08.09.2020

GESAC Answers to Digital Services Act package: open public consultation

GESAC (European Grouping of Societies of Authors and Composers) represents more than one million creators from all artistic fields through its 33 authors' society members (collective management organisations). Please see www.authorsocieties.eu for more information about GESAC.

GESAC welcomes the opportunity to answer this consultation. Please note that only the questions that are answered in questionnaire (yellow highlighted) are included in this document. GESAC answers are provided in blue font colour.

I. How to effectively keep users safer online?

This module of the questionnaire is structured into several subsections:

First, it seeks evidence, experience, and data from the perspective of different stakeholders regarding illegal activities online, as defined by national and EU law. This includes the availability online of illegal goods (e.g. dangerous products, counterfeit goods, prohibited and restricted goods, protected wildlife, pet trafficking, illegal medicine, misleading offerings on food supplements), content (e.g. illegal hate speech, child sexual abuse material, content infringing intellectual property rights), and services, or practices infringing consumer law (such as scams, misleading advertising, exhortation to purchase made to children) online; it covers all types of illegal activities, both as regards criminal and civil law .

It then inquires about other activities online which are not necessarily illegal but could cause harm to users, such as the spread of online disinformation or harmful content to minors.

It also seeks facts and informed views on the potential risks of erroneous removal of legitimate content. It also inquires about transparency and accountability in measures taken by digital services and online platforms in particular in intermediating users' access to their content and enabling oversight by third parties. Respondents might also be interested in related questions in the module of the consultation focusing on online advertising.

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Second, it explores proportionate and appropriate responsibilities and obligations that could be required from online intermediaries, in particular online platforms, in addressing the set of issues discussed in the first sub-section.

This module does not address the liability regime for online intermediaries, which is further explored in the next module of the consultation.

1. Main issues and experiences

A. Experiences and data on illegal activities online

Illegal goods

8 Please explain

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GESAC is aware that many of its CMO members detect a certain amount of pirate products (e.g. DVDs, CDs, or other formats for physical content delivery) advertised and/or sold through online channels and platforms, notwithstanding the decreasing interest of the public. Details on this type of infringements will be given in the individual answers of EU CMOs and trade associations involved in the fight against piracy.

As to the question in the following section, the circulation and making available of illegal content protected by copyright is growing more than proportionally to the decrease in the circulation of pirated goods/ products. Again, details on this type of infringements will be given in the individual answers of EU CMOs and trade associations involved in the fight against piracy. It is useful however to highlight that many Member States have adopted special measures or administrative procedures against unauthorised the making available of copyright content (e.g. Regulation for the protection of copyright content of the Italian Authority for Communications AGCOM). The current situation indicates a lack or harmonisation that should be taken in serious consideration while elaborating the DSA.
Moreover, since the legal framework developed by Art 17 of the Copyright in the DSM Directive does not cover the services whose purpose is piracy, a sound legal framework to effectively stop the illegal activities of piracy oriented platforms would be an important perspective for DSA review.

The following questions are targeted at organisations. Individuals responding to the consultation are invited to go to section 2 here below on responsibilities for online platforms and other digital services

3 What is your experience in flagging content, or offerings of goods or services you deemed illegal to online platforms and/or other types of online intermediary services? Please explain in what capacity and through what means you flag content.

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As regards unauthorised content on platform services, we would like to use this opportunity to underline that the newly adopted Copyright in the Digital Single Market Directive (EU 2019/790), in its Article 17 provides a specific regime for online content sharing service providers, as defined by Art 2.6 of the same directive. It is a sector specific regulation (lex specialis) providing for the liability of the concerned platforms for their copyright relevant acts and therefore the forthcoming Digital Services Act and its possible review of E-Commerce Directive should apply without prejudice to this newly adopted Copyright Directive and should not have any negative impact thereon.

The Digital Services Act therefore should relate to horizontal issues but shall not apply to Online Content Sharing Service Providers for their copyright relevant acts.

