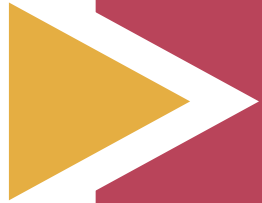




**DIRECTIVE 2019 / 790  
ON COPYRIGHT IN THE  
DIGITAL SINGLE MARKET**

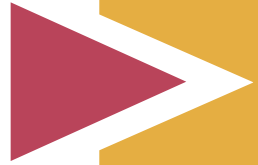
**Analysis and checklist**

**IMPLEMENTATION  
PLAYBOOK**

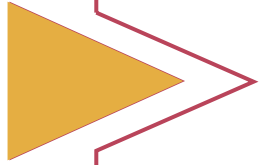


This document is prepared by FERA with input from FSE and presented to the members of both organisations.

- ▶ Basic information about the implementation process.
- ▶ Key provisions of interest for European Film and TV Directors and Screenwriters, focusing on the Directive provisions on Fair Remuneration in Contracts.



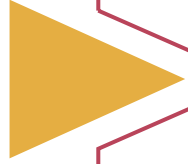
# CHECKLIST



# CHECKLIST

**A checklist to ensure that everything we want is included in the draft national legislation.**

- ▶ **How to get information on the transposition process.**
- ▶ **What to include in national legislation if not already explicitly mentioned : 54 items to check.**
- ▶ **(+)** indicates recommendation to reinforce the Directive provisions to transpose listed below.
- ▶ See main Playbook for reference on key concepts/provisions and further analysis (p.3).



**To get information on  
the transposition process :**



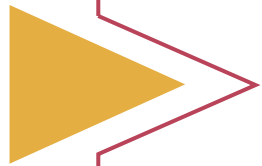
## To get information on the transposition process :

- 1** Identify the Ministry in charge of drafting the corresponding national legislation.
- 2** Get information on stakeholders' consultation process (legislators are required to consult stakeholders) and deadlines for contribution.
- 3** Provide input stressing the importance of the essential new provisions to include in national law.
- 4** Build strategic alliances with sister organisations (e.g. actors, composers, etc).



## To get information on the transposition process :

- 5** Inform and mobilize the membership through a targeted campaign.
- 6** Identify the parliamentary adoption timeline and key players (Committee and Member of Parliament designated as rapporteur on the related draft legislation).
- 7** Meet the Rapporteur MP or Parliamentary Committee Chair and give input on draft legislation tabled.



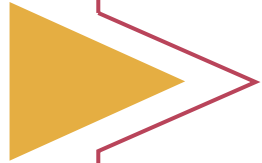
## **Article 18 – Principle of appropriate and proportionate remuneration**



✓	WHAT	RECITALS
1	<b>Authors tend to be in the weaker contractual position when they grant a licence or transfer their rights, including through their own companies.</b>	<b>Rec. 72</b>
2	Where authors license or transfer their exclusive rights for the exploitation of their works, they are entitled to receive appropriate and proportionate remuneration.	<b>Art. 18 Par. 1</b>
3	Appropriate and proportionate remuneration means entitlement of a share of actual income generated by the ongoing use of the work, as demonstrated by the implementation of the transparency obligation (Art.19).	<b>Rec. 73 (+)</b>

✓	WHAT	RECITALS
4	Restrictive definition of lump-sum payment constituting proportionate remuneration for the AV sector only where there is no prospect of a work any other income in the future (e.g. corporate films).	<b>Rec. 73</b>
5	<p>Does legislation provide mechanisms to ensure appropriate and proportionate remuneration from :</p> <ul style="list-style-type: none"> <li>- Theatrical exploitation</li> <li>- Broadcasting</li> <li>- Online/on-demand uses : (i) catch up-TV, (ii) simulcast, (iii) S-VOD, (iv) T-VOD, (v) A-VOD</li> <li>- Video sales</li> <li>- Rental/lending</li> <li>- Educational uses (where relevant)</li> </ul>	<b>Art. 18 Par. 2</b>

