



Ensuring a fair future for visual artists

28th September 2022, Brussels

Report



In 2022, EVA celebrates 25 years since its foundation, an important moment to reflect on past successes and the challenges to come. Even though much has been done to defend visual artists' rights, there is still a long way to go. It is key to continue exchanging experiences, views and insights on how to ensure a fairer future for artists, making sure that they are at the heart of this conversation. For this very reason, EVA organised a one-day conference on the 28th of September 2022 in Brussels entitled '*Ensuring a fair future for artists*'. The conference, moderated by EVA's Secretary General **Carola Streul**, was attended by several international speakers, including:

- **Hervé di Rosa**, Painter, President of ADAGP, France
- **Marie-Anne Ferry-Fall**, General Director, ADAGP, France
- **Jürgen Gawron**, Illustrator / President of German Illustrators Association, Germany
- **Marco Giorello**, Head of Copyright Unit, DG CNECT, European Commission
- **Javier Gutiérrez Vicén**, Director General at VEGAP, Spain
- **Anita Huss-Ekerhult**, WIPO Counsellor, Copyright Management Division
- **Marcel Noack**, Visual Artist, Chairperson of BBK and IGBK, Germany
- **Anke Schierholz**, EVA President and Head of Legal Department at VG Bild-Kunst, Germany
- **Hilde Tørdal**, Visual Artists / Vice President of the International Association of Art (IAA) Europe, Norske Billedkunstnere, Norway
- **Nele Van Canneyt**, Photographer, Belgium
- **Vincent van den Eijnde**, Managing Director, PICTORIGHT, Netherlands
- **Esther Pizarro**, Visual Artist / Researcher and Professor at the Universidad Europea in Madrid, Spain

Opening address

During the “Opening address”, **Javier Gutiérrez Vicén**, Director General at VEGAP recalled that EVA was registered in 1997 under Belgian law after being active as an association



already since the early nineties. EVA today unites 29 collective management organisations for visual works in 25 European and EU countries. The initiative came from Gerhard Pfennig, previous Director of VG Bild-Kunst in Bonn, Germany and was supported by CIAGP, the CISAC’s International Council for Authors of

Graphic, Plastic Works and Photography. The purpose was the protection of the visual

authors' rights within the European Internal Market. He reported that, in the beginning, there were no digital rights or metaverse and the key Directives harmonizing the resale right and the Internal Art Market (2001/84) as well as the Information Society Directive (2001/29) did not exist. He reminded that the Resale Right Directive alone took twelve years of intensive work to be achieved. In 1997, EVA became a European Economic Interest Group (E.E.I.G.) managed by Secretary General Carola Streul, who is still in office today. Javier Gutiérrez Vicén underlined her qualifications being a lawyer with experience in collective management and knowledge of the functioning of the EU Institutions. Since 1997, seven presidents have provided their valuable expertise and empowered the Association.

In her opening speech, EVA's President and Head of the Legal Department at VG Bildkunst, **Anke Schierholz** said that ensuring safe incomes for authors is EVA's priority today. She described the mostly precarious life and work situation of many artists by showing several facts and figures on the importance of ensuring fair payment to them. The sector contributes significantly to employment with 1,89 million jobs in 2019, and the pan-European turnover of the visual sector was €138 billion in 2019. More than 95% of fine art artists earn less than € 20.000 per year. Although most visual artists have an academic education, they hardly earn 1/3 of the average income for academically trained professionals in Germany. Only if artists are fairly paid for their work(s), can they access social security schemes like health insurance and pension schemes. In Germany, only 4% of fine art artists over the age of 67 have pension entitlements, while the rest must continue all their lives to generate artistic income to make a living. Figures are regularly collected from artists' associations, also for the illustrators and the photographers' sector with comparable but less dramatic figures. On a positive note, a recent British YouGov survey showed that there is a broad consensus in the general public that artists should be fairly remunerated: 81% of the interviewed persons answered that culture is important in their daily lives, 75% access cultural content more than three times a week and 82 % say that artists should be paid for their works. She said that these figures show clearly that changes are possible and that providing visibility by using protected visual works is generally not seen as enough payment for authors.

