



European Visual Artists

Feedback on the Intellectual Property Action Plan of the European Commission

Brussels, 22 July 2020

EVA is a European interest group for collective management organisations (CMOs) for visual authors. Our 28 members are located in 23 countries and represent over 130.000 authors. They are covering fine arts, illustration, photography, graphic design, street art, design, comics and architecture. Our members are managing a broad amount of different copyrights for visual authors. Included are collective rights, such as private copying, reprography, public lending right and cable distribution. Individual management is provided for reproductions and distribution of works in all kinds of media, including cross border licensing of collections of cultural heritage institutions, education materials, broadcasting rights and others. EVA is official observer of WIPO since more than 15 years.

In the framework of the Commission's Intellectual Property Plan, we would like to stress the importance of proper reflections on the impact and market implications of the expansion of **Artificial Intelligence** in the copyright sector. In coordination with parallel initiatives on AI, we call on all relevant departments of the Commission to conduct assessments of what impact the many possible AI applications can have on the copyrights of visual artists across the EU. The potential distortion that an unregulated expansion of AI uses of copyrighted works as input for machine learning or as output of AI processes can have on the current market of protected visual works can be deep and irreversible. Within the Cultural and Creative Industries in the European Union the visual sector is a leading contributor and generated 127,6 bn Euros turnover in 2012 and provided in the same year 1,2 million jobs. (data from the December 2014 [EY study](#) "Creating Growth") The impact of AI on copyright needs to be inquired carefully and in depth to prevent losses. The visual works sector belongs to those that are hardest hit by the COVID 19 pandemic. Following an ongoing membership survey more damaging consequences are expected for the next one or two years to come.

We are worried that if not correctly and swiftly tackled, these changes can close down the market of European artists who make their living out of copyrights and sale of human-made artworks, which have made the history and the culture of our continent.

Similar implications are to be found in the development of 3D printing, although to a lower extent. There should be a clear cross-sector approach that **3D printing** will not be exempted from copyright levies nor large-scale 3D reproductions will be exempted from copyright authorisations.

The IP action plan is a key opportunity for the Commission to protect an important sector of the EU economy (the creative sector), taking the lead in the world for protecting its artists without hindering new technological development and deployment.

The recent achievement of the **DSM directive 2019/790** is a good example of the EU (and the European Commission) setting the pace in new areas, as we see now around the world more and more countries considering introducing measures similar to the directive. That is why we fully support the goal to a swift and smooth implementation of its provisions in all Member States. New opportunities provided by the Directive should be transformed into national legislation by the Member States ensuring that authors are remunerated and that unremunerated exceptions are banned. The implementation of Article 17 DSM Directive should focus on the **'best efforts' to obtain a license** and privilege collective and extended collective licensing (ECL) models. It is the rule stated in Article 17 (1) and (2) that **online content-sharing service providers have to actively seek authorization from authors**. Collective licensing and ECL are models developed for mass uses to the benefit of users, service providers and the authors who need to make a living from their creations.

Similarly, the creative sector and the visual sector in particular bear hopes that the upcoming Digital Services Act will provide clarifications over the use of copyrighted works over the internet, at least in the areas not covered already by the DSM directive. For example, **image search engines** (like Google Image or Bing Images) make reproductions of copyrighted images without consent nor without any fair compensation to authors. The technical ways the display of the images happen can vary (thumbnails, embedding etc.), but all methods amount to either reproduction or communication to the public, which are exclusive rights of rightsholders. In many cases such images are also available on the search results in high quality, making it extremely easy for users to download and use them offline without permission and/or share them on additional websites or social media. Our members, the visual Collective Management Organisations, would be willing to provide blanket licensing covering the whole of their repertoire, so that the image engine services would not be disrupted nor their collections would experience any reduction. The only difference is that the owners of the engine would have better legal certainty over the use of those images and European artists would be fairly remunerated.

Secondly, we would expect the DSA to include provisions regulating the use of **embedded or framed works** on the internet. "Embedding" and "framing" of images is a widespread practice among all websites which consists in displaying an image on the website A through an "embedded" or "sharing" link that displays a portion of website B, with that portion being an image or an album of images¹. The technology is quite easy to use, especially with social media automatically generating embedding links for users to further communicate content originally found on other websites. The problem is that

¹ For more information, please refer to our [infographics](#) and our [explanatory brochure](#).

embedders (website A) are also communicating to the public a copyrighted work they have not paid for. A clear obligation should be introduced for online services to pay a remuneration for embedded and for framed visual works.

Thirdly, a **clarification between active and passive hosts** is needed to improve the liability regime everywhere on internet. The requirements to qualify a digital service as “active” should be updated taking into account CJEU recent rulings. Acts like promotion, recommendation, organization and presentation of content should qualify digital services as active, and therefore be attributed liability. They should cover all uses by third parties which use visual works to increase traffic and therefore profits from advertisement on online services.

About EVA

European Visual Artists (EVA) represents the interests of authors' collective management societies for the visual arts. **28 European societies** are gathered under this roof as members or observers. They manage collectively authors' rights of close to **130 000 creators** of works of fine art, illustration, photography, design architecture and other visual works.

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