

ACTIVITY REPORT 2021 - 2022



**REBUILDING
EUROPE**

with Culture

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FOREWORD BY GERNOT GRANINGER, INTERIM PRESIDENT OF GESAC

2021 was again marked by the significant impact of the pandemic on the cultural sector and our community of authors' societies. While beginning of 2022 shows some indications of going back to normal, the impact of lost royalties will be felt also this year and beyond. Adding to that the devastating impact on our society with rising war raged by violent attacks of Russia at the border of Europe, reminds us once again the relevance of European project, the role of culture in building peace and the importance of solidarity.

Indeed, ongoing crises also prove the justifications of collective management model, providing a safety net for creators, taking actions of common interest and counting on the solidarity of creators and their societies.

While the model of collective administration reduces the direct and immediate impact on creators, it is also the fact that the damages from the last years will be difficult to heal soon for many European societies.

Today, we are on the one hand encouraged by the recognition of the EU institutions of the necessity and usefulness of collective management

model in several reports and policy documents. On the other hand GESAC and its members have further expectations from European decision makers to strengthen the authors' right regime in Europe and to rebalance the power of major digital services by ensuring a framework that creates a fairer market-place, better recognition of value of authors' works, and an appropriate remuneration of creators.

This Annual Activity Report outlines the significant achievements made and the leading role played by GESAC on all these critical issues for our grouping.

We are proud to be recognised as a key partner for EU policy makers in making the decisions that matter for our sector and as a business model that adapts and improves itself with the changing realities of the world, in spite of the challenges and growing level of competition for rights management market that our members face in practice. We should continue to work together to accomplish common interests of authors' societies and the three main perspectives that have been the driver of GESAC's work and campaigns over the last year: Recover, Reopen and Rebalance!



FOREWORD BY VÉRONIQUE DESBROSSES, GENERAL MANAGER

As the COVID-19 pandemic and the closure of cultural and public venues persisted, creators continued to suffer significant revenue losses. In spite of the sharp drop in their collections, author's societies showed their resilience and solidarity with creators. For a second consecutive year, they provided emergency funds, advanced payments, and schemes to help their most vulnerable members and cushion the devastating impact of crisis for creators.

Europe reached a deal on an exceptional economic recovery programme of €1.8 trillion and GESAC and other organisations pledged that substantial funding would be provided for the cultural sector in order to ensure its long-term stability and growth.

GESAC took several actions in this respect, with tangible results reflected in financial and political instruments launched by EU institutions, as well as in national recovery plans.

In particular, the EY study allowed to demonstrate with figures the key importance the cultural ecosystem has for the European economy, and the results of this devastating crisis that has taken a heavy toll on the sector. The study became the reference point in EU policy documents and reports. Through the "Rebuilding Europe with Culture" campaign, we mobilized creators from across Europe, as well as book publishers, museum directors, event organizers, and other important players from the cultural sector.

GESAC became the representative of the entire cultural sector vis-à-vis the decision makers and maintained continuous direct contacts with the European Commission's Executive Vice-President Dombrovskis, Commissioners Breton, Gabriel, Gentiloni and others, reflecting also on the importance of authors' rights and collective management, while working with them on the European actions for recovery.

From a European copyright policy perspective, 2021 can be considered as an important year for collective management.

With the publication of its report on the implementation of the 2014 Collective Rights Management (CRM) Directive, the European Commission (EC) confirmed the positive impact the directive has on our sector.

Today, collective management is recognized as a well-regulated, reliable business model and a pillar of the EU's copyright policy. Several resolutions from the European Parliament also underlined the role of authors' societies for creators and future EU policy.

The swift and effective transposition of the recent copyright directives into national laws was a GESAC top priority.

We carefully monitored the process and took follow-up actions where necessary. GESAC also closely engaged in the recent political and legislative discussions regarding the Digital Services Act (DSA), artificial intelligence, and future action plans of the EU in media and digital sectors. But there are still serious problems that need to be addressed, amongst which the growing phenomenon of buy-out practices and the imbalances in music streaming market. As the future of creation in Europe is threatened by those issues, GESAC began to work on them intensively to find a solution at EU level.

The start of 2022 was marked by darkness, destruction, terror, and fear of the military invasion of Ukraine by Russia, leading us all to express our more than ever needed principle: the principle of solidarity. The GESAC community stands with the people of Ukraine and has joined the #CreatorsforUkraine campaign launched by CISAC.

This year will see, most notably, adoption of two important legislations on online platforms, the DSA and the Digital Market Act (DMA), further discussions at Member States level on buy-out, as well as follow-up actions on recovery of the sector, transposition of copyright directives and more in-depth discussions on the future of online media at EU level. GESAC will remain the strongest voice of creators at EU policy level in all discussions and will reflect on the interests of authors and their societies.



GESAC PRIORITIES IN 2022

ADDRESSING IMBALANCES IN DIGITAL MARKET

20
22

While several Member States are still in the process of finalising the transposition of Directives 2019/790 and 2019/789, which provide a solid foundation for the protection of authors' rights in the EU, there are still significant issues to be addressed, in order to ensure adequate protection of creators based on European authors' right model.

In this regard, GESAC has identified two priority issues: addressing the phenomena of buy-out practices, particularly in the current Video-on-Demand (VOD) industry, and resolving market imbalances in the music streaming market.

Both issues have had a severe influence on creators worsened by the Covid crisis and protracted periods of lockdown, which has hastened digital transition and massively increased digital consumption. Existing market concerns must now be addressed in order to create a viable and well-functioning digital market for creators.

BUY OUTS

**as a growing phenomenon against
European model of protection**

.....