✓	WHAT	RECITALS
6	<p>Such mechanisms include :</p> <ul style="list-style-type: none"> <li>- Collective bargaining (incl. FR interprofessional agreement, DE joint remuneration rules)</li> <li>- Voluntary collective rights management</li> <li>- Statutory collective remuneration mechanisms</li> </ul>	<p><b>Rec. 72</b></p> <p>(+)</p> <p>(+)</p>
7	<p>This provision is of a mandatory nature and parties should not be able to derogate from it.</p>	<p>(+)</p>



## **Article 19 – Transparency obligation**

✓	WHAT	RECITALS
<b>Minimum Scope of the Transparency obligation :</b>		
8	▶ up-to-date accurate data,	<b>Article 19 Paragraph 1 and Recital 75</b>
9	▶ to be received on a yearly basis,	
10	▶ as long as exploitation is ongoing,	
11	▶ comprehensive to include identification of all modes of exploitation separately,	

✓	WHAT	RECITALS
<b>Minimum Scope of the Transparency obligation :</b>		
12	▶ all relevant revenues worldwide including merchandising separately,	<b>Article 19 Paragraph 1 and Recital 75</b>
13	▶ as well as remuneration due,	
14	▶ reporting should be comprehensible for individual recipient,	
15	▶ and fit for the purpose of an “ effective assessment of the rights in question ”.	
16	Authors’ contractual counterparts should have to notify authors when exploitation has ceased, thereby suspending their transparency obligation.	<b>(+)</b>

✓	WHAT	RECITALS
<b>Obligations on contractual counterparts and sub-licensees</b>		
17	The information is to be received from the parties to whom they have licensed or transferred their rights or their successors in title.	<b>Article 19 Par. 1</b>
18	<p>In cases where the contractual counterpart does not hold the information necessary to fulfil the transparency obligation, additional information will be provided by sub-licensees (i.e. users granted a license to exploit the work in a particular format) :</p> <ul style="list-style-type: none"> <li>– upon request,</li> <li>– to authors “or their representatives” (incl. representative organisations).</li> </ul>	<b>Article 19 Par. 2 and Recital 76</b>

✓	WHAT	RECITALS
19	Legal obligation of the sub-licensee to provide relevant information to the author or its representative upon request.	(+)
20	Authors' contractual counterparts should exercise due diligence in collecting the data from sub-licensees necessary to fulfil their transparency obligation.	(+)
21	Authors' contractual counterparts should systematically provide information on the identity of sub-licensees.	<b>Article 19</b> <b>Par. 2</b>

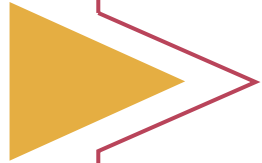


✓	WHAT	RECITALS
<b>Confidentiality</b>		
<b>22</b>	<p>Authors and their contractual counterparts should be able to agree to keep the shared information confidential. Authors should always be able to use the shared information for the purpose of exercising their rights under this Directive.</p>	<b>Recital 76</b>
<b>23</b>	<p>Confidentiality agreements cannot prevent the use of information in the scope of the transparency obligation by authors or their representatives (including representative organisations) in enforcing the right to remuneration, the contract adjustment mechanism, the right of revocation or in using the dispute resolution procedure.</p>	<b>Recital 81</b>

✓	WHAT	RECITALS
<b>Collective agreements</b>		
<b>24</b>	All relevant stakeholders should be involved when deciding on such sector-specific obligations, explicitly including screenwriters' and directors' professional organisations.	<b>Recital 77</b>
<b>25</b>	Collective bargaining should be the preferred option for AV sector relevant stakeholders to decide on sector-specific obligations, at the minimum level of the Directive's transparency obligation requirements.	<b>Article 19 Par. 5 Rec. 77 (+)</b>
<b>26</b>	Such agreements should be concluded by the transitional period deadline of June 2022.	<b>Article 26</b>

