

# IMPLEMENTATION OF THE EUROPEAN COPYRIGHT DIRECTIVE

INDUSTRY INTERIM GUIDELINES  
FOR PRODUCERS, AUTHORS AND PERFORMERS  
IN THE IRISH SCREEN INDUSTRY



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# NEW RIGHTS FOR AUTHORS AND PERFORMERS IN IRISH LAW

## INTERIM GUIDELINES FOR APPLICATION

These Interim Guidelines was created by the industry collaboration of Animation Ireland, Equity, Screen Composers Guild of Ireland, Screen Directors Guild of Ireland, Screen Producers Ireland and Writers Guild of Ireland with the support of Screen Ireland. They are designed to facilitate the implementation of and compliance with the EU Copyright Directive (2019).

The EU Copyright Directive (2019) was brought into Irish law by Statutory Instrument in November 2021. These Interim Guidelines relate to the new rights for authors and performers in the value chain for the exploitation of films and audiovisual works. These Interim Guidelines are in respect of Chapter III of the EU Copyright Directive and Part 6 of Statutory Instrument 567/21 under the heading “Fair Remuneration in Exploitation Contracts of Authors and Performers”.

## ADDITIONAL RIGHTS

The European Union's 2019 Copyright Directive<sup>1</sup> was introduced into Irish law by a Statutory Instrument on 12th November 2021<sup>2</sup>. Among many other provisions, it introduced a group of additional rights for authors and performers which are now legally binding entitlements.

In brief these rights are:

- 1. Principle of appropriate and proportionate remuneration:** A right to appropriate and proportionate remuneration,
- 2. Transparency obligation:** A right to receive annual information from their producer on the economic life of the project,
- 3. Contract adjustment mechanism:** A right to re-open contract terms where the success of the project is significantly greater than originally anticipated,
- 4. Right of revocation:** A right to a return of rights in the event of non-exploitation,
- 5. Alternative dispute resolution procedure:** A right to a disputes process.

<sup>1</sup> <https://eur-lex.europa.eu/eli/dir/2019/790/oj>

<sup>2</sup> <https://enterprise.gov.ie/en/legislation/si-no-567-of-2021.html>

## INTERIM GUIDELINES

The details of how these rights are to be implemented is not clear from the original Directive or from the Statutory Instrument. So, with the support of Screen Ireland, the representative organisations of producers, performers, writers, directors and composers of the original score<sup>3</sup> (the Group) have been meeting to agree on how to move forward.

Some issues are not easily resolved and will take considerable time. Therefore, it was decided to agree Interim Guidelines.

These guidelines will stay in force for a period of two years from adoption [1 January 2025] or until a comprehensive collective agreement/s can be established, whichever comes first.

**3** Animation Ireland, Irish Equity, Screen Composers Guild Ireland, Screen Directors Guild of Ireland, Screen Producers Ireland, Writers Guild of Ireland.

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## WHAT PRODUCERS SHOULD DO

### **1. Principle of appropriate and proportionate remuneration:**

#### A right to appropriate and proportionate remuneration

Performers, writers, directors and composers of the original score are “entitled to receive appropriate and proportionate remuneration”.

Appropriate and proportionate remuneration is defined in the Statutory Instrument as “proportionate to the actual or potential economic value of the licensed or transferred rights”.

At the present time in Ireland the principal form of proportionate remuneration that exists is a contractual agreement to pay continuing amounts based on a share of ongoing income/share in profits. This is usually specified in a CAMA. This is a matter for individual contract negotiation.

The Group recommends that producers negotiate the inclusion of credited writers, directors and composers of original score in revenue/profit-sharing schemes in future contracts pending the conclusion of collective negotiations. The situation for performers is governed by collective bargaining agreements.

The Group agrees that fixed amounts paid to performers, writers and directors by contract do not constitute appropriate and proportionate remuneration except in very limited cases.

The Group agrees that, in the case of composers of original score, where the performing rights of the music are registered and assigned to a collective management organisation, such as IMRO in Ireland, and the composer is in receipt of music royalties, this constitutes a form of proportionate remuneration in addition to the contracted fee.



## **2. Transparency obligation:**

### **A right to receive annual information from their producer on the economic life of the project**

In respect of any project in which rights have been transferred (through assignment or licence) to you or your companies, it is agreed, for the purposes of these interim guidelines, that a producer shall provide an annual report of all revenues in connection with the project which has been reported and accounted to the producer in the previous year. The first of these should cover the period from 7th June 2022 to now and should be repeated every year from then on.

The report should be sent to writers who are accorded a “written by” or “created by” in the credits of the film or television series, to directors who are credited as “director” or “directed by” or “a film by” in the credits of the film or television series and to composers who are credited as “composer” or “music score by” in respect of the soundtrack of the film or television series.

Performers rights shall continue to be addressed under existing and future collective bargaining agreements.

If the project has a sales agent, the appropriate extracts from sales agents’ reports should suffice, subject to confidentiality requirements.

If the project has a Collection Agency Management Account Agreement (“CAMA”) which lists the writer, director, composer of the original score or performer as a beneficiary, a report from the CAMA will suffice for such beneficiary.

