



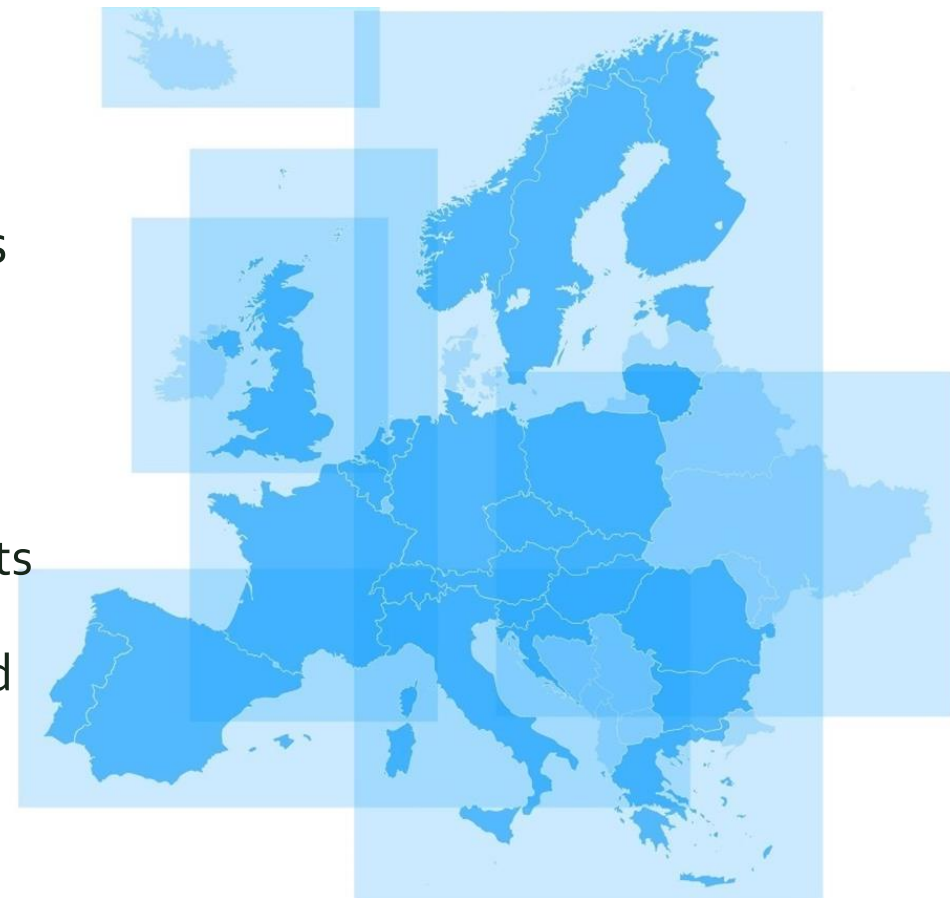
Society of  
Audiovisual  
Authors

**Implementation status of Article 18 DSM on  
appropriate and proportionate remuneration**

**Marienlyst, 26 August 2021**

# Society of Audiovisual Authors

- ✦ 33 audiovisual authors' CMOs in 25 European countries
- ✦ 160,000 audiovisual authors represented
- ✦ Objectives:
  - ✦ Promote audiovisual authors' rights and remuneration
  - ✦ Develop the collective management of AV authors' rights and remuneration
  - ✦ Provide information on how audiovisual CMOs work and their challenges



# Today's priorities

- Strengthening AV authors' CMOs in the audiovisual sector
- Implementing the 2019 Directives
- Catching up with the online market for an equal level playing field for audiovisual authors



# Article 18: Principle of appropriate and proportionate remuneration

1. Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration.
2. In the implementation in national law of the principle set out in paragraph 1, Member States shall be free to use different mechanisms and take into account the principle of contractual freedom and a fair balance of rights and interests.

# Implementation processes at national level

- ✦ Deadline for implementation of the Directive: 7 June 2021
- ✦ Most implementation processes have been delayed by the COVID-19 crisis
- ✦ 5 Member States completed transposition (covering Article 18):
  - ✦ The Netherlands (15 Dec 2020)
  - ✦ Hungary (28 April 2021)
  - ✦ France (12 May 2021)
  - ✦ Germany (4 June 2021)
  - ✦ Malta (21 June 2021)

# The Netherlands

- ✦ Explanatory Memorandum accompanying the bill: notion of **'fair' remuneration** already exists in the law.
- ✦ Article 25c Copyright Act on fair compensation: *The maker is entitled to contractually stipulated fair compensation for granting a right of exploitation).*
- ✦ Article 45d(2) **film works**: *anyone who broadcasts the film work, or who has it broadcast, or who communicates it to the public in any other manner, whether by wired or wireless connection, with the exception of making the film work available in such a manner that the film work is accessible to the members of the public in a place individually chosen by them, owes the **principal director and the screenplay writer** of the film work who has assigned these rights to the producer, **proportional fair compensation**. The right to fair compensation cannot be waived.*

# Hungary

- ✦ Explanatory Memorandum accompanying the bill: notion of '**proportionate**' remuneration already exists in the law.
- ✦ Article 16.4 Copyright Act: *the remuneration due to the author against the licence he has given for the use of his work shall be **in proportion to the revenue** earned by the use of the work.*

# France

- ✦ Explanatory Memorandum accompanying the bill: principle of **'proportional' remuneration** already exists in the law for authors (Art 18 only transposed for performers).
- ✦ Article L131-4 Intellectual Property Code: *an assignment of rights shall comprise a proportional participation by the author in the revenue from the sale or exploitation of the work.*
- ✦ Not possible to derogate by agreement (public order)
- ✦ Ordinance implementing AVMSD (Art 70-1) excludes from the quotas of European works the works whose production contracts do not respect the moral rights and right to proportional remuneration of the authors.



# Germany

- ✦ Explanatory Memorandum: right to '**equitable**' remuneration already exists in the law.

Article 32 UrhG: "(1) *The author shall have a right to a contractually agreed remuneration for the granting of exploitation rights and permission for exploitation of the work. (...) (2) **Remuneration shall be equitable if determined in accordance with a joint remuneration agreement** (Article 36). Any other remuneration shall be equitable if at the time the agreement is concluded it corresponds to what in business relations is customary and fair, given the nature and extent of the possibility of exploitation granted, in particular the duration and time of exploitation, and considering all circumstances.*"

- ✦ Addition: *a lump sum remuneration shall ensure that authors receive an **appropriate share of the expected total revenues** generated by the use of the work and must be justified by the specificities of the industry.*

# Malta

- ✦ Verbatim transposition of Article 18
- ✦ Article 17 decree of 21 June 2021: *Where authors or performers licence or transfer the exclusive rights for the exploitation of their works, or other subject matter, they are entitled to receive **appropriate and proportionate remuneration**. In the absence of agreement on the remuneration payable under this sub-regulation, the amount of such remuneration shall be determined by the Board: Provided that in determining the appropriate and proportionate remuneration to the actual or potential economic value of the licensed or transferred rights, account shall be taken of the author's or performer's contribution to the overall work or other subject matter and all other circumstances of the case, such as market practices or the actual exploitation of the work.*

# Resources and material

- ✦ [Implementing Article 18 for audiovisual authors](#)
- ✦ Recordings of 3 online events
- ✦ academic work and legal studies
- ✦ presentations on existing remuneration schemes in Netherlands, Poland, Spain and France.
- ✦ A case study on Spain highlighting the positive impact of remuneration schemes on the industry.
- ✦ Another case study on Italy to be published soon.





**Thank you for your attention!**

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