



SERVING AUTHORS WORLDWIDE
AU SERVICE DES AUTEURS DANS LE MONDE
AL SERVICIO DE LOS AUTORES EN EL MUNDO

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CISAC submission to the notice of inquiry on mass digitisation pilot program



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CISAC, the International Confederation of Societies of Authors and Composers, would like to thank the US Copyright Office for the opportunity to express its position on the desirability of introducing an extended collective licensing regime for certain mass digitisation use of visual art works.

CISAC is a not-for-profit, non-governmental organisation, composed of 230 authors' societies from more than 120 countries. Through its membership, CISAC represents some 4 million creators. These creators are drawn from a wide variety of artistic fields, including music, drama and literature, visual arts and audiovisual.

In the field of visual art, our members represents the interests of authors of fine art, painters, sculptors, video artists, illustrators, photographers, designers, architects and other visual authors. The tasks our visual art societies typically carry out for the benefit of their members are diverse and include the following:

- Providing licenses for the reproduction and communication to the public of their members' works, thus providing legal certainty to users;
- Collecting and distributing royalties for the rights managed under mandatory collective management;
- Collecting and distributing the artist's resale right;
- Defending its members' rights against any infringement;
- Protecting and developing authors' rights at a national and international level;
- Promoting cultural activities and assistance in favour of the creators' community.

The rights our visual art societies manage are typically the so-called "Primary use rights", which include the rights for reproduction and distribution of images in any print media such as books, newspapers, or postcards; for advertisement campaigns and merchandising products. For these uses, our member issue licenses based on published tariffs that are normally agreed with users.

In some countries, national law provides mandatory collective management for certain categories of rights that are of particular relevance for visual artists. This is the case for instance in many EU members with regard to the remuneration for private copying, for reprography, for cable retransmission or for public lending. In these countries, CMOs (and among them, visual art societies) are entitled to collect and distribute royalties on behalf of their members without the need of a specific authorisation. In this context, we would also like to bring to your attention a specific French law on out-of-print books that entered into force on 2012, with good results so far. This legislation grants to registered CMOs the right to authorize the reproduction and representation in digital form of 'out-of-print books'. CMOs are entitled to a share of remuneration for the pictures incorporated in books. Also, the authors of the incorporated visual works are able to opt-out at any time. The French legislation can thus be of interest to appreciate the opportunity of the proposed ECL framework.

Based on the experiences of our visual art member societies, CISAC considers that the introduction of an extended collective licensing scheme for mass digitization uses could be suitable provided that a number of conditions are met:



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- The CMO that take part on the extended collective licensing scheme must have a strong representation of visual artists (including foreign artists) of the relevant categories of works and must have a proven experience in rights management. In case of a mixed repertoire CMO (e.g. visual art and other repertoire such as literature or audiovisual), visual authors should be proportionately represented in key decisions-making bodies.
- The society appointed should be the one that is most representative, with the most important factor being the extent of its representation of its foreign members through its reciprocal agreements with foreign societies, as well as the efficiency of its representation of its own national members.
- Authors shall have the possibility to opt-out at any time of the extended collective licensing scheme, and the licenses issued by CMOs shall always be reversible;
- It must be guaranteed that right holders receive fair remuneration, to be provided directly by CMOs.
- The functioning contractual framework currently in place (with a special reference to agreements with educational establishments, museums, online services) should be preserved.
- The new scheme should not turn out to be used by big commercial companies to make profit with the visual works to the detriment of the authors.

We do hope that the above information will assist the United States Copyright Office in adopting the most appropriate strategy as regards the introduction of an extended collective licensing scheme in the field of visual art.

We remain at your disposal for any question or clarification you may have on the above-mentioned considerations.