

Actors' Summit – Ghent 5th and 6th of September 2023

Attendees

Blaise	Lefevvre	ADAMI	In person
Peter	Kep	AIPA	In person
Francisco	Gimenez Merchante	AISGE	In person
Astrid	Wiedersich Avena	ARTISTI7607	remotely
Isabel	Marcano	ARTISTI7607	remotely
Tayyiba	Nasser	BECS	remotely
Jess	Winchester	BECS	remotely
Stefan	Gheorghiu	CREDIDAM	In person
Nadia	Kyprouli	DYONISOS	In person
Zoe	Rigopoulou	DYONISOS	In person
Pál	Tomori	EJI	In person
Ori	Reshtick	ESHKOLOT	In person
Zelig	Rabinovitz	ESHKOLOT	In person
Claudia	Cadima	GDA	In person
Nikolina	Vujinovic	GOS	In person
Tilo	Gerlach	GVL mbH	In person
Václav	Hodonický	INTERGRAM	In person
Joey	Cramer	NORMA	remotely
Christophe	Van Vaerenbergh	PLAYRIGHT	In person
Christian	Martin	PLAYRIGHT	In person
Nena	Langloh	PLAYRIGHT	In person
Anastasia	Chaidron	PLAYRIGHT	remotely
Colman	Clinch	RAAP	remotely
Konstantin	Vogel	SWISSPERFORM	In person
Ioan	Kaes	AEPO-ARTIS	In person
Iva	Galovic	AEPO-ARTIS	In person
Remy	Desrosiers	SCAPR	In person
Ines	de Nervo	SCAPR	In person

Purpose of the meeting

Follow up on the first Actors' Summit that took place in Bled (Slovenia) in April 2023 and discuss issues specific to CMOs representing actors.

Summary of the meeting

1. Structuring of the AV Summit

1.1. Election of a convenor and a secretary.

Christophe Van Vaerenbergh (PLAYRIGHT) was appointed as convenor and Inès de Nervo (SCAPR) as secretary of the Actors' Summit.

1.2 Role and objectives

The participants agree that:

- the Actors' Summit will cover issues related to performers directly participating to audiovisual productions exclusively. Music in audiovisual is excluded.
- both policy and operational aspects will be considered in the Actors' Summit. This specific session of the Actors' Summit is more oriented towards policy but future sessions will include operational matters. The operational aspects will be dealt in coordination with the SCAPR AV forum convenor, Francisco Gimenez Merchante.
- the Actors' Summit will not take decisions but issue recommendations to the AEPO-ARTIS and SCAPR boards.

Once these general principles were agreed upon, discussions were opened on more practical topics. Belgium is going to take over the EU Council's presidency in January 2024 and AEPO-ARTIS needs to convey the appropriate messages on various topics. Although SCAPR doesn't lobby, it intervenes in numerous international fora where similar issues are also discussed.

2. Beijing Treaty on Audiovisual Performances (BTAP)

Ioan Kaes (AEPO-ARTIS) gave a short presentation briefly reminding the content of the BTAP and providing an overview of the different remuneration mechanisms for actors already implemented by the EU member states for what concerns the right of broadcasting and communication to the public (article 11) and the possible impact choices by the EU will have on these existing systems.

At international level, the approach should be different depending on the state of operations of the local CMOs. Some CMOs consider that signing the BTAP without any reservation can be a quicker beneficial step paving the way for a later implementation of a presumption of transfer with monetary counterpart or a remuneration right.

The diversity of existing remuneration mechanisms makes it difficult to adopt a single position but all participants agreed on the need to adopt a practical approach: the common position adopted by AEPO-ARTIS and SCAPR should be the most economically beneficial to performers.

RECOMMENDATION : the Actors' Summit recommends SCAPR and AEPO-ARTIS to:

- Conduct a study about the different implementation systems of the BTAP in their members' countries.
- Based on the findings of the study, draft a position paper.

3. Retransmission remunerations

For what concerns retransmission, the situation is even more complex and fragmented than the implementation of BTAP. In the EU, the SatCab directives harmonises the management of this right but not the right itself, resulting in very diverse systems existing from one Member State to another.