As regards the platform services that do not fall under the OCSSP definition or platforms involved in piracy and counterfeiting GESAC notes the negative impact of the differences and lack of harmonisation regarding "notice and action" procedures and refers to the individual answers of its members for further detail on the problems that the currently ineffective and unharmonized system causes at national level.

5 Have you encountered any issues, in particular, as regards illegal content or goods accessible from the EU but intermediated by services established in third countries? If yes, how have you dealt with these?

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Authors' societies members of GESAC are usually part of the national anti-piracy organisations that for some undertake actions on their behalf against the services that are involved in counterfeiting and piracy of copyright protected works on physical formats, although this type of illegal activity has significantly reduced due to the lesser relevance of such physical formats for consumers in the EU and shifting of illegal activity to delivery of digital copies or mainly streaming.

GESAC would like to address another issue, which has important ramifications on the rights and earnings of authors and composers in Europe: the responsibilities and possible liability of online marketplaces for the implementation of private copy remuneration schemes that concern the consumer devices and recording media sold on their platforms to EU consumers.

According to Article 5.2(b) of the Copyright in the Information Society Directive (EC/2001/29), Member States of the EU can introduce an exception for the reproduction of the copyright protected works for personal and non-commercial uses by private individuals. Member States that choose to implement this exception must provide an accompanying compensation scheme for the harm caused by such private copies to creators and rightholders. This regime of private copy remuneration (PCR) exists in most of the Member States and has been approved several times by the Court of Justice of the European Union (CJEU) it is typically applied in form of a levy added on the price of electronic devices, recording media or services that provide the capacity to copy (such as mobile phones, tablets, USBs, memory cards, computers, etc.) and collected by collective management organisations (CMOs) on behalf of all relevant rightholders. The Court of Justice held in the Opus Case C-462/09: "*Directive 2001/29, in particular Article 5(2)(b) and (5) thereof, must be interpreted as meaning that it is for the Member State which has introduced a system of private copying levies chargeable to the manufacturer or importer of media for reproduction of protected works, and on the territory of which the harm caused to authors by the use for private purposes of their work by purchasers who reside there occurs, to ensure that those authors actually receive the fair compensation intended to compensate them for that harm. In that regard, the mere fact that the commercial seller of reproduction equipment, devices and media is established in a Member State other than that in which the purchasers reside has no bearing on that obligation to achieve a certain result*."

The manufacturers or importers of devices or recording media subject to payment of PCR are required by the law of each country to pay such amounts when they sell their products in those markets. However, several device or recording media manufacturers use the online marketplaces to avoid, among other EU laws, payment of private copy remuneration. Although this specific issue of avoiding the payment of private copying compensation by using online market places is typically undertaken by third country manufacturers and sellers, it is also notably used for sales originating from Luxembourg and Ireland, where no effective compensation system for private copying is in place.

Another issue arising from the current liability regime of the online market places needs to be addressed is that of non-fulfilment by these products of other, non-copyright, requirements of EU law and the consequent concerns for consumer safety or the environment. In the case of such illegal contents or goods accessible from the EU but intermediated by services established in third countries without the payment of due amounts to authors' societies, the users of the platforms (sellers) and in some cases even the platforms themselves use data obscuring services in order to impede the identification and prosecution of registrants. It is

hindered accordingly also the identification of the country of establishment of the content provider/ seller and/or the country of origin of the products.

A proper process is needed to stop the sale of non-compliant products, especially from third countries, or ensure their compliance with EU laws, including for the payment of the private copy remuneration.

Our members have tried several times to stop such trade unsuccessfully.

Apart from that, it is also seen that counterfeit "smart card" for access to pay-TV channels, "cloned" decoders and devices allowing the circumvention of technological protection measures are widely available through such platforms infringing other laws, harming creative sector in other ways and risking consumer safety in Europe.

The following questions are open for all respondents.

