



Society of
Audiovisual
Authors

Implementation of Article 18 of the EU Copyright Directive in the Digital Single Market

FERA/FSE Webinar, 7 April 2022

Presentation outline



- ✦ The Society of Audiovisual Authors
- ✦ Collective management of AV authors' rights
 - ✦ Rights managed by SAA members
 - ✦ Collections
- ✦ Unwaivable rights to remuneration collectively managed in Europe
- ✦ Art 18 of the 2019 EU Directive on Copyright in the Digital Single Market
- ✦ Implementation in EU Member States
- ✦ Resources

Society of Audiovisual Authors

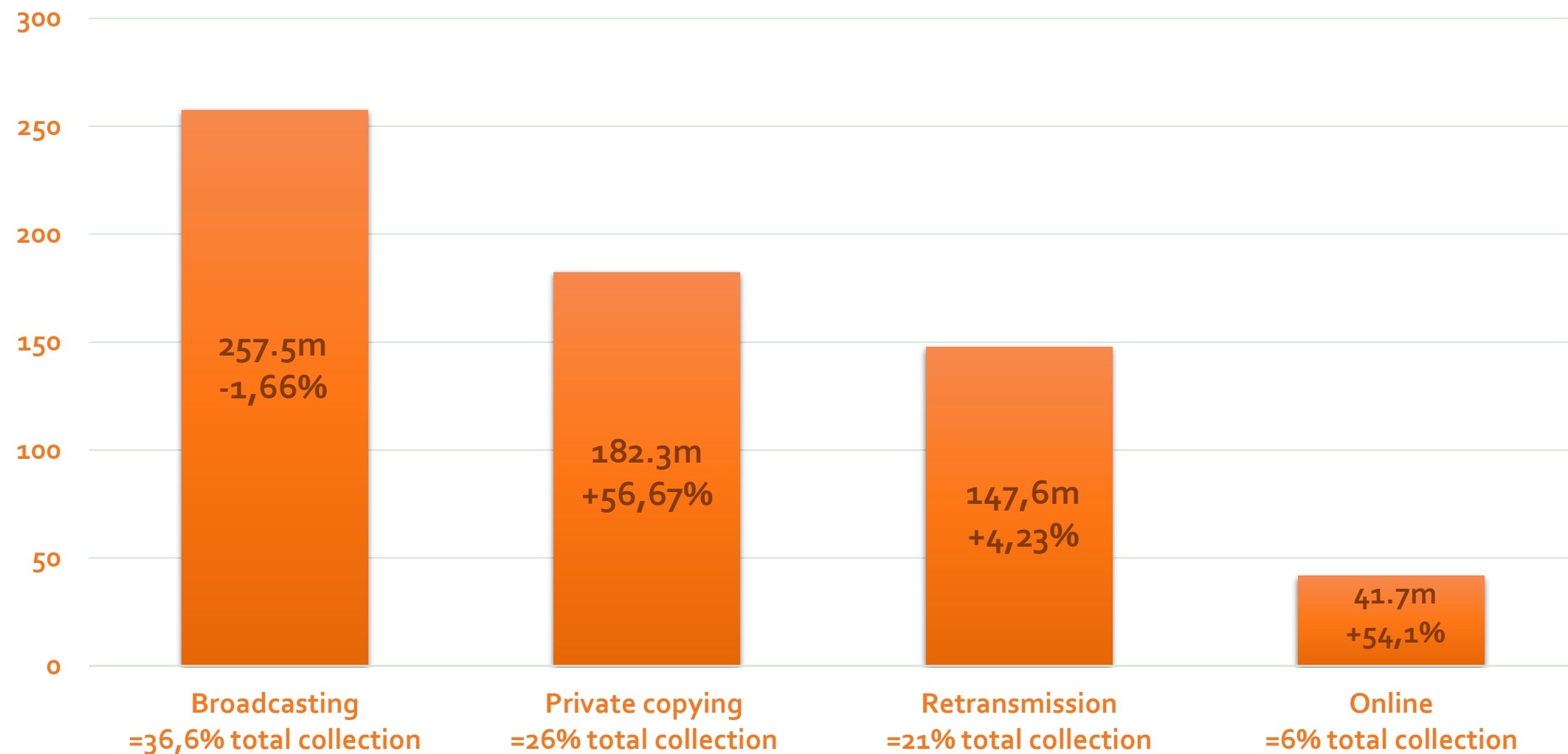
- ✦ 33 audiovisual authors' CMOs in 25 European countries
- ✦ 160,000 film & TV screenwriters and directors
- ✦ Objectives:
 - ✦ Promote audiovisual authors' rights and remuneration
 - ✦ Develop the collective management of AV authors' rights and remuneration
 - ✦ Provide information on how audiovisual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