Authors and composers are at the core of the Cultural and Creative Industries' value chain, creating the main output of the sector. Cultural policies of Europe and its Member States, as well as their long-standing legal framework of "authors' rights" (droit d'auteur, Urheberrecht, diritto d'autore, etc.)

provide the foundation for safeguarding authors' contributions to society and creativity.

An appropriate remuneration for creators is essential for the protection and enhancement of European creation.

However, the increasingly common and extremely destructive practices of imposing "buy-out" and "work-for-hire" contracts/provisions endanger the European model of authors' right and the principle of "appropriate and proportionate remuneration" guaranteed by EU law.[1]


More and more often, music creators are given no other choice than to accept an upfront payment in exchange for their rights, if they want to be in a project, e.g. composing a soundtrack of a series/film on VOD platforms. Simply said, if a creator wants to work, he or she must do it on the producers' terms.



BUY-OUT:

form of coercive practice that deprives authors of all their future revenues. A creator receives a one-time fee, that is typically very low, in exchange for the services performed and for all exploitations of the work listed in the contract.

In case of "**work-for-hire**" contracts, authors even lose their very ownership of and their moral rights (e.g. attribution as an author or protection of the integrity of the work) in their own creation. In the US, the work-for-hire expression refers to the mechanism under which the producer – rather than the creator – is the initial owner of the copyright in the work in exchange for such one-time fee, the "buy-out fee".



Some progress has been made toward a better understanding of the problem at the EU level, as seen by the inclusion and identification of the problem in various policy documents:

- The EC Media Action Plan adopted at the end of 2020 first mentioned it as a problem, but without foreseeing any action plan.
- European Parliament (EP) highlighted the issue in three different Resolutions relating to the status of artists after Covid[2], media action plan[3], and IP action plan[4]. The EP also underlined the importance of collective management organisations (CMOs) for authors' rights and

Based on the inputs and expertise from its members, GESAC issued in February 2022 a **position paper** highlighting the different aspects of the issue, suggesting possible line of thought to address this growing unfairness and call on the EU to investigate further and take decisive initiative at EU level.

[1] Article 18 of the Directive (EU) 2019/790 on Copyright in the Digital Single Market (CDSM Directive)

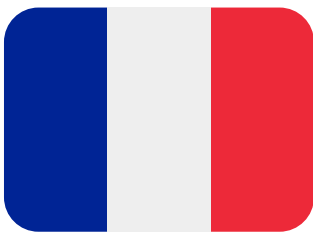
[2] European Parliament resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU

[3] European Parliament resolution of 20 October 2021 on Europe's Media in the Digital Decade: an Action Plan to Support Recovery and Transformation

[4] European Parliament resolution of 11 November 2021 on an intellectual property action plan to support the EU's recovery and resilience

asked the EC to investigate this issue and take decisive steps to ensure adequate and continuous remuneration for creators based on authors' rights.

- At the Culture and Audiovisual Council meeting of 18 May 2021, the Spanish government, supported by France, Germany, Italy, Austria, Croatia, and Greece, asked the EC to investigate the “impact of VOD platforms on the EU Audiovisual market, in particular on the relationships between the different actors in the value chain”[5].
- The Working Programme of the Council prepared by the French, Czech and Swedish Presidencies for the 18-month period starting from 1 January noted “the importance of securing a fair remuneration for creators and a sustainable environment for independent media. It will notably follow-up on the media and audio-visual action plan”[6].
- At the beginning of 2022 French Presidency identified buy-out as one of their priority issues in Council working group:



“ As regards literary and artistic property, the French Presidency will launch discussions on the effectiveness of copyright in a globalised environment in light of the circumventing practices of certain stakeholders such as buyout clauses, and on safeguarding the competitiveness of its creators and cultural industries in such an environment. ”



[5] <https://data.consilium.europa.eu/doc/document/ST-8319-2021-INIT/en/pdf>

[6] <https://presidence-francaise.consilium.europa.eu/en/programme/trio-programme/>

MUSIC STREAMING MARKET



the need for removing unfairness and imbalances

With 443 million users of paid subscription accounts at the end of 2020, music streaming services including both paid subscription and advertising-supported, grew 19.9% and reached 62.1% of total global recorded music revenues. While digital revenues are rising, remuneration for digital uses of creators' works are still undervalued, representing 20,5% of their revenue in 2019[7]. Addressing the need for growing creators' income from streaming is gaining momentum worldwide.

Even more so with the impact of the pandemic and associated lockdowns and social distancing measures, music streaming is the most buoyant market in this moment and a key issue for the remuneration of creators.

At the same time, creators and their CMOs are greatly contributing to the success of the music streaming model by offering streamlined rights clearance for wide repertoires.

GESAC commissioned a STUDY on the music streaming market

to give the issue a more author-oriented view.

The study is intended to bring new elements to the debate and to come up with new ideas and vision on the European music market from the standpoint of authors/composers and their CMOs.

This study will identify issues that will necessitate EU-level action.

[7] CISAC 2020 Global Collection Report and artists' led campaigns calling to "fix streaming"

MAIN POLICY ISSUES IN 2021

The pandemic entered its second year in 2021, with devastating economic impacts on creators, their CMOs, and the entire cultural and creative sector. On the other hand Europe announced an unprecedented €1.8 trillion economic recovery plan for the entire economy.

1. COVID

Post-Covid Recovery and Rebuilding Europe with Culture

GESAC's goal for 2021 was to make sure that the cultural and creative industry (CCI) gets the attention it deserves in the EU and national recovery plans and policies. Several steps were taken in this direction, yielding positive outcomes in terms of the size, design, and breadth of the EU budget allocated to the CCI. These activities have also helped to increase awareness of the relevance of our sector to the European economy and policy.