2. Clarifying responsibilities for online platforms and other digital services

1 What responsibilities should be legally required from online platforms and under what conditions?
Should such measures be taken, in your view, by all online platforms, or only by specific ones (e.g. depending on their size, capability, extent of risks of exposure to illegal activities conducted by their users)? If you consider that some measures should only be taken by large online platforms, please identify which would these measures be.

2 Please elaborate, if you wish to further explain your choices.

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GESAC would like to refer to the problem it mentioned above regarding the sale manufacturers' products through online marketplaces. Market places' involvement in tackling this problem is essential. They should keep the contact details of such business customers, avoid their trade, or require from those sellers their compliance with EU law, once the latter's incompliance with EU law is notified. If such measures are not taken by the platform, the platform should face legal liability. Platforms shall also be able to develop practical solutions without a shift of liability from the manufacturers of the relevant devices or reproduction media onto the platforms as the perpetrator of the acts, but by bearing the cost of compliance on their own, if they consider avoiding incompliance of their business customers with EU law is more burdensome and costly.

3 What information would be, in your view, necessary and sufficient for users and third parties to send to an online platform in order to notify an illegal activity (sales of illegal goods, offering of services or sharing illegal content) conducted by a user of the service?

- ☐ Precise location: e.g. URL
- ☐ Precise reason why the activity is considered illegal
- ☐ Description of the activity
- ☐ Identity of the person or organisation sending the notification. Please explain under what conditions such information is necessary:
- ☐ Other, please specify

4 Please explain

3000 character(s) maximum

In order to notify illegal online activity by users or third parties, the necessary information is:

- the exact URL where the violation is present (link),
- the description and qualification of the person or organization that is sending the notice,
- the reason why the activity is illegal (e.g. lack of authorisation),

It is essential that the platforms have a dedicated section or an email address where to send such notices.

The time period within which the violation must be ended by the removal of the content must be short, especially taking into account the damage caused by the unauthorised content.

5 How should the reappearance of illegal content, goods or services be addressed, in your view? What approaches are effective and proportionate?

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Today, online intermediaries are under a notice and take down obligation but not a stay down obligation (with the very limited exception of certain specific provisions under German and Italian national laws). As a consequence, right holders bear a disproportionate burden to ensure the protection of their works. Although the online intermediaries can create fingerprints or easily search their services for a work once they are given all relevant information, they are nevertheless spared from this very unburdensome task and it is up to the right holders to notify on a daily basis their works which can sometimes reach several millions. This seems entirely disproportionate, especially as the rights holders, at least as far as GESAC members are concerned, have as their core mission to grant authorisations not to prohibit use of their repertoire.

Effective measures, based on harmonised provisions, including possibility of notice and stay-down would provide a better result in preventing the reappearance of such content. Coordination and collaboration between enforcement bodies and recognition of court rulings and injunctions on a cross-border basis would also facilitate the process.

7 How should the spread of illegal goods, services or content across multiple platforms and services be addressed? Are there specific provisions necessary for addressing risks brought by:
a. Digital services established outside of the Union?
b. Sellers established outside of the Union, who reach EU consumers through online platforms?

3000 character(s) maximum

As far as the non-payment of the private copying remuneration due on electronic devices and recording media is concerned the issue often occurs with “sellers established outside of the Union, who reach EU consumers through online platforms”. In this respect the platforms, especially online market places, that are dedicated to European consumers (for instance European services or Member State extensions of global marketplaces, or generic versions of

platforms as long as the relevant products placed thereon are delivered to EU consumers) shall take the necessary measures to stop the spread of such goods after they are informed. They can inform and warn the concerned sellers on their liability to pay such amounts, can make sure that only products for which due amounts are paid or will be paid are placed as offer for sale.

19 In your view, what measures are necessary with regard to algorithmic recommender systems used by online platforms?

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The online market for cultural creative content is very much dominated by, on the one hand, services that are designed as hosting based online platforms and on the other, independent digital content services or services offered as part of a company that operates also as an online platform or as the manufacturer of devices on which the content is accessed or the operators of the app platforms from which their applications are available. We also see the trend for more convergence in the market, where services for different types of content is merged or different types of services are gathered under the same company structure. In order to protect and promote cultural diversity, support for European works and media pluralism, the use of algorithms by such platforms and services should therefore be addressed in a more holistic manner covering both the online platforms and digital content services.

