



Society of Audiovisual Authors
Société des Auteurs Audiovisuels

Green Paper on the opportunities and challenges of the online distribution of audiovisual works

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Panel 3 – Audiovisual archives

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Mesdames et Messieurs bonjour,

Permettez-moi tout d'abord de vous présenter la SAA, Société des Auteurs Audiovisuels, cette nouvelle organisation qui regroupe les sociétés de gestion collective des droits des auteurs audiovisuels, scénaristes et réalisateurs. Lancée à l'initiative de 9 sociétés de 5 pays à la fin de l'année passée, elle s'est développée en quelques mois et rassemble aujourd'hui 24 sociétés de 17 pays.

Les missions principales de la SAA sont

- 1) La défense et la valorisation des droits économiques et moraux des auteurs, scénaristes et réalisateurs d'œuvres audiovisuelles en Europe ;
- 2) Le développement, la promotion et la facilitation de la gestion des droits par les sociétés membres;
- 3) La sécurisation d'une rémunération juste pour les auteurs audiovisuels pour chaque exploitation de leurs œuvres ;

Depuis son lancement public en mars 2010, la SAA poursuit des missions d'information auprès notamment des institutions européennes, afin de faire comprendre les problématiques des auteurs audiovisuels en termes de droits et rémunération, notamment dans le contexte du développement du marché numérique. L'objectif étant de développer des solutions permettant aux auteurs audiovisuels de participer pleinement au développement de ce marché numérique.

Nous sommes ainsi en train de finaliser un Livre blanc sur les droits et la rémunération des auteurs audiovisuels en Europe qui sera publié fin janvier et lancera la discussion sur les solutions que nous proposons.

Pour ce qui concerne les archives audiovisuelles, je vais passer à l'anglais pour vous présenter ma contribution :

A shared heritage

While the European Commission focuses on orphan works in the context of the digitisation and online exploitation of European cultural heritage, SAA believes in the involvement of audiovisual authors and their collective management societies in the exploitation of this heritage.

Orphan works solutions will not solve all the difficulties faced by cultural institutions when digitising, archiving and making available their collections, directly on their own platforms or through Europeana. We all know that complex processes are at stake, which require political will, big budgets, coordination and qualified teams of experts.

As far as protected works are included in the collections, cultural institutions should better look at rights holders as partners rather than obstacles to their mission.

European cultural heritage does not belong to the cultural institutions which preserve it. It is a "shared heritage": cultural institutions on the one hand and authors and other rights holders on the other, share the responsibility of preserving and making available to the public a heritage of an exceptional richness. This notion of "shared responsibility" is essential to building a fruitful dialogue.

There is no universal, legal, economic or technical solution to this multi-faceted challenge. Defining the models for a long-term and balanced partnership requires a dialogue between all the parties involved.

In the audiovisual sector, SAA favours general agreements between the authors' collective management societies and the cultural institutions in charge of the film and audiovisual heritage at national level to facilitate the global exploitation of archives, rather than a European specific legislative solution for orphan works only, whose impact would be questionable as the phenomenon of orphan works has never been assessed by the European institutions in this sector.

In this context, it is important to distinguish broadcasters' archives from film archives held by cinémathèques.

Broadcasters' archives

The collective management of authors' rights in the audiovisual sector as regards the relationship with broadcasters has a long track record of efficiency in facilitating the exploitation of works. Whether on a legal or contractual basis, many collective management societies have negotiated and administer agreements concluded with broadcasters. Most of them are currently discussing the extension of their agreements to cover online services of broadcasters, such as catch-up TV and on-demand services.

Some of them have already concluded agreements with broadcasters which cover the online exploitation of broadcasters' archives, commonly defined as audiovisual programmes which were either produced or commissioned and financed by broadcasters under their own editorial control.

One of the most quoted examples is the general agreement that French authors' societies have concluded with INA. In response to the request made by INA, which wanted to ensure that its collection of archives could circulate as widely, as simply and as efficiently as possible, while complying with French intellectual property law, the French authors' societies agreed to issue a general economic rights exploitation licence for their entire repertoire,

covering all modes of exploitation. In return, INA has undertaken to pay a percentage of its turnover from the sales of archival material and of the revenue from its co-production activity and to periodically send detailed documentation to the authors' societies, so that they can distribute the royalties to the authors concerned.

But other solutions exist:

In Switzerland for example, exploitation rights on broadcasters' archives can only be exercised by collective management societies, except if a contract exists and contains provisions on the exploitation of the material, in which case the contract is applicable¹.

In Germany, special legislation² provides for a remuneration right for authors of works concerning formerly "unknown uses" (e.g. digital exploitation) with respect to old contracts. The remuneration right can only be administered by collective management societies. Due to this legislation, collective management societies are negotiating with broadcasters to define the adequate authors' remuneration for the digital exploitation of the audiovisual archives.

Audiovisual authors' collective management societies have always pled for agreements with broadcasters at national level to define the best conditions for the exploitation of broadcasters' archives, both for broadcasters and authors.

In recent proposals (Legal analysis and proposals for modern copyright for digital media³), EBU proposes a simplified legal mechanism to enable broadcasters to exploit their own productions or commissioned productions in their archives (not those for which the rights are held by an external producer), provided that the right-holders affected by re-use are remunerated. This could take the form of the award of a general mandate to a recognised collective management society, enabling it to authorise communication to the public, including making available online. An alternative solution would be the application of the "extended collective licences" system to rights included in the archives of broadcasting companies.

EBU makes it clear that it is therefore not necessary for member states to introduce absolutely identical solutions to resolve difficulties in exploiting broadcasters' archives falling within their jurisdiction and that, inevitably, the details of the solutions will vary from country to country.

With this proposal, EBU is looking for legal certainty and the guarantee that EU Member States will ensure that appropriate mechanisms will be put in place to allow broadcasters' archives to become available online. It also recognises the essential role of collective management societies in authorising exploitation and administering payments for right-holders.

Film archives

For film archives, the situation is more complex for three main reasons:

- There is a lack of transparency and information on the content of the collections of film archives (including between them), which prevents the establishment of a clear and sound panorama of the situation;

¹ Article 22a of the Federal Law on Copyright and Neighbouring Rights of 5 October 2007, entered into force on 1 July 2008.

² Section 137 I of the German Copyright Code, as amended in 2007.

³ S. Edwards, P. Kamina and K.N. Peifer, "Modern Copyright for Digital Media – Legal Analysis and EBU proposals", March 2010, available at: http://www.ebu.ch/registration/policy2010/images/EBU%20Copyright%20WHITE%20Paper_EN_FINALE.pdf

- According to the information available, there is a lack of homogeneity of the collections compared to broadcasters, as they often include foreign works;
- There is a lack of dialogue between film archives and rights holders, in particular audiovisual authors. ACE only talks to FIAPF at EU level, while a constructive dialogue including authors' organisations, in particular collective management societies, would certainly help in many respects.

So, while film archives are claiming for a copyright exception to conduct their activities, SAA firmly believes in the "shared responsibility" of film archives and rights holders, as already stated, in preserving and making available to the public the European film heritage. This notion of 'shared responsibility' is essential to building a fruitful dialogue and defining the models for a long-term and balanced partnership.

SAA offers the rights clearance expertise of its collective management societies' members and is ready to explore any proposal based on a prior study of the concrete situation of the film archives' collections. SAA believes that in this context, collective management could certainly bring appropriate and secured solutions.