Where a CAMA solution is not available, the Group strongly recommends suitable software solutions to enable transparency reporting obligations to be complied with. Further information will be provided as available.

In the case that none of the above reporting options are used by the Producer, the Group has, in principle, agreed to develop an interim standard reporting form as soon as possible, but by no later than the end of Q1 2025. Once mutually agreed by the Group, this form will be incorporated into these guidelines.

If the project has been sold, transferred or licensed by you to a sub-licensee you should either a) if requested by the writer, director or composer of the original score ask the sub-licensee for the necessary information or b) if requested by the writer, director or composer of the original score provide the writer, director or composer of the original score with the name and address of the sub-licensee.

If the producer cannot find the writer, director or the composer of the original score, the producer can send a notification that there is a report available to the appropriate representative organisation which will acknowledge receipt. Writers, directors or composers of original score should keep producers advised of their up-to-date contact information.

The Group acknowledges that service producers who provide production services for a fee on projects originated outside the Republic of Ireland who may be the first contractual counterpart of an Irish writer, director or composer of original score, have limited information to provide in their first annual report beyond statutory information about their sub-licensees. The service producer shall be entitled to make it clear in that report that the report also covers all subsequent years, provided that in those years no further revenues are received by the service producer for that project. In respect of such projects produced by a service producer which have already been completed and delivered by 7th June 2022, the service producer will, on request, deliver such a report and provide details of the sub-licensee.

If a project, regardless of when it was produced, is generating revenue and/or being actively exploited, then a producer is obliged to produce a report. A project is understood to be in “active exploitation” when it has a sales agent attached (for film) or when it has a distributor attached (for television) who is actively reporting to the producer and the project has generated more than €2,500 to the producer in the previous calendar year.

If no revenue has been accounted to the producer by a project for three (3) consecutive years or more the producer shall not be obliged to provide an annual report unless requested to do so by a writer, director or composer.

If the project subsequently resumes revenue generation, the producer shall at that time be obliged to generate annual reporting in accordance with the legislation.

For the avoidance of doubt, with regards to rights assigned or licensed, the first contractual counterpart shall be considered and understood to extend to and include any successor in title to a Designated Activity Company (DAC) or single purpose vehicle (SPV) that has been wound up since production has completed.

This right cannot be waived by contract.



**3. Contract adjustment mechanism:**

A right to re-open contract terms where the success of the project is significantly greater than originally anticipated

This provision in the law is intended to allow performers, writers, directors or composers of original score to seek amendments to contracts if the original payment is disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the work.

We believe that the best way to manage this provision, in the longer term, is to fix agreed rates of increase in the event of increased income. This negotiation will take time.

In the interim the group of representative organisations are working on the establishment, without prejudice to your legal rights, of a system of Mediation and Arbitration which will address any claims under the provisions of this new right.

Performers, writers, directors or composers of original score who wish to assert their right under this provision should first contact their representative organisation for initial advice.

This right cannot be waived by contract.

#### **4. Right of revocation:** A right to a return of rights in the event of non-exploitation.

This right intends to allow performers, writers, directors or composers of original score to reclaim their rights in the event that the project has not been exploited. However, it acknowledges that revocation may be impractical where there is a plurality of performers, writers, directors or composers of original score.

Therefore, it is accepted that this right will normally be waived for film or television production.

There are some exceptions; in the case of the assignment of music copyright, a composer should be able after a period of time to re-license rights to music which could be used again in other contexts where it does not prejudice the project it was originally composed for. Writers may be able, after a period of time and mutually agreed terms, to claim theatre, novelisation, radio, format or character rights. These exceptions should normally be negotiated at contract level.

For existing contracts producers should be aware that writers, directors and composers of original score may have a legal right to seek revocation of rights in the event of non-exploitation of the project and should negotiate accordingly.

The foregoing is without prejudice to contractual turnaround provisions.



## **5. Alternative dispute resolution procedure:** A right to a disputes process

These rights are new and complex in the detail of their application in practice. Nonetheless they are now enshrined in European Union and Irish law. We expect that there will be questions and perhaps problems that need addressing.

The new law includes a right to a dispute procedure which, in the Irish Statutory Instrument is only a right of access to mediation and arbitration and of course access to the courts.

We have decided that, in addition to the statutory rights, we have put in place two structures to address any problems. We are establishing an Oversight Committee which will assess how the Interim Guidelines are working out and will also address any problems that arise from their implementation. The Oversight Committee comprises two representatives from each side of the working group – the producers and the performers, writers, directors and composers of original score.

This is primarily intended to oversee the application of these Interim Guidelines but will also address problems related to the interpretation of our intentions in respect of the Guidelines. Individual performers, writers, directors, composers of original score or producers should firstly speak to their representative organisations.

As the new rights enshrined in Irish law affect all productions where rights are assigned or licensed by performers, writers, directors and composers of original score to Irish based companies, the representative organisations have committed to provide information to any relevant performer, writer, director or composer of original score, making enquiries including non-members.

In the case of unresolved disputes regarding transparency or contract adjustment mechanism, the Group is working on establishing a dedicated mediation and arbitration process which will have expertise in the audio-visual industries.

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