**EY
Study**
**Rebuilding Europe -
The cultural and creative
economy before and after
the COVID-19 crisis**

Commissioned by GESAC with the support of 20 partners and supporting organisations, the EY study was launched in January 2021 with a press conference and meetings of a high-level delegation of creative sector led by Jean-Michel Jarre with seven Commissioners and Vice-Presidents of the Commission. MEP Verheyen, Chair of the Culture and Education (Cult) Committee, and the European People's Party (EPP) members of the Cult Committee, as well as the Cultural Creators Friendship Group (CCFG) in the European Parliament, were among those to whom GESAC presented the report.

Since its publication, the study has been cited in a number of EU and national events and publications, and it has established itself as a source of information.

CCI AS A KEY ECOSYSTEM FOR
#REBUILDINGEUROPE

2019 IN FIGURES

THE CCIs REPRESENTED

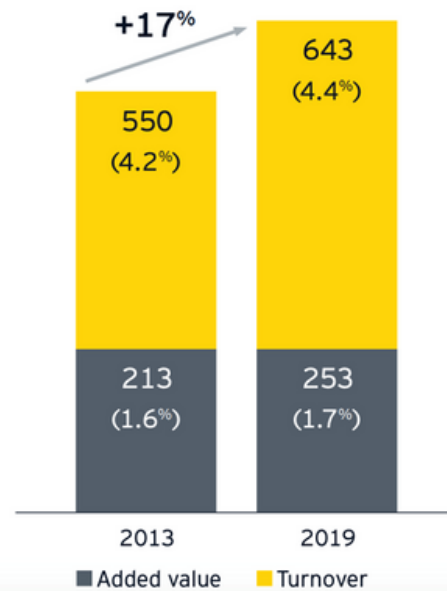
4.4 %

of EU GDP in terms of turnover

€253

billion of total added value

Turnover and added value in 2013 and 2019, and share of GDP
(in € billion and %, EU-28)

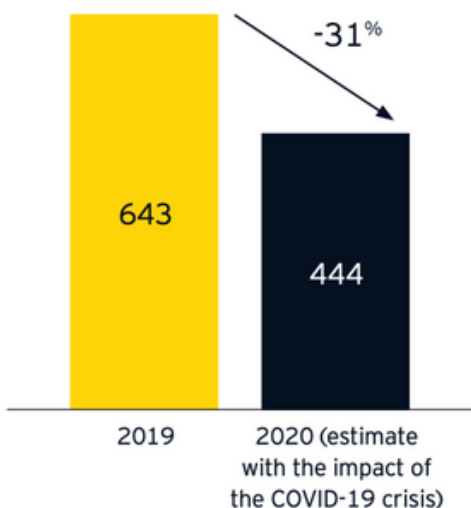


growing faster **[+2.6 %]** than the EU average **[+2 %]**
per year since 2013

CCIs were also one of Europe's leading job providers, employing more than **eight times** the telecommunications industry.

7.6
million
people

Total turnover generated by CCIs in the EU-28 (in € billion)



CCIs were hurt worse than the tourism business and only marginally less than the air transport industry when COVID-19 took effect, according to the study.

CCIs experienced losses of over 30% of their turnover for 2020 - a cumulated loss of €199 billion - with music and performing art sectors experiencing 75% and 90 % losses respectively, €53 billion for visual arts, €26 billion for audiovisual, etc.

Considering CCI's key contribution to the overall economy, and its potential to lift the EU out of the crisis, the study concludes that the creative sector should be central to Europe's recovery efforts and recommends a three-pronged approach: 'finance, empower, leverage'. It recommends massive public financing and the promotion of private investment, a solid legal framework to create the conditions needed to revitalize the creative economy and safeguard its long-term growth and leveraging the soft power of CCIs and individual creative talent to drive societal progress.



CREATORS AT THE CENTER OF THIS ECOSYSTEM

On the one hand, creators are at the heart and genesis of the cultural ecology, yet they are also its most susceptible economic component. As a result of the epidemic, their revenues have plummeted, as cultural and public venues have shuttered, and all creative endeavors have been placed on hold or simply scrapped. The EY study forecasted a 35 percent loss in performance rights royalties for authors and composers in the music industry, a drop in earnings that would persist over time owing to the broader economic condition.



Culture is what keeps communities connected and vivid. Culture enriches our societies more every day.

Artists and creative minds are the living soul of Europe. They have never failed us, we will make sure they stay at the heart of the European project.

I will be participating in the event "Rebuilding Europe with Culture" on December 8.

We count on your presence!

Mariya Gabriel, European Commissioner for Innovation, Research, Culture, Education and Youth

The campaign

The findings of the EY study were advocated by GESAC at the EU level, and subsequently an online campaign was started in October 2021:

"REBUILDING EUROPE WITH CULTURE"

Goals of the campaign:

- Following-up on efforts to include culture in national recovery plans and proper addressing of the cultural sectors' needs in EU programmes
- Tracking progress in the cultural sector's recovery and holding leaders to account, while also showcasing best practices and important initiatives
- Bringing European, national and regional decision-makers, as well as key players from the cultural sector, together to observe and promote cultural recovery

The online campaign used video messages and quotes of creators and decision-makers from across Europe on various channels.

REBUILDING EUROPE *with Culture*



Where do we stand one year on following our study into the Cultural and Creative sector? Our members, politicians, EU officials and creators have come together to say that we must Rebuild Europe *with Culture*!

**Join us in spreading the word!
& Join us for a hybrid event
on 8 December**

more: rebuilding-europe.eu

Positive messages from notable individuals from the cultural industry, and European and national decision makers were distributed through the social media campaign, which served as an informal "watch dog" initiative:

"We are here for culture and will continue to follow up until the needed funds actually reach creators/the creative sector and the necessary policy actions are taken at EU level".



"The pandemic showed, once again, how important culture is for all our lives!"

