software developers. All rights holders would then entirely depend on such programs. The development of specific DRM programs is very costly and the income generated for content via DRM would be for a long term needed to compensate for such investment before the first could receive income. From the past we can recollect that software developers do not always comply with EU competition rules.

We expressively refer additionally to the IFRRO submission to this questionnaire.

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