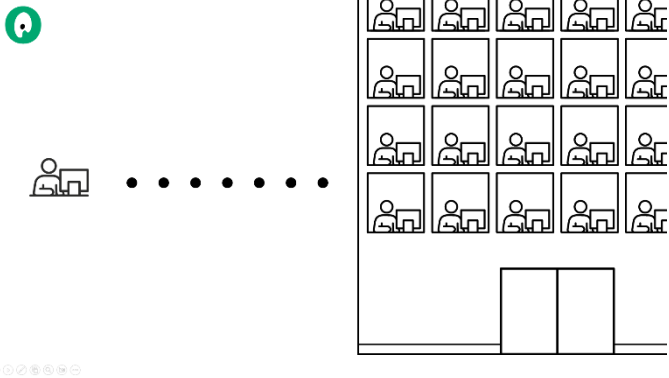
A day in the life of an artist - Understanding the artist's work

During the second session of the conference, French painter and President of ADAGP **Hervé di Rosa** talked about artists' support in France, which includes social security schemes. He said that the new platform liability in Article 17 of the DSM Directive is not yet

providing income and he warned that not too much should be expected from it. He mentioned that negotiations are ongoing with several U.S. platforms. At the beginning of his career, Mr Di Rosa’s revenue came from selling his paintings, but now CMOs manage his reproduction and resale rights, contributing significantly to his income. He pointed out that with NFTs, new rights might appear, and it would be important to keep up with recent trends. Concerning exhibitions, Mr di Rosa stated that everybody involved in exhibitions of artworks is paid revenues except the artists, using the visibility raised for these artists as a motive. So, things need to improve on that end. Finally, he stressed the importance of having young artists on the Board of Directors of the French CMO ADAGP to increase diversity and representativity.



Jürgen Gawron, German Illustrator and President of the German Illustrators Association, presented a day in his life as an artist. He explained that he creates illustrations and narrative concepts for IT applications. Being self-employed, Mr Gawron has to face a series of challenges and tasks that go beyond his artistic skills, including accounting, taxes and insurance, but also soft skills such as negotiation, communication and client acquisition which have an important impact on his professional success and are even more crucial than



illustrative or artistic skills. He informed that being self-employed and negotiating contracts with almost always larger companies is hard. The people on the other end of the phone represent their company, most of the time they are employees, with a multitude of colleagues, superiors, and entire legal departments on whose support they can count at any time. Their job is to

negotiate projects commercially, and they do it with greater resources and greater financial flexibility. On the artist's side, verifying the contracts is a long task which demands expertise and time to check the terms and formulate change requests, and in relation to the expected fees, this gets quickly uneconomical. Moreover, small markets are unbalanced for artists, with constant financial pressure and competition, on top of the necessity of avoiding conflicts and the danger of becoming blacklisted. Therefore, the contracts artists conclude are leaving much to be desired. He added that illustrators suffer from a lack of recognition: he recently became aware of an award ceremony for children's books. The award was limited to text authors, while illustrators were left out and not even personally informed about the award: a blatant neglect of the contribution of illustrators, without which these books would be neither conveyable nor conceivable. He reckoned that artists should join forces and enter organisations, as it is the only way to face the digital world's challenges and overcome the risk of being blacklisted by potential clients. Taking legal action as an individual is dangerous, because of the probability to lose and the resulting side effects. Collective action can protect individuals, carry out trials and achieve verdicts that can serve as precedents.

Hilde Tørdal, visual artist from Norway and Vice President of the International Association of Art (IAA) Europe, explained the structural problem that has left the vast majority of visual artists at the bottom of the statistics of artists' income year after year: artists don't get paid for making exhibitions within the non-commercial and publicly funded galleries and museums. People visit these shows to get an art experience and not to buy art to take home. What they do bring home is the art experience they get, a sense of community, personal reflections, and impressions that at best can stay with you for a lifetime or even be life-changing. The artist should get fair pay for the part they play in creating that value, which is not the case today.

The idea that the artist will benefit economically by selling artworks from their exhibition, does not fit the model of the non-commercial art scene. These venues rarely pay the artist proper fees, remuneration or cover exhibition costs. The artist must take too much of the risk, and often work double to pay the bills. Just because exhibiting might give the artist higher credit or opportunities later in their career, such as raised market price commercially or exposure to new markets, doesn't mean working for free is fine when everybody else gets paid to do their job.