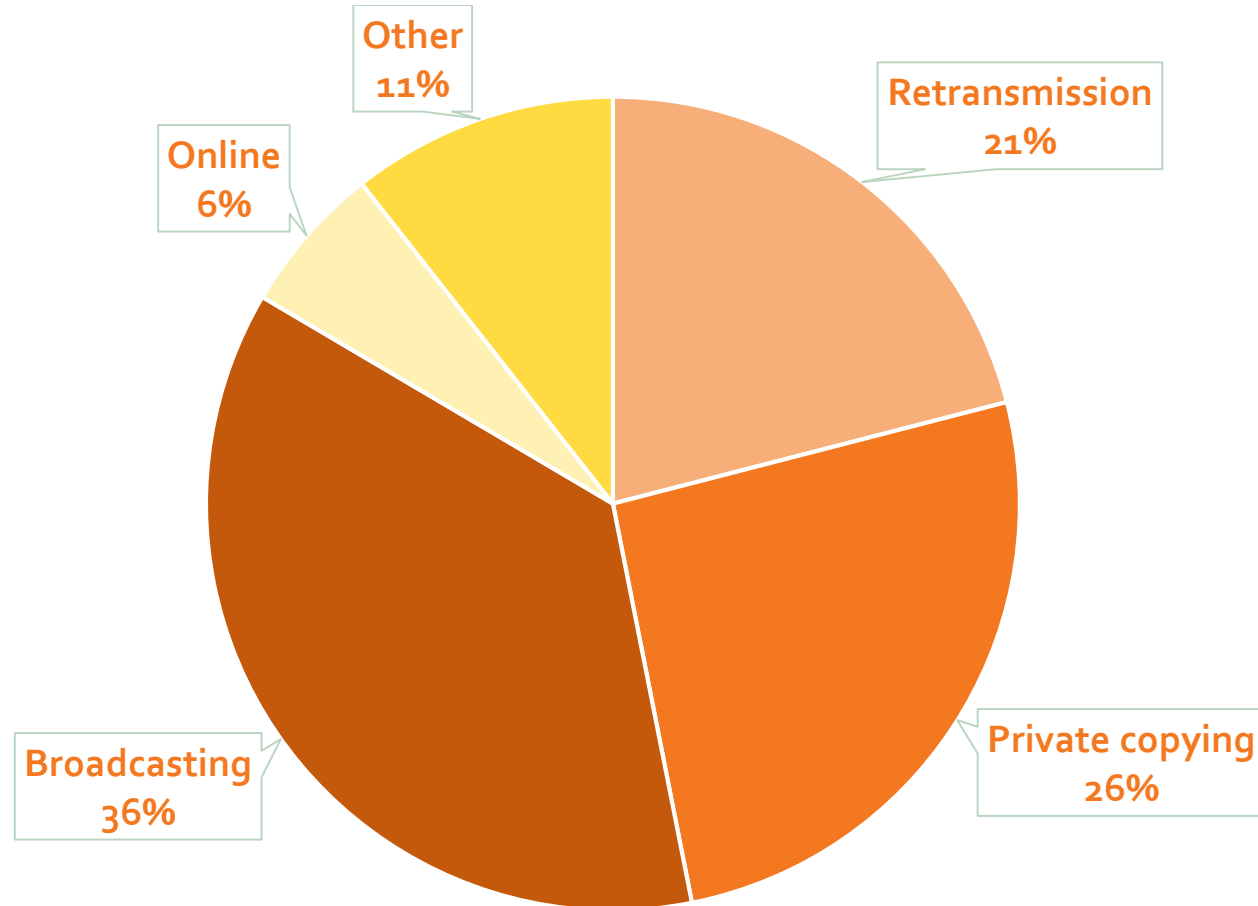
Rights managed by SAA members

Country	SAA member	Cable retransmission	Private copying	Other retransmission rights (satellite, IPTV)	Online / on demand uses	TV broadcasting	Video Sales	Educational uses	Video rental	TV archives	Cinema / public performance	Video lending	Totals	Percentages
Albania	FMAA												3	27,27%
Austria	Literar-Mechana												6	54,55%
Austria	VdFS												6	54,55%
Belgium	SABAM												8	72,73%
Belgium	SACD/SCAM												9	81,82%
Belgium	DeAuteurs												8	72,73%
Bulgaria	FILMAUTOR												7	63,64%
Croatia	DHFR												2	18,18%
Czech Republic	DILIA												4	36,36%
Estonia	EAAL												7	63,64%
Finland	Kopiosto												4	36,36%
France	SACD												8	72,73%
France	SCAM												8	72,73%
Germany	VG Bild-Kunst												6	54,55%
Germany	VG Wort												7	63,64%
Greece	ATHINA-SADA												5	45,45%
Hungary	Filmjus												6	54,55%
Italy	SIAE												4	36,36%
Lithuania	LATGA												3	27,27%
The Netherlands	LIRA												8	72,73%
The Netherlands	VEVAM												8	72,73%
Norway	Norwaco												5	45,45%
Poland	ZAPA												8	72,73%
Portugal	SPA												6	54,55%
Romania	DACIN SARA												6	54,55%
Slovakia	LITA												7	63,64%
Slovenia	AIPA												1	9,09%
Spain	DAMA												8	72,73%
Spain	SGAE												8	72,73%
Sweden	Copyswede												7	63,64%
Switzerland	SSA												9	81,82%
Switzerland	SUISSIMAGE												8	72,73%
United Kingdom	ALCS												3	27,27%
United Kingdom	Directors UK												4	36,36%
Totals		31	30	22	21	20	18	16	13	12	12	12		
Percentages		96,88%	93,75%	68,75%	65,63%	62,50%	56,25%	50,00%	40,63%	37,50%	37,50%	37,50%		

SAA members' aggregated figures 2020 (in millions €)