✓	WHAT	RECITALS
<b>Limitations</b>		
	Possible limitation of the transparency obligation :	<b>Article 19 Par. 3</b>
<b>27</b>	▶ in duly justified cases,	
<b>28</b>	▶ where the administrative burden resulting from the obligation would become disproportionate in the light of the revenues generated by the exploitation of the work or performance,	
<b>29</b>	▶ the obligation is limited to the types and level of information that can reasonably be expected in such cases.	
<b>30</b>	Is there a provision for sanctions on contractual counterparts not fulfilling the transparency obligation?	<b>(+)</b>

✓	WHAT	RECITALS
<b>Mandatory obligation</b>		
<b>31</b>	This obligation is of a mandatory nature and parties should not be able to derogate from it.	<b>Article 23</b> <b>Recital 81</b>



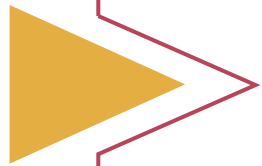
## **Article 20 – Contract adjustment mechanism**

✓	WHAT	RECITALS
	<b>Authors or their representatives are entitled :</b>	<b>Article 20</b>
<b>32</b>	▶ to <b>claim</b> additional, appropriate and fair remuneration,	<b>Par. 1</b>
<b>33</b>	▶ from the party with whom they entered into a contract for the exploitation of their rights (or their successor in title),	
<b>34</b>	▶ when the remuneration originally agreed turns out to be disproportionately low compared to <b>all</b> subsequent relevant revenues derived from the exploitation of the work.	

✓	WHAT	RECITALS
35	<p>All revenues relevant to the case should be taken into account for the assessment of whether the remuneration is disproportionately low.</p> <p>The scope of information obtained through the transparency obligation must be sufficiently detailed and comprehensive to allow for a fair assessment.</p>	<p><b>Recital 78</b></p> <p>(+)</p>
36	<p>Is “disproportionately low” understood as “not proportional” and not in a more restrictive way unduly limiting the possibility to use the contract adjustment mechanism?</p>	<p><b>Article 20</b> <b>Par. 1</b></p>
37	<p>This mechanism is of a mandatory nature and parties should not be able to derogate from it.</p>	<p><b>Article 23</b> <b>Recital 81</b></p>

✓	WHAT	RECITALS
	<b>Collective Bargaining</b>	
	The contract adjustment mechanism applies on an individual basis in the absence of an applicable collective bargaining agreement providing for a comparable mechanism.	<b>Article 20</b>
<b>38</b>	Duly mandated authors' representatives should be able to provide assistance to one or more authors in relation to requests for contracts' adjustment, taking into account the interest of other authors where relevant.	<b>Recital 78</b>
<b>39</b>	Representatives should protect the identity of the represented authors for as long as it is possible.	<b>Recital 78</b>

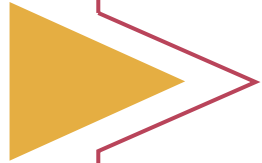




## **Article 21 – Alternative dispute resolution procedure**

✓	WHAT	RECITALS
	<p><b>A voluntary, alternative dispute resolution procedure must be available to settle disputes concerning the transparency obligation and the contract adjustment mechanism.</b></p>	<p><b>Article 21</b></p>
<p><b>40</b></p>	<p>Authors' representative organisations can initiate such procedures at the specific request of one or more authors.</p>	<p><b>Article 21</b></p>
<p><b>41</b></p>	<p>Sector-specific procedure should involve professional organisations and provide binding arbitration.</p>	<p><b>(+)</b></p>
<p><b>42</b></p>	<p>This procedure is of a mandatory nature and parties should not be able to derogate from it.</p>	<p><b>Article 23</b> <b>Recital 81</b></p>
<p><b>43</b></p>	<p>Costs of the dispute resolution procedure should be affordable for all individual authors.</p>	<p><b>Recital 79</b> <b>(+)</b></p>