Artists are an essential part of the value chain, by creating exhibitions for art spaces within a non-profit model. Paying the artist gives the art institutions and the artist clearer roles,

creates a more diverse and sustainable art scene and also helps to equal the balance between the two parties.

Fair remuneration means both an exhibition participation fee as compensation to visual artists for the work and administration invested in creating content for exhibitions, as well as an exhibition rights remuneration for the display of artworks in the artist's possession, while the artist is not able to dispose of the artwork during the exhibition period - be it through copyright or soft law agreements.

Nele van Canneyt is a Belgian photographer who spoke about her condition as an artist in Belgium. She believes the remuneration of the "right of exhibition" should be proportionate



ART PHOTOGRAPHY NELE VAN CANNEYT

to the time the works are exhibited. In Belgium there is no right of exhibition remuneration for visual artists (like for example in France and in Canada). She illustrated the Canadian case, where the right of exhibition is in place, and how she managed to get a collective agreement with the National Gallery of Canada in 2015 under the Status of the

Artist Act. She explained that it works very well in Canada with CARFAC, an artists' union that has been committed to negotiating strong contracts for artists since 1968. CARFAC recommends reproduction royalties and professional services fees, but exhibition payments are at the core of their fee schedule, often referred to as an artist fee or CARFAC fee.

During the roundtable discussion, it was highlighted how certain organisations such as Wikimedia, don't want to pay for culture or recognize authorship, and why every use of culture should not remain unpaid. Moreover, it was underlined that the national institutions lobby hard to ask for educational exceptions, instead of remunerated licensing.

Article 17: negotiating with platforms and update on other copyright matters

Marco Giorello, Head of the Copyright Unit at DG Connect at the European Commission, informed the audience about the delay in implementing the DSM Directive, likely due to the European member states' administrations. He added that the situation is overall favourable for a copyright reform to support the creative industries.

He stated that the DSM directive positively impacts the single market. Thanks to Article 15, press publishers have more and more agreements with platforms and are currently discussing remuneration amounts.



Concerning Article 17 and the negotiations with platforms, Mr

Giorello advised that the discussions around it have been challenging and thus the Commission issued the respective guidelines. Poland also challenged this article before the Court of Justice of the European Union, which eventually endorsed the legislation. During the legislative process, the European Commission was open to stakeholders' input and provided the possibility to implement Article 17 with an Extended Collective License (ECL). It also acknowledged the critical role of CMOs in negotiations and licensing processes with platforms, which are now responsible for the content uploaded by their users. Concerning a question from **Carola Streul** on public lending right reciprocity for countries outside of Europe, Mr Giorello informed that the Commission is now focusing on the music sector.

Vincent van den Ejnde, Managing Director at Pictoright, stated that the DSM Directive, and in particular Article 17, are a good starting point for CMOs. Yet, not all the directive text seems to be clear, claiming that newly revised guidelines would be helpful. In response, Mr Giorello informed that the European Commission does not issue guidelines very often for copyright compared to other sectors such as competition law.

Mr Van den Ejnde then outlined the market fragmentation due to the fact that not all the Member States implemented Article 17 with ECL. To which Mr Giorello replied that the Commission does not deem it necessary to harmonise ECL in Europe, also because the Council itself proposed the current solution, i.e., the Member States. But he added that a

voluntary basis was introduced in Article 12 for cases where individual licensing would be unfeasible.

Highlights of the Q&A include a discussion about excluding Article 12 and ECL in some countries like Spain, although the directive pushes for it. Mr Giorello advised that it was impossible to set mandatory ECL, but a consensus was reached on Article 12.

On the users' side, it would be preferable to have the same solution in all Member States and make negotiations with platforms easier.

It was highlighted how important it is that CMOs also lobby at the national level, as often the Member States do not want to legislate on copyright.

