

## Expression of Interest for participating in the Stakeholder Dialogue on the application of Article 17 of Directive on Copyright in the Digital Single Market (EU 2019/790)

Submission deadline 18 September 2019

### **Question 5: Please explain briefly how, in your views, Article 17 will impact the activities/interests of the represented stakeholder group**

Article 17 is considered as a key legislation for EUROKINEMA's constituency in order to implement a better regulation of online content sharing service providers. And it confirms at EU level provisions that have to some extent already been implemented in France through the agreement reached end of 2017 between ALPA-CNC and Google regarding YouTube (see Question 6).

It has to be recalled that article 17 not only stipulates that concerned online content-sharing service providers will have to conclude agreements with rightholders willing to do so (see article 17,2<sup>1</sup>) which provides that online content sharing providers shall obtain an authorization, for instance by concluding a licensing agreement. This option is certainly the ways and means that would be pursued by the music authors collecting societies, but not necessarily for audiovisual works – see below). Article 17 also sets the framework for implementing proportionate measures in order to prevent or remove unauthorized upload of copyright protected content (if the option of licensing is not chosen by the rightholders, article 17, 4<sup>2</sup> provides that the online content-sharing service provider shall be liable for unauthorised acts of communication to the public, including making available to the public). These provisions are therefore of particular importance for audiovisual producers, notably feature films producers.

Uploading audiovisual and cinematographic works for the purposes of economic exploitation, without the authorization from rightholders constitutes indeed an act of copyright piracy, with major negative financial impact. The exclusive exploitation of works is put into question, while it is necessary to protect the means of exclusive distribution (in particular the territoriality of rights as well as the media chronology which grants windows of exploitation to each investor of the work) given the substantial investments made by the producer (4 to 5 million euros on average for a cinematographic works in Europe).

The removal of an unauthorised work from the online content-sharing service providers at the time of uploading is therefore a vital procedure to protect the exploitation of works. It is also an effective means to fight piracy.

For cinematographic and audiovisual works, and as indicated above, it's therefore more important to obtain the removal of an unauthorized work than to provide for a possible compensatory remuneration as envisaged elsewhere in Article 17.

In addition, in order to obtain the removal of the work, the rightholder (producer) must specify which work must be removed and must notify the online-content sharing services provider. It is important that the nature of this information and the conditions under which it will be notified do

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<sup>1</sup> 17,2. Member States shall provide that, where an online content-sharing service provider obtains an authorisation, for instance by concluding a licensing agreement, that authorisation shall also cover acts carried out by users of the services falling within the scope of Article 3 of Directive 2001/29/EC when they are not acting on a commercial basis or where their activity does not generate significant revenues.

<sup>2</sup> 17,4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter.[...]

not result in a blockage or ineffectiveness of the system provided for in Article 17. This should be taken into account by the the stakeholder dialogue.

**Question 6:** Please explain briefly how your experience is relevant and how your organization could contribute to the stakeholder dialogue mentioning, where possible, some specific practical examples

Article 17,10<sup>3</sup> provides that the Commission, in cooperation with Member States, shall organize stakeholders dialogue to discuss the best practices in order to settle a cooperation between online content-sharing service providers and rightholders. The aim of this cooperation is to issue guidance for the application of Article 17,4, a), b), c).

- Providing information on works & rights

Article 17,4 b) notably provides that to ensure the unavailability of specific works, the rightholders have provided the service providers with the relevant and necessary information.

Such provisions have already been anticipated to a great extent in France as far as YouTube is concerned, through the ALPA-CNC-Google agreement mentioned above (see Question 5) EURO CINEMA's constituency (producers' professional organisations and their collecting society PROCIREP) is closely associated to the implementation in France of said agreement and has therefore experience and feedback to share about it.

EUROCINEMA's constituency has therefore experience and data that can contribute to exchange of "best practices" in this area, notably databases of rightholders and/or contracts – PROCIREP and/or CNC – accessible through standard identifiers of works such as ISAN (See: <http://www.isan.org/>).

Said experience has notably been used as input in French High Council for Literary and Artistic Property report on RECOGNITION TOOLS FOR COPYRIGHT-PROTECTED CONTENT ON DIGITAL PLATFORMS<sup>4</sup>. EURO CINEMA's constituency includes members of said High Council.

Said experience at French level can also be extended to feedback from other producers' organisations in Europe, notably those that are members of EURO COPYA, a sister organization of EURO CINEMA.

- Assess content recognition technologies

As regards available content recognition technologies, it is not only important to assess if available tools are efficient, but also to assess if European content industry is not likely to be "in the hand of" US service providers who develop their own proprietary recognition tool (for instance "content ID" for Youtube).

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<sup>3</sup> 17,10. As of 6 June 2019 the Commission, in cooperation with the Member States, shall organise stakeholder dialogues to discuss best practices for cooperation between online content-sharing service providers and rightholders. The Commission shall, in consultation with online content-sharing service providers, rightholders, users' organisations and other relevant stakeholders, and taking into account the results of the stakeholder dialogues, issue guidance on the application of this Article, in particular regarding the cooperation referred to in paragraph 4. When discussing best practices, special account shall be taken, among other things, of the need to balance fundamental rights and of the use of exceptions and limitations. For the purpose of the stakeholder dialogues, users' organisations shall have access to adequate information from online content-sharing service providers on the functioning of their practices with regard to paragraph 4.

<sup>4</sup> Report available here in French & English : <http://www.culture.gouv.fr/Thematiques/Propriete-litteraire-et-artistique/Conseil-superieur-de-la-propriete-litteraire-et-artistique/Travaux/Missions/Mission-du-CSPLA-sur-les-outils-de-reconnaissance-des-oeuvres-sur-les-plateformes-en-ligne>

EUROCINEMA believes that the European Union, under the auspice of the European Commission, should develop a European norm of recognition technology.

The power of normalization is historically a competence of the Commission in the framework of the completion of the Internal market.

It should be reasonable to confer to the Commission a power of normalization in the framework of the completion of the Digital Single Market.

A norm of recognition technologies of protected works to fulfill the obligation of article 17,4 should fix the prerequisites of the recognition technology to be developed.

Basic principles should be mentioned such as:

- open system / prohibition of proprietary system or discretionary use of the tools
- labeling of recognition technologies
- regular control of the efficiency of the technological devices
- revocation in case of obsolete technologies.

So, the norm should not only focus on one recognition technology. Different patterns could co-exist but should respect basic principles as proposed.

In case of litigation concerning a protected work or matter related (incidental uses/parodies) human intervention should be also envisaged. By linking human and automated monitoring, the system of recognition should reasonably work.

- Taking into account copyright limitation & exceptions

Article 17, 10 notably stipulates that *“When discussing best practices, special account shall be taken, among other things, of the need to balance fundamental rights and of the use of exceptions and limitations”*.

Here again, EUROCINEMA’s constituency has specific and useful experience to share in the way copyright exceptions or limitations should be taken into account and articulated with the exercise of exclusive rights.