The first step in this is ensuring transparency and adjustability of the algorithms used by those services when recommending content, presenting certain content on their home pages and user interfaces, including content in pre-set or algorithmically set playlists of the service itself. So that there is understanding on why and how access to certain content is granted, classified or limited. Nevertheless, simple reference to "you see this content, because you listened to that one" would certainly not be sufficient, in this respect.

GESAC believes that platforms must not only safeguard but also actively promote cultural diversity, as they play an essential role in access to cultural and creative works and what people hear, see, read and listen to online in general.

Cultural diversity is not an intellectual or a romantic aspiration but one of the building legal obligations for the Union. Observance and promotion of cultural diversity is one of the pillars of the European Union's founding texts (Article 3 of the Treaty on the European Union, Article 167 of the Treaty on the Functioning of the European Union, Article 22 of the Charter of Fundamental Rights of the European Union). The European Union also affirmed its commitment to cultural diversity by participating in the implementation of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted in 2005 by UNESCO, which enshrined the principle of cultural diversity in international law.

Therefore, certain indicators to ensure active promotion of culturally diverse offer, in particular of European works, can be ensured.

In this respect, it is to be noted that AVMSD already has a 30% quota for audio-visual works. For the music sector, imposing compliance with a quota concerning availability of a certain amount of content on the platform is not relevant since all the musical works are already available as they are licensed and this on a non-exclusive manner. However concrete measures to ensure discoverability, availability and visibility of such European works for instance on the user interfaces, playlists created by or with the intervention of the service and home-pages of services would be appropriate. Different indicators can be developed to measure their discoverability and visibility, in particular for new releases, new artists, niche genres etc. Indeed, the Conclusions of the Romanian Presidency of the Council of the EU after its Music Moves Europe meeting on 20-21 June 2019 underlined guaranteeing optimal discoverability of musical works as an objective and noted the role to be played by the services by properly indexing the content. It proposed also the intervention of policy makers to ensure the promotion of diverse and niche European music in the digital environment.

II. Reviewing the liability regime of digital services acting as intermediaries?

The liability of online intermediaries is a particularly important area of internet law in Europe and worldwide. The E-Commerce Directive harmonises the liability exemptions applicable to online

intermediaries in the single market, with specific provisions for different services according to their role: from Internet access providers, to messaging services, to hosting service providers. The previous section of the consultation explored obligations and responsibilities which online platforms and other services can be expected to take – i.e. processes they should put in place to address illegal activities which might be conducted by the users abusing their service. In this section, the focus is on the legal architecture for the liability regime for service providers when it comes to illegal activities conducted by their users. The Commission seeks informed views on the functioning of the current liability exemption regime and the areas where an update might be necessary.

2 The liability regime for online intermediaries is primarily established in the E-Commerce Directive, which distinguishes between different types of services: so called 'mere conduits', 'caching services', and 'hosting services'.
In your understanding, are these categories sufficiently clear and complete for characterising and regulating today's digital intermediary services? Please explain.

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GESAC would like to repeat that the newly adopted Copyright in the Digital Single Market Directive (EU 2019/790), in its Article 17, provides a specific regime for online content sharing service providers, as defined by Art 2.6 of the same directive. It is a sector specific regulation (lex specialis) outlining copyright and safe harbour liability aspects of the concerned platforms for their copyright relevant acts and therefore the forthcoming Digital Services Act and its possible review of E-Commerce Directive should apply without prejudice to this newly adopted Copyright Directive and should not have any negative impact thereon.

The Digital Services Act therefore should relate to horizontal issues but shall not apply to Online Content Sharing Service Providers for their copyright relevant acts.