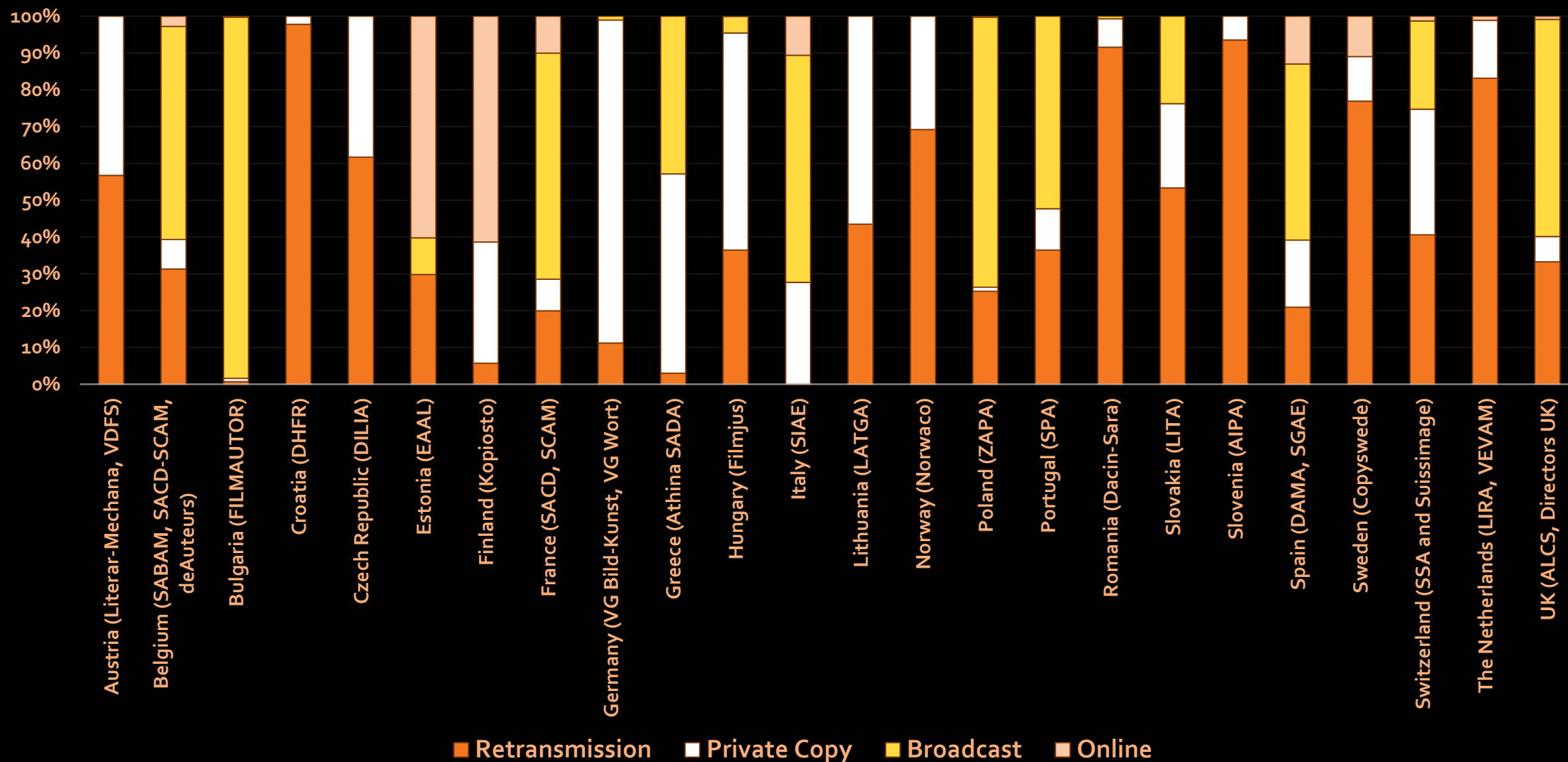


Respective share of the main categories of royalty 2020



■ Retransmission ■ Private copying ■ Broadcasting ■ Online ■ Other

Respective share of the main categories of royalty collected by SAA members (2020)



Unwaivable rights to remuneration collectively managed in Europe

- ✦ Several copyright laws provide for a right to remuneration for AV authors, collectively managed
 - Spain (Art 90), Italy (Art 46bis) and Estonia (Art 14.6): general provision
 - Poland (Art 70): list of rights collectively managed (cinemas, TV, public performance, retransmission, rental)
 - The Netherlands (Art 45d): all communications to the public (exclusion of on-demand uses)
 - Germany and Belgium (Art XI.225): retransmission
 - Switzerland (Art 13a): on-demand uses
- ✦ Combination of strong legal principles and voluntary CM practices
 - France, Belgium, Switzerland: communication to the public

Directive 2019/790 on Copyright in the Digital Single Market

Art 18: 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.

Recital 73

The remuneration of authors and performers should be **appropriate and proportionate to the actual or potential economic value of the licensed or transferred rights**, taking into account 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.

A lump sum payment can also constitute proportionate remuneration, but it should not be the rule. Member States should have the freedom to **define specific cases for the application of lump sums**, taking into account the specificities of each sector.