"Culture helps people to endure and resist, it also accompanies us and brings us closer to each other. Now we should mobilise for Rebuilding Europe with Culture and give culture the place it deserves in recovery plans and policies."

Electronic Music Pioneer
Jean-Michel Jarre
Photo (c) Feng Hai

REBUILDING EUROPE *with Culture*



**REBUILDING
EUROPE**
with Culture
Where do we stand?

The event

GESAC, in cooperation with MEP Christian Ehler and the Federation of European Book Publishers (FEP), with the support of European Movement International (EMI) and under the auspices of internationally renowned electronic music pioneer Jean-Michel Jarre, organised a hybrid event “Rebuiding Europe – where do we stand?” on 8 December.

Speakers included among others:

David Sassoli, European Parliament's late President, **Roselyne Bachelot**, Minister of Culture (France), **Thierry Breton**, Commissioner for Internal Market, **Mariya Gabriel**, Commissioner for Culture, **MEP Christian Ehler**, **MEP Ibán García del Blanco**, **Nina Obuljen Koržinek**, Minister of Culture (Croatia), **Andrej Šircelj**, Minister of Finance (Slovenia) and presiding over the Council of the EU, **Rafal Trzaskowski**, Mayor of Warsaw

High-level decision-makers expressed their perspectives on the role culture should play in the European economy's recovery, and showcased policies and plans, focusing on three themes that are integral for rebuilding the sector: Reopen, Recover, Rebalance.



Shada Islam, Moderator - MEP Christian Ehler



Roselyne Bachelot-Narquin

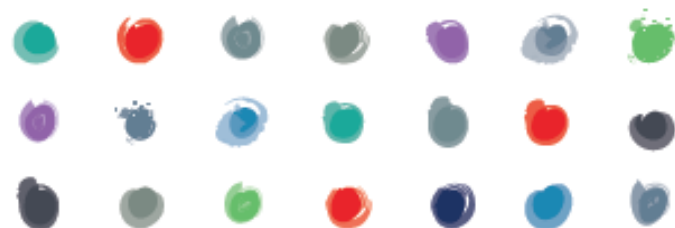


Commissioner Thierry Breton



The late President of the EP, David Sassoli

Our lines of actions



Reopen

the reopening of cultural venues under safe sanitary rules and protocols

On 26 January 2021 when we presented the EY study, Commissioner Thierry Breton offered his help for a swift and safe reopening of cultural and public venues.

In March, GESAC joined six live event sector organizations in a letter to the EC, urging it to take the lead in coordinating the reopening of Europe's cultural venues and the relaunch of cultural life, and we offering our expertise and experience to assist Europe in adapting to the new normal.

The statement also urged Member States to collaborate quickly prior the busy summer season, involving the live event industry to draw on already acquired evidence and experiences, rather than duplicating work or delay it with unnecessary red-tape.

The EC issued a Communication of the Commission for an EU level strategy on a safe and sustained reopening.



The technical work on the necessary standards and requirements to start this coordination were drawn by the live event organisations and professionals based on their experiences and best practices. GESAC led the political side of the initiative on behalf of the group.

In April, a joint letter was sent to Commissioners Breton and Gabriel, with a list of proposals on the practical steps that should be taken for a safe reopening of cultural events.

Early in July, the EC issued Guidelines on the reopening and relaunching of the cultural sector, with the aims to guide the design and implementation of measures and protocols in EU countries.

Both the Communication and the Guidelines cite the EY study as one of their primary sources of data, and they address some of the significant arguments expressed in GESAC's joint statement with the live sector.

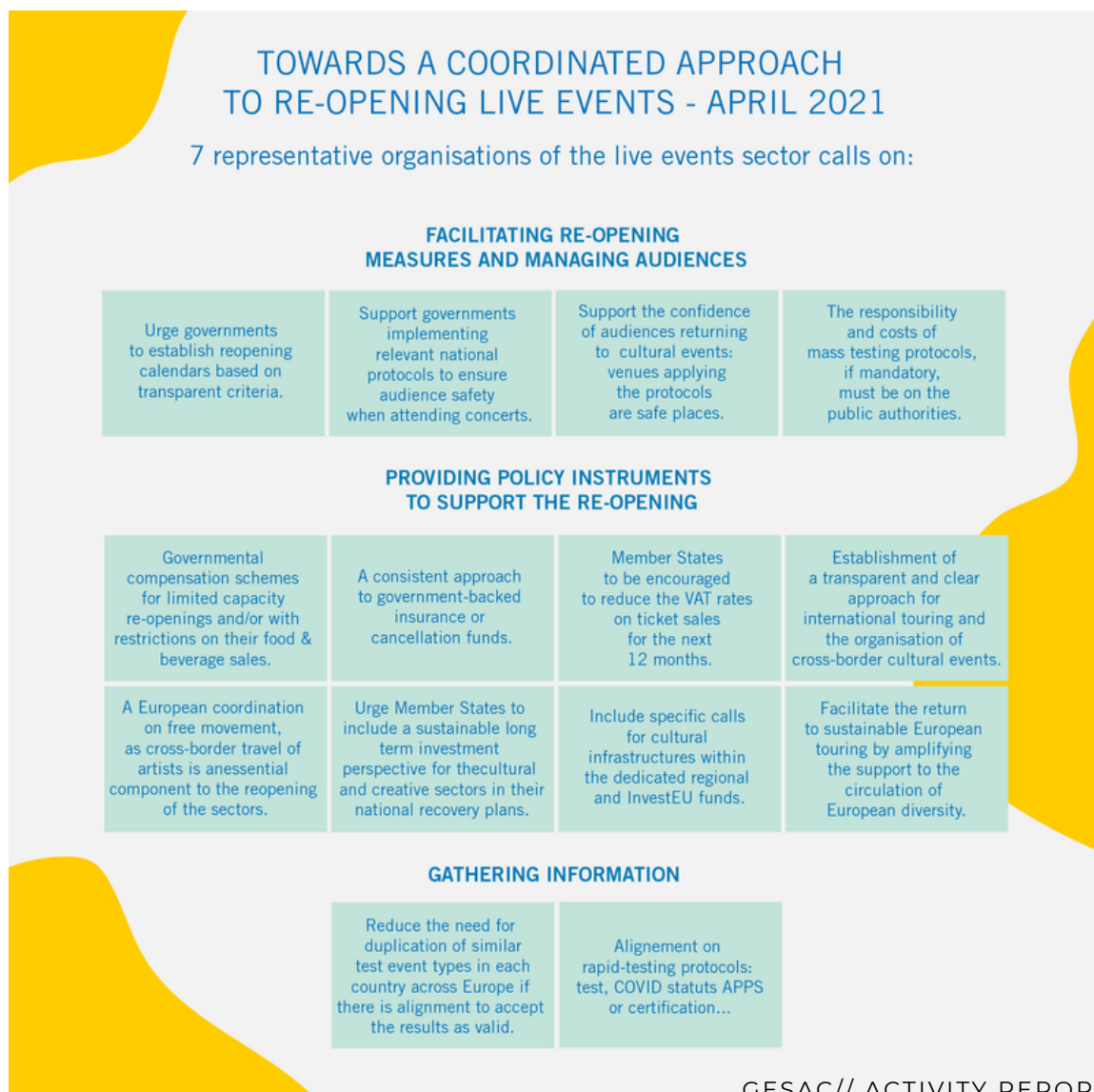
Both also emphasize the importance of using national recovery and resilience funds for CCI in order to ensure a safe and long-term reopening.