GESAC would like to add that, given their particular role, as described in our answers to previous questions, market places should not be able to rely on the hosting service provider status and should be given an adapted liability regime, where they are used by sellers distributing in particular reproduction media and devices in Europe, where it is obvious that their prices don't include the private copy remuneration.

4 Does the current legal framework dis-incentivize service providers to take proactive measures against illegal activities? If yes, please provide your view on how disincentives could be corrected.

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GESAC is of the opinion that there is a broad agreement for more responsibility and where appropriate liability of online platforms in many different areas affecting the interests of the society as whole and creators and rightholders in particular. As mentioned above, the previous legislature took the sectoral approach to establish a specific liability regime for the concerned services under the Copyright in DSM Directive and AVMSD. Indeed, the existing legal framework was not clear enough to properly address the harm and difficulties caused by those "self-proclaimed" intermediaries that play a substantial role in providing access to creative content through their platforms.

There is therefore a continuous desire to address those services on a horizontal level as well, since their involvement in many consumer markets or socially desirable activities are substantial. The DSA should therefore have the primary intention to establish a clearer and stronger liability regime for online platforms, rather than creating wider 'safe harbours' in order to avoid adverse effect on the society and their competition with legitimate services that comply with EU laws.

Principles like a better supervision and effective due diligence, "know your business customer" (please see contribution of our individual members for more detail), avoidance of traders who do not provide necessary information, better enforcement, cross-border recognition of injunction decisions and coordination of enforcement authorities for effective result can all be positive steps in the right direction to build a more reliable, competitive and innovative online market that respects the rights of others and prevent a parasitic growth at the expense of others. Such responsibilities shall now be required from online platforms with attached liability provisions if not complied and any other voluntary measures taken by such platforms to fight against illegal content or harmful practices, and disinformation must not lead to a limitation of their liability, established as such.

5 Do you think that the concept characterising intermediary service providers as playing a role of a 'mere technical, automatic and passive nature' in the transmission of information (recital 42 of the E-Commerce Directive) is sufficiently clear and still valid? Please explain.

5000 character(s) maximum

This criterion is outdated and no longer reflects the realities of the existing services and the online market. The concept that has been used so far to characterise intermediary service providers as playing a role of a "mere technical, automatic and passive nature" in the transmission of information, was not intended to cover hosting service providers, but it was unjustifiably extended to them. It now seems clearly outdated in view of the tools that these service providers implement. If algorithms work automatically, they are necessarily engineered and powered by human beings for desired functionalities and purposes which show that the services cannot be characterised as being passive.

Although, as we noted before, the copyright liability and disqualification from safe harbour of YouTube type of services have been clarified by the Copyright in the DSM Directive, a more modern and adapted liability regime for hosting based services as a whole would be needed. The liability of services that use hosting content as its technical design can therefore be shaped in a way that better reflects their business model and impact on the market, since that is becoming more and more the main way of doing business online and taking more market share than traditional digital content services or direct online sale of products. They should have more liability as regards what is going on on their platforms and more responsibility to avoid any illegal activity, especially comparing to "mere conduit" and "caching" services.

6 The E-commerce Directive also prohibits Member States from imposing on intermediary service providers general monitoring obligations or obligations to seek facts or circumstances of illegal activities conducted on their service by their users. In your view, is this approach, balancing risks to different rights and policy objectives, still appropriate today? Is there further clarity needed as to the parameters for 'general monitoring obligations'? Please explain.

5000 character(s) maximum

GESAC is of the opinion that there can be two issues that are relevant to consider within the forthcoming DSA proposals:

- Where a more adapted and modern liability regime for hosting-based platforms is developed, the responsibilities required from them can involve a more flexible and more adapted interpretation of Art 15 ECD as well, without deviating from its main principles.
- It is important to note that Art 15 would apply only to the activities (and not category of services/businesses) that are covered by Art 12, 13 and 14 of the ECD. Therefore, strict requirements of Art 15 ECD as applied by national and European courts should only be

for such services as they take their justification from the "safe harbour" status of the concerned activities.