Member States should be free to implement the principle of appropriate and proportionate remuneration through different existing or newly introduced mechanisms, which could include collective bargaining and other mechanisms, provided that such mechanisms are in conformity with applicable Union law.

Implementation in 12 Member States

- ✦ The Netherlands (15 Dec 2020)
- ✦ Hungary (28 April 2021)
- ✦ France (12 May 2021)
- ✦ Germany (4 June 2021)
- ✦ Malta (21 June 2021)
- ✦ Croatia (22 Oct 2021)
- ✦ Italy (4 Nov 2021)
- ✦ Ireland (19 Nov 2021)
- ✦ Estonia (20 Dec 2021)
- ✦ Austria (22 Dec 2021)
- ✦ Luxembourg (30 March 2022)
- ✦ Romania



Countries with existing remuneration mechanisms

The Netherlands

France

Italy

Estonia

The Netherlands

- ✦ Notion of '**fair**' remuneration already exists in Article 25c Copyright Act: *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.*

Italy

- ✦ Art 107 (Legislative decree) transposes Art 18 and its principle of appropriate and proportionate remuneration “without prejudice to the right to remuneration provided for by Art 46-bis”.
- ✦ Art 46-bis: **equitable remuneration rights for AV authors** for any communication to the public via air, cable or satellite and any other use (includes online/on demand) paid by the operators (not producers) and managed by SIAE on voluntary mandates from authors.
- ✦ CISAC/SAA case study demonstrates the effectiveness of the statutory remuneration rights for AV authors and the related growth of the Italian audiovisual sector over recent years.