Concerning the right of exhibition, Mr Giorello informed that it is a new discussion in the EU institutions. Still, it is already covered by the right of communication to the public and/or the right to distribution. Several participants stressed the right of exhibition as something really needed, as it is comparable to the right of performance for musicians. There are production costs that are not covered. In museums, music played is remunerated, but visual art is not, which is a paradox. A public value is added when a work is exhibited in a museum for people to experience it. Claire Contamine, Assistant Curator at Kanal - Centre Pompidou mentioned that more public funding is needed to provide fair remuneration to artists. Mr Giorello concluded that Article 17, as it is drafted now, cannot provide for a remuneration right.

Visual Authors' rights and protection from a global perspective - update from WIPO

Anita Huss-Ekerhult, WIPO Counsellor at the Copyright Management Division, presented an overview of WIPO's activities to promote creativity and defend intellectual property and copyright. She illustrated the tools for the collective management of copyright, which

Collective Management: WIPO Tools and Assistance

- WIPO non-normative tools and Member States-driven assistance:
 - Technical assistance, including legislative advice
 - WIPO Good Practice Toolkit for CMOs
 - WIPO Academy and capacity-building activities
 - WIPO Connect
 - WIPO Arbitration and Mediation Center
 - Building respect for IP initiatives

include technical assistance, legal advice, the WIPO Good Practice Toolkit for CMOs, WIPO Academy, WIPO Connect, and WIPO Arbitration and Mediation Center.

The toolkit for CMOs is a non-normative document that is regularly updated after consultation with WIPO's member states and

observers and it is reviewed every two or three years. WIPO Academy offers online courses for legal practitioners, rightsholders, CMOs and policymakers. WIPO Connect supports CMOs to acquire the technological infrastructure and documentation skills, providing access to international repertoire datasets such as CIS-NET.

WIPO for Creators, an open public-private partnership, to which EVA is a member, is developing a rights awareness platform to support creators worldwide across the many different creative fields. At this stage, funding is being secured to develop and launch the first release of the platform focused on music, and thereafter the platform will be extended to all creative sectors.

Concerning the SCCR, the resale right was recently added to the official agenda, and WIPO launched a study on its economic implications. She announced that the next SCCR meeting will happen in March 2023.

During the Q&A, it was noted that the resale right does not apply to the benefit of artists with origins from countries where the right is not included in the national legislation. It was also underlined that within WIPO, some Member States believe that copyright is an obstacle to the freedom of expression and access to protected works in general, so it is important to

ensure that artists are heard during SCCR meetings. Michele Evangelista, Associate Legal Officer at WIPO Copyright Law division, informed that more and more countries are recognising the resale right and that WIPO, as a UN specialised agency, is available to assist countries that wish to understand and implement this right in their national legislation.

EVA's President, Ms Schierholz pointed out that the exhibition right is an important initiative to show the international community that artists deserve fair remuneration, especially because cultural institutions want to use culture for free. It is important to monitor the debate concerning exceptions and limitations to copyright. CMOs establish one-stop shops to manage licenses and distribution and they should show that licensing is easy and convenient. She also mentioned that EVA's CMOs manage the primary rights for artists nationally and internationally and therefore they also have experience with international publishers. EVA's members are closely cooperating to find transnational solutions for the primary rights on the market. EVA members had developed a one-stop-shop for digital uses with a pool of international rights. This one-stop shop, called OLA, was transformed in the past years, and now OLA is based on the same cooperation idea for primary rights. CMOs can always opt-out for their repertoire when licenses are granted. The model was also presented to the antitrust unit of the Commission. However, the prominent US-based industries appear not to be requesting transnational licensing outside Europe. The intention is to be able to offer these kinds of licenses.

How to be fair to visual authors? Pay for exhibitions!

Esther Pizarro, Spanish visual artist, researcher and professor at the Universidad Europea in Madrid, presented a study from 2019. She informed that 40% of the 25.000 visual artists in Spain have an annual income of less than € 8000, which is lower than the minimum wage. Cultural institutions pay a symbolic amount for communication to the public. When works are exposed in galleries, artists' working conditions are usually not written down in a formal contract but based on a verbal agreement. When artists participate in contests, they need to finance themselves from the conception of the artwork, and they are not offered any fees at any stage of the creative process. Ms Pizarro believes that it is necessary to establish guidelines to manage artists' rights, especially to avoid authors being asked to waive their rights and remuneration. Authors should be paid for the exploitation of their works both online and offline, and it should be guaranteed that copyright is not a transferable principle.