- Most importantly, it would help to clarify what is exactly meant by the prohibition of general monitoring obligations so as to avoid any extensive or misconstrued interpretation. It is key to recall that general monitoring can only be understood as searching for potentially illegal content and implies permanent, systematic monitoring of all the hosted content with no prior identification of what to search for. It does not therefore apply when relevant identification information of the content to be searched for is provided by rightholders.

7 Do you see any other points where an upgrade may be needed for the liability regime of digital services acting as intermediaries?

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GESAC raised in its answers to previous questions the problem regarding the payment of private copy remuneration for the consumer devices and reproduction media sold by sellers/manufacturers through online marketplaces. While online marketplaces can take necessary measures to avoid such traders on their platforms or to ensure payment of the due amounts by those traders, the legislator can also consider platforms' direct liability, where they do not fulfil their responsibilities to avoid such harmful practices and do not take the necessary measures to prevent incompliance with EU rules.

VI. What governance for reinforcing the Single Market for digital services?

The EU's Single Market offers a rich potential for digital services to scale, including for innovative European companies. Today there is a certain degree of legal fragmentation in the Single Market . One of the main objectives for the Digital Services Act will be to enhance the innovation opportunities and '*deepen the Single Market for Digital Services*'.

This section of the consultation intends to collect evidence and views on the current state of the single market and on steps for further improvements for a competitive and vibrant Single market for digital services. This module also inquires about the relative impact of the COVID-19 crisis on digital services in the Union.

It then focuses on the appropriate governance and oversight over digital services across the EU and means to enhance the cooperation across authorities for an effective supervision of services and for the equal protection of all citizens across the single market. It also inquires about specific cooperation arrangements such as in the case of consumer protection authorities across the Single Market, or the regulatory oversight and cooperation mechanisms among media regulators. This section is not intended to focus on the enforcement of GDPR provisions.

The following questions are targeted at all respondents.

Governance of digital services and aspects of enforcement

The 'country of origin' principle is the cornerstone of the Single Market for digital services. It ensures that digital innovators, including start-ups and SMEs, have one set of rules to follow (that of their home country), rather than 27 different rules.

This is an important precondition for services to be able to scale up quickly and offer their services across borders. In the aftermath of the COVID-19 outbreak and effective recovery strategy, more than ever, a strong Single Market is needed to boost the European economy and to restart economic activities in the EU.

At the same time, enforcement of rules is key; the protection of all EU citizens regardless of their place of residence, will be in the centre of the Digital Services Act.

The current system of cooperation between Member States foresees that the Member State where a provider of a digital service is established has the duty to supervise the services provided and to ensure that all EU citizens are protected. A cooperation mechanism for cross-border cases is established in the E-Commerce Directive.

3 Please explain

5000 character(s) maximum

As explained in Sections I and II above, some sellers/manufacturers are using online marketplaces as a means of avoiding compliance with EU law in many different fields to their competitive benefit vis-à-vis other sellers and manufacturers complying with EU law. For creators, non-payment of the private copy remuneration by those sellers through online marketplaces is a substantial problem. Cooperation of online platforms/marketplaces with CMOs is therefore necessary. This would on the one hand ensure the fair remuneration of creators based on the provision of EU law, and on the other hand ensure more accurate and streamlined payments by the concerned companies when relevant devices enter into one Member State but then sold to consumers in several other Member States.

In some Member States CMOs also cooperate with the national authorities, such as tax authorities or customs, to more effectively follow the distribution and sale of such devices in the EU in order to collect the due amounts from the relevant manufacturers/distributors. In such cases, online platforms/marketplaces' cooperation can also be extended to those national authorities to ensure payment of private copy remunerations for the devices sold on such platforms/marketplaces.

