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# European Memorandum 2010

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# Summary

In its recent European memorandum, SABAM has uttered the wish to make its contribution by putting at the disposal of the European Union (EU) authorities information and proposals meant for providing food for thought and future debates, so that the status of each author's right could be enhanced and fairly remunerated within the creation and exploitation process. You will find a summary thereof below.

## The author's essential contribution to the European economy

The author, also called the creator, is at the origin of an important creation of value. The creative industries are strongly contributing to the European economy as regards turnover, investment, employment and gross added value to the GDP. By distributing its creations, the author is participating to the economic and cultural enrichment of the whole European society. He is a real promoter of lasting economic and cultural development.

The Member states have recognized this essential contribution by the author, who enjoys exclusive rights on his work. These rights are protected at the international level by several agreements<sup>1</sup>.

However, the artistic/creative industry is a sector that is undergoing nowadays an unprecedented crisis<sup>2</sup>, among others because the principle of the author's exclusive right is not being respected within the framework of all its exploitations.

**The five solutions proposed by SABAM so that this contribution's status be enhanced and the author's right be fairly remunerated in Europe, are the following:**

### 1. To guarantee a high level of online protection of the author's right

Online piracy has considerably developed in the last ten years. The consequences thereof are not only prejudicial to the right owners but also to society as a whole. Piracy is eating away at innovation and investment. When creative artists are being despoiled of their income, creation is dying and several jobs are being lost.

An efficient action of fight against piracy is consequently crucial in order to protect not only the right owners but also the consumers.

SABAM reminds that Internet access providers (IAPs) are technically in the best position to intervene. Within this context, SABAM supports the proposals aiming at encouraging the conclusion of agreements with the latter as regards the limits and conditions for the access to and the use of the Internet. It concerns essentially agreements on the setting-up of efficient filtering systems by the IAPs intended for here ; these systems have to make it possible to put an end to the illegal traffic of copyrighted works in Belgium.

<sup>1</sup> The Bern Convention for the protection of literary and artistic works of 9 September 1886; the World Intellectual Property Organization (WIPO) Copyright treaty, adopted in Geneva on 20 December 1996 ; the 2001/29/EC Directive of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

<sup>2</sup> For more information, see the SABAM survey in favour of « a fair remuneration of creation on the Internet », April 2010, available on the website [www.sabam.be](http://www.sabam.be).

SABAM also wishes that their system of exemption from liability be called into question. Indeed, it is legitimate that IAPs, whose online conveyance of creative contents is contributing to the main part of their market value, pay a fair remuneration for the distribution and use on the Internet of the copyrighted works.

Furthermore, SABAM stands for the resort to the obligatory collective management, which is a procedure for exercising the author's exclusive right in order to make financially aware the operators of copyrighted contents on the Internet and the web 2.0 platforms, who take directly or indirectly advantage of the distribution and exchange of copyrighted works. Obligatory collective management has already proven its worth as regards cable distribution and is fully justified in the event of a massive use of copyrighted works.

## **2. To harmonize a lower VAT rate applicable to all cultural works, including musical works**

This harmonisation requires a European agreement of all the Member states.

Last year, a first step has been made in order to harmonize the VAT rate in the book sector, while no longer making any distinction between the different reproduction carriers. This modification resulted in putting an end to the discrimination between the selling of books on paper and that of any other type of carriers such as CDs and CD-ROMs. The European Parliament has motivated this measure by stressing that it does not pose any major problem for the good working of the internal market and that it would have a positive impact on the creation of jobs and the fight against the parallel economy.

The music sector, for its part, is still miles away from such a breakthrough. So, while Belgium is ensuring the EU's presidency, SABAM wishes to draw the attention on the importance and the emergency of introducing in the EU a reduced and harmonized VAT rate for all cultural works, whatever their nature and their way of distribution.

## **3. To inform students and teachers about copyright and to make them aware of it and this by way of targeted campaigns led by the Member states in collaboration with the players of the private sector**

In order to safeguard the future of artistic creation, SABAM is expecting from the European Union's authorities that they take their responsibilities and start, in collaboration with the national authorities of the Member states, projects as to information and awareness for copyright, notably in schools and, more particularly in the primary and secondary schools.

More precisely, SABAM proposes that a one-hour class about artistic creation and its crafts be integrated into the courses of all Member states, the objective being that students and teachers be informed of the current opportunities, difficulties and challenges with which the creative sector is confronted.

SABAM proposes, as a priority information about the risks and consequences of illegal downloading but also about its different legal alternatives. Besides, pedagogical information about the legislation that is in force in Europe and the penalties incurred in the event of an illicit use of the repertoires is of capital importance.

## **4. To introduce a « European day of the author and of artistic creation »**

It is necessary to enhance the status of artistic creation and to recognize its importance for the European economy. But the difficulties undergone by the creative sector, its split in a plurality of players and the complexity of the system of collective management explain why its approach sometimes turns out to be difficult.

In this perspective, passing on a positive message with an economic, social and cultural interest related to creativity and copyright would make the work of creative artists more visible and accessible to the media, consumers and political world.

SABAM also proposes the introduction of a « European day of the author and of artistic creation ». In order to facilitate its implementation, it suggests the organization of multiple collaborations with public authorities, broadcasting companies, teachers and cultural industries.

## 5. To maintain cultural diversity

Information and communication technologies contribute to the fact that the use of works goes beyond the borders of national territories. Consequently, on 18 May 2005, the European Commission decreed a recommendation on collective cross-border management of copyright and related rights<sup>3</sup>. This recommendation, which explicitly provides for the possibility to retrieve from the classical network of collective management online rights for a multi-territorial use, has been the start of a fragmentation of the repertoire. Instead of a licence for using a world repertoire on a national territory, the recommendation leads to a licence per repertoire, by virtue of which it will be difficult for small repertoires to keep being remunerated fairly.

By way of two resolutions, the European Parliament has expressed its concern about this fragmentation and, consequently, also about the infringement of cultural diversity.

SABAM also feels the consequences of the repertoire's fragmentation. When SABAM was obliged to issue a writ against YouTube after long and unsuccessful negotiations, the latter banished a part of the Belgian repertoire from its database!

For this reason, SABAM is pleading with the European lawmaker, so that the latter would pay enough attention and give enough protection to small repertoires by supporting the working of the authors' societies and by making of them key partners for the granting of on-line use licences. On the other hand, within the framework of the Belgian presidency of the EU, SABAM wishes that the Belgian members of parliament take initiatives in order to adapt the European legislation in favour of a bigger cultural diversity.

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<sup>3</sup> Commission Recommendation 2005/737/CE of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services.