Marcel Noack, visual artist and Chairperson of BBK and IGBK in Germany, insisted on the fact that to be fair to visual artists, exhibitions must be paid. It is therefore very important to lobby by providing facts and figures. For instance, the German copyright law stipulates the right to exhibit. It guarantees artists the exclusive right to present their works in public as long as the work has not yet been published. However, there is no legal claim to remuneration for the right to exhibit.

Some cities and federal states are closing this pay gap and pay exhibition remuneration for exhibitions in publicly funded art spaces such as museums and municipal galleries, for instance in Berlin, Hamburg, Bremen, Halle or Kassel. Then there are also new regulations in the Länder of Rheinland-Pfalz and Brandenburg. But there is a variety of settings and some of the agreements are not binding.



It is important to know whom to talk to and essential to work together on many different levels. Germany is highly institutionalized. And Germany has - comparably - a lot of possibilities to support artists with public funding. And it is also important to take in as many levels as possible e.g. the Initiative *Ausstellungsvergütung*. This "initiative exhibition payment" - was founded in 2016 as an alliance of artists' associations operating nationwide on the issue of exhibition payment, together with the collecting society VG Bild-Kunst. The goal is to jointly draw attention to the existential living and working conditions of visual artists.

The BBK, the biggest national artist association in Europe, prepared a set of guidelines in 2021 to illustrate how exhibition organizers should pay the artists. With this guideline, the BBK offers a basis for negotiation and shows exhibition organizers the way to appropriately remunerate artists for their services with regards to exhibitions - also for preparatory work and for work accompanying the exhibition itself, like research, or artists' talks. The commission installed by the Conference of Ministers of Culture in Germany, on the subject of minimum fees for artists, explicitly refers to the BBK's guideline. At the end of 2022, the

BBK will publish a new guideline for all artistic work based on an hourly rate and with many examples of how to calculate them. It should be kept in mind that paying artists also strengthens social security systems and prevents poverty in old age in European national economies.

Marie-Anne Ferry-Fall, General Director at ADAGP in France, mentioned that the income from exhibitions is essential for visual artists, but often the budget is limited, and, in the end, they are not paid. Moreover, the general opinion is that visibility is an appropriate payment for artists. Often copyright is referred to as a production cost, or artists are asked to waive their remuneration right. ADAGP developed legal tools to help artists, and so far 230 museums and art centres signed an agreement to guarantee fair remuneration. It is possible to pay a lump sum for online collections, and an annual flat rate is set to calculate the artworks that are exhibited online.

The right of exhibition remains unpaid, despite being in French law. ADAGP has been informing the Ministry of Culture since 2008 about this matter, but some experts claimed that an exhibition fee would result in fewer exhibitions, negatively impacting cultural diversity. In 2016, the Ministry opened a discussion with cultural institutions and artists' representatives to negotiate a payment scale, and in 2019 a few tariffs were established, i.e. € 1.000 plus 3% of the ticket revenues, and in case of collective exhibitions, the tariff is set at € 150 per artist and a per capita share of 3% of the ticket revenues. In the same year, ADAGP published a payment recommendation.

Finally, Ms Ferry-Fall gave some figures about copyright and exhibition right costs for museums. In exhibitions, the cost of copyright equals only 0,11% to 0,3% of the annual functioning cost of the museums, public galleries, or other venues. Even if the cost would double with the right of exhibition, it would be only between 0,22% and 0,6%. Some venues already pay some exhibition fees through ADAGP. She underlined that the role of a CMO is very important to keep track of the evolution of payments and make better negotiations for future contracts. CMOs are an important third party that can rebalance the situation between exhibition venues and artists. Between 2019 and 2021, ADAGP managed to raise the exhibition venues that pay for the right of exhibition from 45% to 80% (45% raise) and the total collection of revenues increased from € 25.000 to € 300.000. ADAGP also guarantees that social security and taxes are paid.

All in all, the 25th anniversary conference provided the perfect platform for EVA's distinguished speakers and guests to speak up and debate about the need to ensure fair

remuneration for artists. EVA thanks all participants for enabling this fruitful exchange and invites them to continue this important discussion beyond its walls.