Other areas of cooperation

13 Other areas of cooperation - (please, indicate which ones)

3000 character(s) maximum

The online market, on the one hand, gradually replaces traditional media (TV, radio, print), and on the other hand converges rapidly including AV, music, print, streams, podcasts, etc. within the same services. Moreover, algorithmic transparency has become one of the main issues for ensuring diversity and pluralism in the media. Algorithms are indeed essential for the proper functioning and user-friendliness of online services, but cannot be totally left in the hands of their commercial choices and decisions that are now determining what people see, hear, listen to and read online.

It should be noted that on-demand online music services are currently in direct competition with radio stations, offering thematic playlists created by the services themselves which are similar to the thematic offerings of music radio stations, without however being bound by any media law obligations.

On-demand online music services' implementation of algorithms, which are set up on the basis of commercial agreements, promotes the exposure of certain artists and certain musical works. Online music services hold therefore a great deal of control over significant aspects of our culture.

The question therefore arises as to the need for certain measures for exposure and promotion of European works in on-demand online services. Cultural diversity related aspects of this is explained above in our answer to Question 19 of the Section 2

Assessment of the prominence and visibility of European content on online media services under AVMSD can usefully include a comparison of the situation with other types of content, notably music streaming services. This can on the one hand give better understanding of the prominence of European works in general in the online market, while also help following the convergence of media offering different types of content and the share of European content they provide for the sectors. This can also help to better understand how 'culturally diverse' the offer of services in general.

14 Are there other points you would like to raise?

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GESAC would like to elaborate further on the issue raised in the answer to previous Questions 13 in this section and 19 in Section 2.

Although all music services hold pretty much the same 60 million or more songs on their repertoires, they are private enterprises not bound by any kind of requirements in order to promote cultural diversity when it comes to their choices. They therefore tend to make decisions to keep their streams running according to their commercial benefit. Through the algorithmic preferences of the service, certain artists or songs can be favoured, so as to provide more revenues and exposure to those artists, labels or genres. Such practices can benefit the streaming service and tackling them might be costly and hence not always desirable for the service without any legal obligations. However, the result has a clear negative impact on the earnings of creators.

There have been several examples of playlists' or revenue manipulation on the online music services over the past years, which is a growing phenomenon:

In January 2019 there have been claims and a criminal investigation against the Jay-Z owned streaming firm Tidal, which was accused of skewing the listening stats for two albums on which it had scored exclusives: Kanye West's 'Life Of Pablo' and Beyonce's 'Lemonade', both of which are shareholders of Tidal. Because of the way streaming royalties are calculated, such a manipulation can have a negative financial impact on all the other artists and songwriters being streamed on the platform at that time and our Norwegian member TONO is investigating on this.

In May 2019, the German youth TV platform Y-Kollektiv interviewed a self-confessed streaming fraudster who claimed his services were being used by some of the biggest artists in the market. He claimed to be generating over €100,000 a month, thanks to his ability to either operate or, more worryingly, gain access to between 150,000 to 250,000 streaming accounts. Here is the video explaining how such fraudulent business models can be operated by anyone.

There are also cases in between, where it is not entirely clear whether the fake artist names and streams are generated by third parties or the service itself. Here is a link to an Icelandic newspaper (Google translation from the original link) that reports on "ghost artists" in the list of most played songs in the country. In this example, two artists with Icelandic names have managed to reach a substantial number of streams by getting on Spotify´s curated playlists. Oddur Klemenzson with his song Seljalandsfoss with 3,7 m streams and Petra Birgisdóttir with her song Akureyri with over 3,6 m streams (the numbers are updated by our Icelandic member as the number of plays increased after the publication of the article). Neither of them exists as real persons in the national registry of Iceland and our member STEF does not have anyone using these names as artist name in their records. So, they are not pseudonyms of other Icelandic songwriters.

Most recently, an incident realised by an indie band called TV Girl surfaced how fraudulent players use fake songs and publish them through existing artists pages or place bootleg recordings of known artists to create income for themselves.

All those problems can be addressed with more transparency requirement from streaming services and also more positive obligations on them to ensure cultural diversity and prominence of European works.