In France, for instance, the first SatCab directive was transposed in 1997 but was never really implemented in a way that guarantees actors a remuneration collected by their CMO. ADAMI is currently trying to collect this right, via ANGOA, for both national and foreign performers. In Belgium, although an untransferable and unwaivable right was granted to performers in 2014, the provisions were brought to the Constitutional court and the CMOs couldn't collect it until very recently. In Czech Republic, INTERGRAM only manages the retransmission by satellite. In Spain, the retransmission of secondary use is recognized for performers and producers and direct injection exists for a long time for performers only. There is a risk that the performers have to share the revenues with producers. In Germany, the broadcasters generally license for retransmission and in Greece, there is no cable operators and the satellite retransmission collections are limited due to ancient agreements with broadcasters.

The discussions showed that there is a lack of knowledge on the different stakeholders and the different technologies currently used to enable retransmission.

RECOMMENDATION: the Actors' Summit recommends SCAPR and AEPO-ARTIS to identify the different uses and assess how the current legal framework can cover this use.

4. Streaming

All over the world, broadcasters (and distributors of TV signals) are broadening their services with so called 'ancillary services' which are in fact streaming activities (covered by the making available right and not the broadcasting or retransmission right). Thanks to the online services, the broadcasters are now able In the European Union, the Online broadcasting and retransmission Directive (SatCab2) includes the ancillary services and allows broadcasters to offer these ancillary services directly in other member states with only clearing the rights in their country of origin. This directive has also been implemented in different ways making it unclear whether this use should fall under retransmission or making available on demand rights.

Broadcasters and producers try to cover these new uses with existing rights so that they don't have to pay extra remuneration. For instance, in Greece, the producers claimed that simulcasting was covered by broadcasting right, as it directed to the same audience.

In the Netherlands, NORMA has managed to get paid for catch up TV and is negotiating with VOD platforms to include other ancillary services.

There is also a challenge with transparency of users. Some CMOs have issues to collect data to get a clear picture of the exploitations. In Belgium, broadcasters and streaming platforms don't want to disclose information because of competition issues and the monitoring of the played repertoire is really partial.

In Italy, there are some ongoing auditions about transparency of streaming platforms because the transposition of the directive did not provide any standards or rules to define the "fair" remuneration. This allowed platforms to be the one defining the value of rights. On the contrary, in Slovenia and Israel, AIPA and ESHKOLOT were able to obtain data from users showing the trends in those streaming services. It notably showed that the contents watched in catch-up are mainly news. On the contrary, in Greece, the majority of viewings are for series.

RECOMMENDATION: the Actors' Summit recommends SCAPR and AEPO-ARTIS to:

- Collect good practices from CMOs that manage to get data from users and establish guidelines.
- Map the different uses and assess how the current legal framework can cover this new use.
- Draft a position paper.

5. Contractual guidelines

In general CMOs do not give individual legal advice to the performers but some general standards or clauses could be envisaged.

At PLAYRIGHT, creating a template with the most beneficial clauses has never been successful because the provisions were refused by producers.

In Germany, the scope of CMOs and unions are clearly defined and there is no need for CMOs to get involved in the negotiations of actors' contracts. Therefore, GVL considers that the Actors' Summit should more focus on equitable remuneration and leave the contractual guidelines to the unions. This position was also backed by BECS. However, GDA has to deal with the actors' contracts because of the lack of action of the unions. For instance, GDA negotiated some standard clauses with the producers to ensure minimum rights to the performers. In Israel, ESHKOLOT supports the unions on the financial level. This mechanism ensures that they include minimum clauses regarding collection of performers rights in the agreements concluded by the performers and the producers.

Moreover, for US productions, the producers offer buy out scheme which the performers accept to get a quicker payment. Some producers do not keep any personal data because they fear to breach GDPR. It is then very difficult to identify the performers.

RECOMMENDATIONS: this topic should be dealt along with the visibility issue (see below).