Member States are encouraged to collaborate closely with the industry in order to adapt to changing conditions, beginning with a phased reopening and progressing to a full reopening.

GESAC applauded this useful and timely action in a press statement.

Véronique Desbrosses said

“We are grateful to the Commission for this step in the right direction and look very much forward to contributing further to this important process after a careful assessment of the guidelines along with our partners in the live sector, the Commission’s services and the national authorities.”



Recover

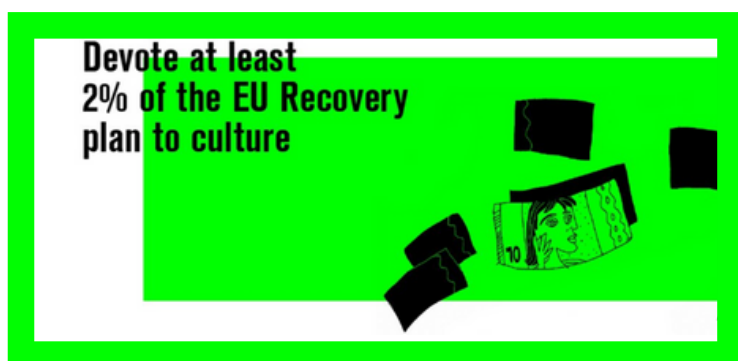
the recovering of the sector with allocation of substantial financial support to restore

The EU has established a unique financial package to help the European economy recover from the COVID-19 outbreak.

It includes various European programs as well as funding for national recovery and resilience plans and a variety of other emergency and support activities.

GESAC's efforts were focused on ensuring that the cultural sector receives the attention it deserves in the EU's new funding plan. GESAC also updated its members on new funding sources that may be beneficial to creators.

European Parliament's call:



Culture's inclusion in national recovery plans

In March 2021, GESAC has signed alongside 110 creative sector organisations, [a letter](#) urging European and national authorities to include culture in their national recovery plans, under the Recovery and Resilience Facility (RRF).

The European Parliament (EP) asked that at least 2% of the RRF be allocated to culture.

The allocation of EU funds for cultural sector at national level has remained at the discretion of national authorities and apart from couple of countries, this 2% objective has so far not been realised in most RRF plans of Member States.

However, there was a general consensus that culture is critical to the European economy's recovery.

Commissioner Gentiloni, in charge of Economy, offered that GESAC cooperates with his services to closely monitor the cultural measures included in Member States' national recovery plans, as well as benchmark and promote best practices.

The EC accepted numerous national recovery plan proposals in 2021, and the first funds have already been disbursed.

GESAC secretariat, together with the PACOM, closely monitored those procedures and the mapping of culture's inclusion in national recovery plans.

In order to circumvent some bureaucratic obstacles, certain Member States that have donated large sums for culture have done so through means other than the RRF.

Funding schemes available for culture at EU level

The EU programs began to construct the greatest stimulus package ever sponsored with EU funds. Their implementation was the product of protracted and arduous talks between the EP and the Council, which pushed for genuine increases in funding for the cultural and creative sectors.

There are various EU programs that involve the cultural and creative sector, and GESAC's duty was to ask for an increase and expansion of the scope of available funds for culture, in collaboration with other sector partners.

In particular, three important flagship programmes, namely Creative Europe, Invest EU and Horizon, under the Multi-annual Financial Framework (the long-term budget of the EU), exclusively or partly provide substantial funding possibilities for cultural and creative sectors.

The Creative Europe Programme

With a dedicated budget of more than €2.2 billion, made up from €1.6 billion proposal with an additional top-up of €0.6 billion, the new programme, which will run until 2027, will continue to boost Europe's artists, creators, and cultural organisations, promote cultural and linguistic diversity, and allow the sector to co-create and cooperate across borders and to reach wider audiences. The programme also provides the basis for sector-specific funding like music (i.e., Music Moves Europe programme).

