



## EXCERPT

Round Table “Copyright Policy in Music and Film” – Expert Talks

**Date:** May 21, 2019

**Location:** mica seminar room, Stiftgasse 29, 1070 Vienna

Upon invitation by EU XXL Film, representatives of the ADA – Austrian Directors’ Association, AKM & austro mechana, the Austrian Filmmakers’ Association, GEMA, MICA – MUSIC Information Center AUSTRIA, the VdFS – Collecting Society of Audiovisual Authors, and the Austrian Federal Economic Chamber – Austrian Association for the Audiovisual & Film Industry discussed the new EU copyright directive<sup>1</sup>. In June 2019 it entered into force and should be implemented by the member states of the European Union by June 2021. The new developments of prime importance for the film sector are the use of protected content by online content-sharing service providers (Art. 17), appropriate and proportionate remuneration (Art. 18), the transparency obligation (Art. 19), and the contract adjustment mechanism (Art. 20).

With its many optional provisions, the copyright directive is also called—with slight disrespect—a de-harmonisation package. Earliest in autumn 2019 can we expect discussions, working groups, and hearings in the BMJ – Austrian Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice.

The greatest irritation in the new directive is and has been Article 17 (formerly 13) and the discussion about the “upload filter”. Opponents of the directive criticise the upload filter as a means of “censorship”. A recommendation of all those present at the Round Table: use the far more positive term “identification software” instead of upload filter in future discussions about the directive. Identification software is already in use and frequently offered. It is not particularly expensive (ca. 3000 EUR). For example, the identification software used by GEMA in the field of discotheques, notably, works very precisely so that compensation can be distributed without problems and in accordance with use.

Furthermore, the directive states that no general monitoring obligation should result and decisions about disabling content shall be made by human review and not algorithms. Proponents of the

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<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

directive must collectively counter the disinformation in society about the “upload filter”, “costs”, “censorship”, and “computer-controlled supervision”.

It is undisputed that technical requirements must be fulfilled to define and shape future means of remuneration. The greatest challenge here is to create unified systems of data collection, at least on a national and preferably a European level.

The current diagonal market power of large online platforms implies that they provide the hardware and software and simultaneously the distribution channel as well. If they now would also stipulate the identification software, their market power would be quite unlimited.

If Europe wants to assume a unified position and form a serious and effective counterpart to the large online platforms and non-European markets like the USA and China, it must develop its own system of unified data collection and thereby strengthen its market position in international competition significantly.

Furthermore, the implementation of the license requirement for online platforms poses a system question. A point of discussion will be individual and collective licensing. Establishing a system of collective management of rights could be an interest and aim of collecting societies. Rights, however, can also be licensed individually or as a package of rights (e.g. a world sale offers a package of film rights). Individual licenses by single copyright holders do not represent a practical alternative and weaken the position of individual creatives. In a system of collective management of rights it would also be possible for collecting societies to address the rights of so-called “outsiders” (non-members)—in this case, however, Art. 12 of the directive must be implemented within Austria.

A decisive issue in the discussions about channels and means of remuneration will be which party is entitled to sit at the table with the policymakers. Can/Should representative associations of authors and performers negotiate common remuneration rules with user organisations (broadcasting corporations, producer associations, etc.)? Or can/should the existing Austrian system with a statutory wage agreement be negotiated by the institutional representations of employers and labour? In all systems attention must be paid to a balance in the negotiating power.

Who sits at the negotiating table with the online platforms? Who represents the authors and performers? Who is entitled to negotiate the licenses? For example, are all Austrian collecting societies entitled to participate in the license negotiations? A controversial point. Above all, the VdFS would like to represent the rights of all filmmakers themselves. The producers’ representative sees things differently: Here the producers are like a one-stop shop—this also corresponds with the view and approach of broadcasting corporations and telecommunications service providers.

The task at hand is to enter into dialogue with policymakers as soon as possible so that implementation on a national level can be as effective as possible for all areas of the film sector.