6. Artificial Intelligence (AI)

Belgium has committed to deal with this topic during their EU Council presidency.

This topic impacts performers, notably on 2 levels:

- Contractual/ financial: performers could be deprived from their remuneration.
- Ethical: use of performers creativity, image, voice...

It was recalled that AEPO-ARTIS and SCAPR signed a joint letter with other international federations (CISAC, ...) to call on 6 general principles regarding AI. The main message was to ensure the proper licensing for AI uses and the possibility for performers to opt out.

The EU has already progressed with the preparation of an AI Act providing a possibility for performers to opt out the use of their performances by AI. However, the performers need to opt out for every use of every individual performance. An option out at personal level is not made possible, which is unpractical. The letter signed by AEPO-ARTIS and SCAPR advocated for a feasible and practical opt out right.

In the UK, the law includes very wide datamining exceptions.

Regarding the use of personality features, it is very specific because of the wide possibilities AI provides (from using a recorded voice to deep fakes). The SCAPR LWG came up with the idea to create a new right, the "avatar right", to cover these kinds of use.

Moreover, it is difficult to use privacy rights arsenal when the performer cannot be identified. The proof is impossible to bring for performers with a lower level of unicity or artistic touch. There is a possibility of transparency on the input (what is used by the AI) but not on the output.

SCAPR and AEPO-ARTIS need to adopt a pragmatic approach: the public loves AI and the legislator is often sensitive to the consumers' interest. The message conveyed on that topic should be positive otherwise it will have no impact. It does not mean that the risks cannot be pointed out.

Moreover, the Actors' summit should also consider the topic from the CMOs angle.

The principles set up in the joint letter could be used a starting point to define a common message. As to financial scheme, due to the difficulty to monitor the use of the contents, a system like private copying could be discussed.

Finally, the CMOs should really make an effort to address their members and the general public of that topic.

RECOMMENDATIONS : the Actors' Summit recommends SCAPR and AEPO-ARTIS to:

- Keep on monitoring the developments on the AI topic with a particular focus on moral right and contractual clauses;
- Assess how the current legal framework can cover this technology;
- Define a licensing scheme.

7. Visibility

This topic relates to the 1st Actors' Summit in Bled where some concerns were raised about the visibility of actors in the activities of SCAPR and AEPO-ARTIS as well as in the international fora.

Some CMOs consider that AV performers should not be systematically separated from the music performers. SCAPR and AEPO-ARTIS should also encourage synergies and advocate for performers in general.

However, the local legislations sometimes make this position inefficient. For instance, in Slovenian law, actors are defined as contractors and not as performers. Therefore, they are submitted to a different regime than music performers and the actions taken based on the music performers status don't concern them. In that regard, synergies are sometimes easier to find with other rightsholders of the AV sector. However, their interests (and in particular producers' interests) can be detrimental to performers.

Moreover, some participants underlined that the issues related to actors need to have their own space, otherwise they will be overtaken by music issues.

Another way to increase actors' visibility is to involve performers, in particular A-Stars. The social funds set up by CMOs are a good incentive to get them onboard. The CMOs, AEPO-ARTIS and SCAPR should consider having some "ambassadors" to reinforce their messages.

RECOMMENDATION:

- Maintaining collaboration with other groups of rightsholders when appropriate.
- Opening discussions in SCAPR and AEPO ARTIS to have "ambassadors".

General conclusions

The Actors' Summit will remain a forum dedicated to actors' rights and issues exclusively. Both policy and operational issues (in coordination with SCAPR AV forum) will be discussed. It will not make any decisions but will issue recommendations for the AEPO-ARTIS and SCAPR boards.

The most important discussed topics are BTAP, streaming and artificial intelligence. The aim is to draft position papers to help AEPO-ARTIS and SCAPR diffuse a common position on these topics.

For retransmission and streaming, there is a need for more clarity on the market before proposing any further action.

Regarding visibility of actors, the participants agree on a need of enhancement, including via joint actions with other international federations, when appropriate.

A new edition of the Actors' Summit will be organized to pursue the discussions on those topics and other topics related to actors.