Useful tool
An online guide of all
EU fundings

gathering as such 75 funding opportunities from 21 different EU programmes

InvestEU Programme

It promotes territorial cohesion and inclusion while supporting investments and ensuring easier access to funding, enabling for the creation of jobs, increased competitiveness, and productivity.

The Programme InvestEU is meant to continue facilitating access to finance

also for cultural and creative businesses, especially via its SME policy window: 26,4% (around € 6,9 billion).

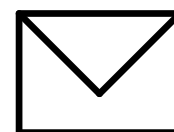
GESAC co-signed a joint letter of the cultural sector to Commissioners Breton and Gentiloni to underline the importance of CCI businesses (SMEs) that would benefit from this.

Dear Commissioner Gentiloni,

We are writing regarding **InvestEU 2021-2027**.

As organisations from the cultural and creative sector, **we are very concerned that the proposed severe cuts to the EU's flagship investment programme could have a dramatic impact** on the ability of Europe's cultural and creative businesses to access much needed affordable debt and equity financing.

With this letter, **we urge the EU to ensure that the cultural and creative sector will benefit from an appropriate level of support via InvestEU.**



Horizon Europe

The biggest EU Research and Innovation financial programme with nearly €80 billion of funding available over 7 years.

Thanks to the EP, with the effort of MEP Christian Ehler, €2.3 billion were secured for the Cluster 'Culture, creativity and inclusive society'.

Culture also benefits from another line of funding, a new so-called Knowledge and Innovation Community (KIC) for Cultural and Creative Industries.

A research was launched on MEP Ehler's proposal to identify and outline the cultural sector's requirements that could benefit from this financing opportunity. Members of the GESAC were asked to participate in a survey on the subject.

The new Horizon Europe programme included the **largest budget for research for cultural and creative industries in the history of the Union.**

Rebalance

the rebalancing of power in the digital market
through a solid legal framework

One of the most sought-after types of content on the internet is cultural content:

In 2018, **more than 80%** of EU internet users used the internet to listen to music, watch movies, or play games.

The imbalance and unfairness rooted in the current structure of the digital cultural content market, dominated by big tech platforms and services, prevents European creators from properly benefitting from the success of their works that constantly grow this market. To establish a sound framework for future growth, creators and the creative sector require proactive policy initiatives, and thorough consideration of culture should be included in every EU policy activities.

Creative sectors have become more dependent on digital exploitation during the pandemic, while the digital market still does not function in a balanced way and poses serious inequalities and unfairness for the cultural and creative sector. Illicit use of works, hiding behind liability privileges, non-transparency and unfair practices imposed by non EU dominant online services have become the mainstream and they seriously threaten the viability of the digital market for CCI.

Although important progress was made during the previous legislative session, there are still significant concerns to be addressed in order for CCI and the digital market to thrive hand in hand.

A solid copyright environment is necessary for the growth of CCI and the implementation of article 17 of the copyright directive is a crucial exercise.

Furthermore, it is necessary to ensure that significant platforms operating outside of the EU do not bring their unfair practices into the Internal Market, bypassing the EU rules and principles based on authors' right protection. It is also becoming urgent matter to ensure more fairness and prominence of European works on all digital services, not only VOD, but also music streaming. Moreover, manipulation of playlists, lack of transparency of algorithms and unfair practices on music streaming services have become a growing concern for European creators and consumers. They are the only part of media that is currently in a legal vacuum without any rules on their offer at national or European level.

2. COLLECTIVE MANAGEMENT

A resilient model proven once again during pandemic

The authors' societies have played a crucial safety net role for creators during this time of pandemic, deploying emergency plans and funds for their most vulnerable members. Despite the difficulties and closures of venues they still managed to roll out a significant amount of revenues for creators, minimizing the impact of the crisis through their resilient collective and solidarity-based structure.

EC report

on the implementation of Collective Rights Management (CRM) Directive

The EC produced a staff working document on the implementation of the 2014 CRM Directive at the end of November, based on two investigations commissioned from external consultants. Its fundamental conclusion is that the Directive was implemented correctly, in general, to the benefit of the market, and that there was no need for reconsideration or change. GESAC and its members societies, which took part in preparation of the studies, notably by answering questionnaires and interviews, welcomed this outcome, which contributes to the stability of the market.

Collective management: a well-regulated reliable business model, considered as one of the pillars of the EU's copyright policy

Recent EP reports also underlined the merit of collective management to ensure remuneration for creators, to protect them from unfair practices of large and dominant media and streaming platforms, and to provide broad access to cultural and creative works.

Collective management is referred to in the recent EU Directives as key for their proper implementation, including:

- The Article 17 of the Copyright in the Digital Single Market (CDSM) Directive. The implementation guidelines issued by the EC refers to Collective Management Organisations and Extended Collective Licensing (ECL);
- The appropriate and proportionate remuneration principle in Art 18 of the CDSM Directive allows creation of new mechanisms based on it;
- Ensuring public interest usages through ECL, such as cross-border access to out of commerce works of cultural heritage institutions and for cross-border educational uses;
- The possibility of new ECL schemes at national level;
- The extension of mandatory collective management to all forms of retransmission, beyond cable;
- The introduction of direct injection licensing scheme with the recognition of the role of collective management for each part of the single act.

Artificial Intelligence & copyright

In 2021, the EC proposed a legislative package on artificial intelligence (AI), with the goal of making the EU a global leader in the development of safe and reliable AI. Although the plan does not address copyright issues, the EP has issued several studies outlining preliminary thoughts on the topic, which relevance is growing as AI-assisted creations are becoming more common.

The implementation of text and data mining exception, provided by the CDSM Directive, as well raises the questions on how to license the use of existing works for training of AI algorithms. GESAC is, among others, examining the different challenges related to the legal status of possible autonomous artificial intelligence generated works and their management.