France

- ✦ Principle of '**proportional**' remuneration already exists in the law for authors (Art 18 only transposed for performers): *an assignment of rights shall comprise a proportional participation by the author in the revenue from the sale or exploitation of the work* (Art L131-4 IPC)
- ✦ Transposition law added that it is not possible to derogate by agreement (public order)
- ✦ New Article L.132-25-2 requests that collective professional agreements specify the modalities of remuneration of authors per mode of exploitation
- ✦ Ordinance implementing AVMSD (21 Dec 2020) excludes from the quotas of European works and public financial support the works whose production contracts do not respect the moral rights and right to proportional remuneration of the authors (standard contractual clauses)
- ✦ New Article L.132-24 for music authors of audiovisual works: cannot be deprived of their proportional remuneration by having their contracts subject to a foreign law.

Estonia

✦ § 14. Author's right to ~~[remuneration]~~ **receive royalties**

(1) An author has the right to ~~[obtain remuneration]~~ **receive appropriate and proportionate remuneration** for the use of a work by other persons, except in the cases prescribed by this Act.

(6) Where an author has transferred (assigned) the author's economic rights to a producer of audiovisual works or granted an authorisation (licence) to use (including to rent) the original or a copy of an audiovisual work, or where such transfer or authorisation is presumed, the author shall retain the right to obtain equitable remuneration from the television broadcaster, commercial lessor or another person who uses the audiovisual work. An agreement to waive the right to obtain equitable remuneration is void.



Countries with no pre-existing protection

Hungary

Malta

Ireland

Austria

Luxembourg

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.*
- ✦ Art 66.3: Regarding each manner of use, remuneration shall be due to the author separately. It is the **producer's obligation to pay the remuneration.**

Malta

✦ New Article 17: **Principle of appropriate and proportionate remuneration**

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.

Ireland

✦ New Article 26: **Principle of appropriate and proportionate remuneration**

(1) Where an author or a performer licenses or transfers his or her exclusive rights for the exploitation of his or her works or other subject matter, he or she shall be entitled to receive appropriate and proportionate remuneration.

(2) Remuneration under Paragraph (1) shall be considered appropriate and proportionate where it is proportionate to the actual or potential economic value of the licensed or transferred rights, taking into account 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 or other subject matter, including, where applicable, merchandising revenues.

Luxembourg

✦ Article 13 (in section about exceptions)

New (1): *When authors license or transfer their exclusive rights for the exploitation of their works, they have the right to receive appropriate and proportional remuneration.*

(2) The transfer of operating methods unknown on the day of the contract is only permitted if it is the subject of special remuneration.



Countries fixing problems

Romania

Romania

- ✦ Art 44 (1): The remuneration payable under a copyright assignment agreement shall be established by agreement between the parties. The amount of the remuneration shall be calculated either in proportion to the sums collected from the exploitation of the work, or as a lump sum, or in any other way.)
- ✦ New paragraph (1¹): *In addition to the remuneration provided for in par. (1), the author has the right to collect, through the collective management organizations, the remuneration due from the real use of the work, if there are no contrary provisions in the assignment agreement.*



Innovative approach

Germany

Germany

- ✦ Separate implementation law for Art 17 provides for an **unwaivable right to remuneration with mandatory collective management** to authors for the communication to the public of their works by the platforms, the newly introduced exception for caricatures, parodies and pastiches, uses presumably authorized by and minor uses.

SAA's resources

How to ensure fair and proportionate remuneration for AV authors?



- ✦ Recordings of SAA's online events
- ✦ Academic work and legal studies
- ✦ Presentations on existing remuneration schemes
- ✦ Case studies



Thank you for your attention!

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