✓	WHAT	RECITALS
44	The dispute resolution procedure is without prejudice to the right of parties to bring an action before a court.	Recital 79
45	Existing mechanisms should fulfil the conditions established in article 21 of the Copyright Directive.	Recital 79



## **Article 22 – Right of revocation**

✓	WHAT	RECITALS
	<p><b>Authors may revoke in whole or in part the license/transfer of rights where there is a lack of exploitation of the work they have licenses /transferred the rights to on an exclusive basis.</b></p>	<p><b>Article 22 Par. 1</b></p>
<p><b>46</b></p>	<p>Contractual counterparts should exercise best efforts in exploiting licensed / transferred by the author.</p>	<p><b>(+)</b></p>
<p><b>47</b></p>	<p>Any contractual provisions derogating from the right of revocation is enforceable only if based on a collective bargaining agreement.</p>	<p><b>Article 22 Par. 5 (+)</b></p>

✓	WHAT	RECITALS
48	Taking into account the specificities of the audiovisual sector, authors should retain a right of revocation during development phase.	<b>Recital 80 (+)</b>
49	<p><i>Are audiovisual authors outright excluded for the implementation of the right of revocation?</i></p> <p><i>Or is there the possibility for audiovisual authors to use the right of revocation on option contracts for example?</i></p>	

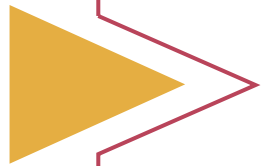


**Article 23 – Common provisions**

✓	WHAT	RECITALS
	<p><b>Any contractual provisions that prevent compliance with the transparency obligation, the contract adjustment mechanism or the dispute resolution procedure shall be unenforceable.</b></p>	<p><b>Article 23</b></p>
<p><b>50</b></p>	<p>This provision extends to the right to proportionate remuneration (Article 18) and the right of revocation (Article 22).</p>	<p><b>(+)</b></p>
<p><b>51</b></p>	<p>This provision extends to agreements between authors, their contractual counterpart and third parties, such as non-disclosure agreements.</p>	<p><b>Recital 81</b></p>



✓	WHAT	RECITALS
52	<p>The parties' choice of applicable law other than that of a Member State <b>does not prejudice the application of the provisions regarding transparency, contract adjustment mechanisms and alternative dispute resolution procedures</b> laid down in the Copyright Directive where all other elements relevant to the situation at the time of the choice of applicable law are located in one or more Member States.</p>	<b>Recital 81</b>



## **Articles 19, 20 and 21 – Representation and Collective Bargaining**

✓	WHAT	RECITALS
	<p><b>Does the legislation allow that transparency rules of a collective bargaining agreements are applicable for the transparency requirements?</b></p>	<p><b>Article 19.5</b></p>
<p><b>53</b></p>	<p>Does the legislation provide that a collective bargaining agreement providing for a mechanism comparable to that set out in Article 20 (contract adjustment) is allowed?</p>	<p><b>Article 20.1</b></p>
<p><b>54</b></p>	<p>Does the legislation ensure that representative organisations of authors and performers may initiate procedures in the dispute mechanism at the specific request of one or more authors or performers?</p>	<p><b>Article 21</b></p>



Founded in 1980, the Federation of European Screen Directors gathers 48 organisations from 36 countries. It speaks for approximately 20,000 European screen directors, representing their cultural, creative and economic interests at national and EU level.

[screendirectors.eu](http://screendirectors.eu)

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The Federation of Screenwriters in Europe is a network of national and regional associations, guilds and unions of writers for the screen in Europe, created in June 2001. It comprises 26 members from 21 countries, representing more than 7,000 screenwriters in Europe.

[federationscreenwriters.eu](http://federationscreenwriters.eu)

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