Copyright infrastructure

Copyright metadata and rights management technologies

Since 2019, the problem has been gaining traction and is now a topic of discussion not only in the EU but also internationally, with WIPO joining the conversation by hosting panels and launching global initiatives. GESAC is in the forefront of this discussion, which is relevant to its members' primary business. The EC has commissioned a study and intends to organise a stakeholders dialogue on

copyright and new technologies in the coming months/years. This debate is an opportunity to highlight the collective management model for creators, as well as the effectiveness of CMO-developed rights management solutions.

OTHER IMPORTANT ISSUES

Transposition of the Copyright & Broadcasting Directives

European Commission Guidance on Article 17: a missed opportunity

Commissioner Breton emphasized the importance of Article 17 of the CDSM Directive in maintaining a fair balance between the legitimate interests of rights holders and users on several occasions, saying that we can count on him and the EC to maintain the balance struck by the co-legislators.

But the Guidance on the implementation of Article 17 prepared by his services and issued early in June 2021 (just in time before the deadline for the transposition of the CDSM Directive, on 7 June) was disappointing as it provided more uncertainty than clarity.

In its press release on 29 June, GESAC noted that although there are some useful clarifications on some important aspects of the implementation in line with the objective of the Directive, the Guidance risks creating uncertainty and ambiguity by going beyond the scope of the Directive, makes the exercise an overall missed opportunity.

The Guidance, which is not legally binding, is supposed to facilitate cooperation between online content sharing service providers (OCSSPs) and rightsholders, while also helping Member States' transposition efforts to address certain issues of practice.

But the Guidance deviates from the language of the Directive and creates new provisions in several instances, leading to uncertainty and possible weakening of the rights of creators in a very unhelpful manner. Furthermore, by making elaborations going beyond Article 17, the Guidance risks being a pretext for further circumvention attempts of the concerned platforms that seek every way possible to avoid their liability.

GESAC therefore called for a cautious approach from Member States in this respect and warns against possible misinterpretations leading to new unwarranted safe harbours, that would be completely against the core objective of Article 17.

Member States should remain faithful to the word and spirit of Article 17, in their transposition process, and not allow the bypassing of democratically adopted rules by the concerned platforms that have repeatedly shown their unwillingness to comply with EU law.

ARTICLE 17

is a long-sought EU legislation intended to put an end to the freeriding and parasitic behaviour of tech giants that circumvent EU framework. It clarifies their liability for making authors' right/copyright protected works available to the public on their services and the need to remunerate creators fairly. It is a great achievement against the intimidation, pressure and misinformation campaigns ran by the concerned tech giants during the legislative process.

The main purpose of Article 17 is to foster licensing, to allow for wide access to protected works while ensuring fair remuneration for the creators of those works. Authors' societies that GESAC represents, deliver licences for a wide repertoire, and as such are key players in the market and for consumers. The Guidance usefully makes it clear that seeking a licence from CMOs is a 'basic' requirement for all OCSSPs under their licensing obligation and refusing such collective licences would be an infringement leading to their liability.

Transposition of Article 17 into national laws

In April 2022, 16 Member States had transposed Article 17 (Germany, France, Netherlands, Hungary, Denmark, Spain, Italy, Malta, Ireland, Croatia, Estonia, Austria, Luxembourg, Romania, Lithuania and Slovakia).

Most transpositions follow faithfully the wording of the Directive. Germany took a slightly different approach but with strong guarantees for authors and CMOs, and Austria adopted a similar approach to Germany but without all the guarantees provided for authors and CMOs that were an essential part of the German transposition.

Several member states are close to transposition, with proposals following the Directive. There are proposals in discussion with positive direction in Czech Republic, Bulgaria, Portugal and also ongoing discussion in Slovenia, Slovakia, Belgium, Cyprus and Latvia.

Finland and Sweden's transposition work raise concerns at this point, although revised wording sent to the Parliament in Finland in March has shown significant improvements. Poland and Greece have not yet published their proposals, but it is expected that they would be on a rather positive direction.

2. DIGITAL SERVICES ACT (DSA)

The Commission announced the legislative proposal in 2020, along with the Digital Markets Act (DMA), with huge promises to regulate the digital wild west with a complicated set of regulations for platform services, and to create a level playing field to stimulate innovation, growth, and competitiveness.

2021 was marked by intensive legislative activities in the EP and the Council, with expectations and disappointments as regards the objective of a strong EU legislation.

During the second half of the year, the discussions both in the EP and in the Council under the Slovenian Presidency, raised considerable concerns.

Rather than meeting the DSA's original objective of establishing an accountability framework for online platforms and creating a safer and more trustworthy online environment, some of the changes proposed by both institutions, could have the very opposite effect and the risk was that the DSA could provide an even weaker framework than the existing ones for the responsibility of platforms that are not covered by Article 17 of the CDSM Directive.

The DSA is an horizontal legislation addressing a number of sensitive societal issues and it is not easy for rightholders to make their copyright-specific concerns to be heard by decision makers, in isolation of other issues at stake. **Joining forces** is obviously the most effective way to get some attention.

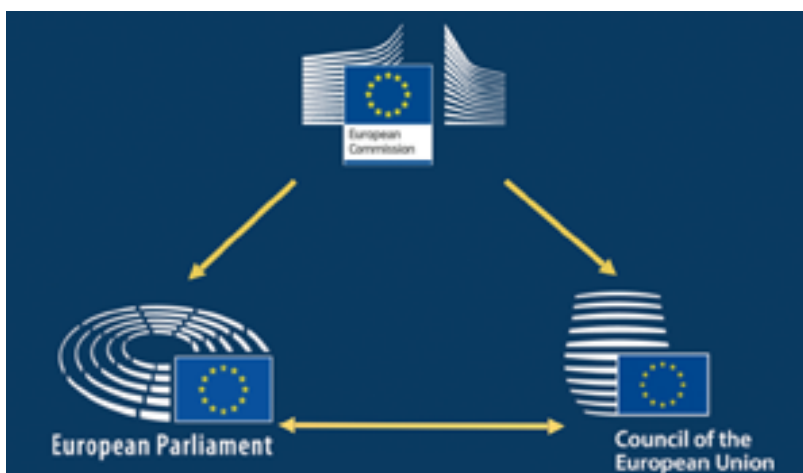


Initiated by GESAC and IFPI, a joint statement from several organisations from cultural and creative sector was issued on 19 January. The statement warned that DSA might be a missed opportunity and a step backwards.

GESAC'S MAIN PRIORITY ISSUES included

- to keep Art 17 of the CDSM Directive intact and to make sure the DSA would apply without prejudice to this key provision. This priority is widely agreed and reflected in the provisional texts.
- to more effectively tackle the issue of online marketplaces that are used by third-party traders to circumvent their obligations to pay private copy compensation under EU and national copyright laws.
- More due diligence obligations to avoid content and services that do not comply with EU and national laws and a more effective notice and action regime applicable to such online marketplaces, as well as all other intermediaries.

The Council approved its position at the end of November and the EP was able to adopt its position early in January. **Trilogue negotiations** between the three legislative institutions started early 2022, under the French Presidency, with the ambition of an agreement on a final text by the end of June.



ALAI AUTHORS' RIGHT AWARD

SUPPORTED BY GESAC

AND THE WINNER OF THE THIRD EDITION IS ...

Seun Lari-Williams

student/researcher at the Max Planck Institute



FOR HIS PAPER:

.....

BRIDGING THE VALUE GAP BETWEEN CONTENT AND
DIGITAL PLATFORMS: A CASE STUDY OF YOU TUBE

The jury is composed of Prof. Frank Götzen (President), Caroline Bonin, Head of Legal Affairs, SACEM, Gabor Faludi, outside counsel for ARTISJUS, Raquel Xalabarder, IP Professor at the Universitat Oberta de Catalunya, and Paul Torremans, Professor of IP law at the University of Nottingham.

NEXT EDITION:

.....

The selection process of the FOURTH edition has now been completed. This year's winner was chosen by the Editorial Committee. The award ceremony of second, third and fourth editions are to take place at the ALAI Congress, in Estoril, on September 15th 2022.

This annual award co-organised by GESAC, aims to pique the interest of young academics and students in authorship, as well as provide encouragement for a future career in related fields.

The prize is awarded to one or two students for their essay on a subject relating to European authors' right. The essay should have a European dimension and include aspects related to the collective management of authors' right.



With this prize, GESAC and ALAI want to build a bridge between the young lawyers/researchers who are passionate about authors' right and the professional and academic world.

GESAC INTERNAL AFFAIRS

GESAC Governance

General Meeting and Board

The General Meeting of 6 May elected Risto Salminen, CEO of TEOSTO, to take his place on the Board of Directors, following the departure of Karsten Dyhrberg Nielsen from STIM. The final accounts for 2020 were approved, as well as other administrative documents.

The General Meeting on 18 November adopted the provisional budget for 2022, which, taking into account the difficulties encountered by GESAC members linked to the pandemic crisis, shows a decrease of 11% compared with the closed budget for 2019.

GESAC Presidency

After almost 10 years as CEO, Jean-Noël Tronc left SACEM in October 2021 and therefore stepped down as President of GESAC. In his farewell message, Jean-Noël emphasized GESAC's significant victories and successes over the past ten years, as well as the difficulties and opportunities that lie ahead. Jean-Noël made a significant contribution to GESAC's success and projects, providing inspiration and strength to our community's efforts.

In a recorded video speech, French Secretary of State for European affairs Clément Beaune, underlined the important work that has been undertaken by GESAC during the Copyright Directives and invited us to submit our suggestions for the French Presidency in the first semester of 2022.

The Board continued its quarterly meetings (20 January, 5 May, 22 September, 16 November). Carine Libert left SABAM in August and, with it, also the Board of GESAC.



In accordance with GESAC Bylaws, Mr. Gernot Graninger was unanimously elected interim President of GESAC by the Board on November 16, 2021, until the next statutory elections in May 2022. Gernot, who has been actively involved in GESAC for decades and in GESAC governance as a member of the Board since its creation in May 2012, said that he will make sure GESAC remains a place of cooperation and trust for common interest of European authors' societies.

GESAC Internal committees

Public Affairs (PAC) and Communication (ComCom) Committees became PACOM

Philipp Rosset (GEMA) was elected as the new Vice-Chair of the PACOM Committee on May 18, replacing Robbert Barruch for a one-year term, alongside the existing Chair, Heloïse Fontanel (SACEM). For the purposes of efficiency, it was decided to merge the COMCOM and the PAC committees and structure the work of the group under dedicated projects. All GESAC members are welcome to attend the meetings of this informal working group.

Madrid Group

The Madrid Group met online on regular basis over the year, to address the important issues for GESAC, such as the DSA, transposition of the CDSM Directive, Article 17 and Commission's guidelines, implementation of the CRM Directive, developments at the Court of Justice of European Union (CJEU), buy-out, music streaming etc.

GESAC Office

Retirement of Martine Rezzi

It was time to say goodbye to Martine Rezzi, Senior Legal Officer, who left GESAC at the end of October for her retirement. Martine has worked for GESAC since its creation in 1990 and has done tremendous work in defending authors at European level. We wish her all the best for the future.





Registered Office and General Secretariat:
23, Rue Montoyer - B - Bruxelles

Tel. (32-2) 511.44.54

Email: secretariatgeneral@gesac.org

Website: <https://authorsocieties.eu>

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