

PANEL V – PANORAMA  
CAROLA STREUL, SECRETARY GENERAL  
EVA, BRUSSELS

EPP Hearing on Copyright 8 June 2017  
European Parliament - Brussels

# About EVA

- **Founded 1997** with seat in Brussels
- Members today: **26 European collective management organisations**
- **In 24 countries** managing a visual repertoire
- Representing **100.000 authors** of fine arts, photography, illustration, design, street-art, architecture and other visual works
- Not-for-profit **trustees**, managing rights on behalf of authors
- Set-up and governed by authors and their professional associations

# Rights management

- **Reproduction, distribution, communication to the public** *for fine arts*
  - EVA members issue every day **hundreds of licenses** for all kinds of usage, nationally and **internationally (= cross borders)**
  - **Print media** – books, journals, post-cards, posters, advertisement
  - **Merchandising products** – mugs, t-shirts, bags etc
  - **Agreements with big scale users:** art museums, libraries, archives, broadcasters, educational institutions
  - **Internet uses**
- **Remuneration** *for all images*
  - Reprography, private copying, cable retransmission
- **Resale Right**
  - Secondary art market sales of original art works

Panorama exception: Both, Parliament and Commission already decided that no further harmonisation was needed

- Very few amendments are tabled in different EP committees;
- Should be rejected: nothing changed since 2015
  - ▣ European Parliament **debated and rejected** panorama exception as a project for harmonisation (report on implementation of Directive 29/2001, art 5.3.h ) on 9 July 2015
  - ▣ European Commission
    - EC consultation in spring 2016
    - 14 September 2016 published draft Directive *without Panorama exception* because there is no evidence of the need to harmonise
    - Same day: publication of qualitative synopsis of consultation

Panorama exception: Both, Parliament and Commission already decided that no further harmonisation was needed continued

- *EU harmonisation is subsidiary to national law*
- *Requirement is evidence for obstacles to the internal market*
- *Differences in legislation are insufficient*
- *France and Belgium have introduced exceptions*
- **NO** jurisprudence by the CJ of the EU
  - ▣ The „Hundertwasserhaus case“ is unique and was ruled by the German High Court BGH **back in 2003**;
  - ▣ Confirms rules on applicable law

# Works in Public Places - Panorama Exception

## FAQ

Can people freely share their photos and videos on social media?

## Answer: YES

Today, everywhere in the EU, consumers can photograph and film art works in public places, take selfies in front of monuments, whether there is a panorama exception or not. They can post these images and videos on their personal websites, blogs or on social media.

**Collective management organisations do not request to take down such pictures.**  
Includes all protected art works and is not limited to works permanently located in public places

# Works in public places- Panorama Exception

## FAQ

Can professionals use images and videos easily throughout the EU?

Answers: YES

**Member States all have licensing mechanisms in place to facilitate and simplify access to protected works for professionals.**

In countries without the panorama exception, solutions and mechanisms have been created that ensure licences can be acquired easily when the work is not concerned by one of the many exceptions already in place.

Example: agreements with broadcasters include all protected works, allowing usage against fee.

# Many other Exceptions apply

- Article 5 Directive 29/2001 provides for 20 optional exceptions; many apply to works in public places; regularly applicable:
- *Article 5.3.c: **Report on current event** – news report related to the art work or author covers journalistic usage*
- *Article 5.3.i: **Incidental inclusion** – if the art work does not take the center stage.*

# Who is responsible for rights in pictures ?

- Intermediaries exploiting pictures are responsible for rights infringements on:
  - Photographer/filmmaker
  - Author of embedded works, if no exception applies and
  - Portrayed persons
- The photographer's obligation is to make his/her client aware that use of contents on the picture may require an authorisation

# Panorama

## □ Picture by photographer

de **Nantes** dans la ville éponyme.

[Description](#) · [Signification](#) · [Notes et références](#) · [Voir aussi](#)

### Afbeeldingen van anneaux nantes daniel buren



→ [Meer afbeeldingen voor anneaux nantes daniel buren](#)

[Afbeeldingen melden](#)

### Les Anneaux - Daniel Buren et Patrick Bouchain | Nantes Tourisme

<https://www.nantes-tourisme.com/fr/art-contemporain/les-anneaux> ▼ [Vertaal deze pagina](#)

Avec les **Anneaux**, œuvre d'art contemporain situé sur le Quai des Antilles à **Nantes**, le plasticien français **Daniel Buren** a livré 18 anneaux qui souligne la ...

## Les Anneaux de Buren ★

[Website](#)

[Routebeschrijving](#)

4,7 ★★★★★ 16 Google-recensies

Toeristische attractie in Nantes, Frankrijk

**Kunstenaar:** [Daniel Buren](#)

**Adres:** Quai des Antilles, 44200 Nantes, Frankrijk

**Openingstijden:** **Vandaag geopend** · 24 uur geopend ▼

**Telefoon:** +33 2 40 75 75 07

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# Platforms *Shift liability* by terms and conditions to users who upload content – *is that fair?*

- Terms and conditions of UUC platforms
  - ▣ Conditions - a) non-exclusive transfer of all rights also for commercial purposes – b) liability for rights of third parties
  - ▣ Consumers unaware
  - ▣ Authors have no choice: they must be visible
- EU legislators should:
  - ▣ ban these terms and conditions
  - ▣ Improve contractual law (photographers and illustrators)
  - ▣ Close the value gap
- To delete authors' rights instead is unfair and unjustified

# Licensed advertisement



*Orange's advertising  
(artwork : D. Buren, Les Anneaux)*

# Panorama Exception

## FAQ

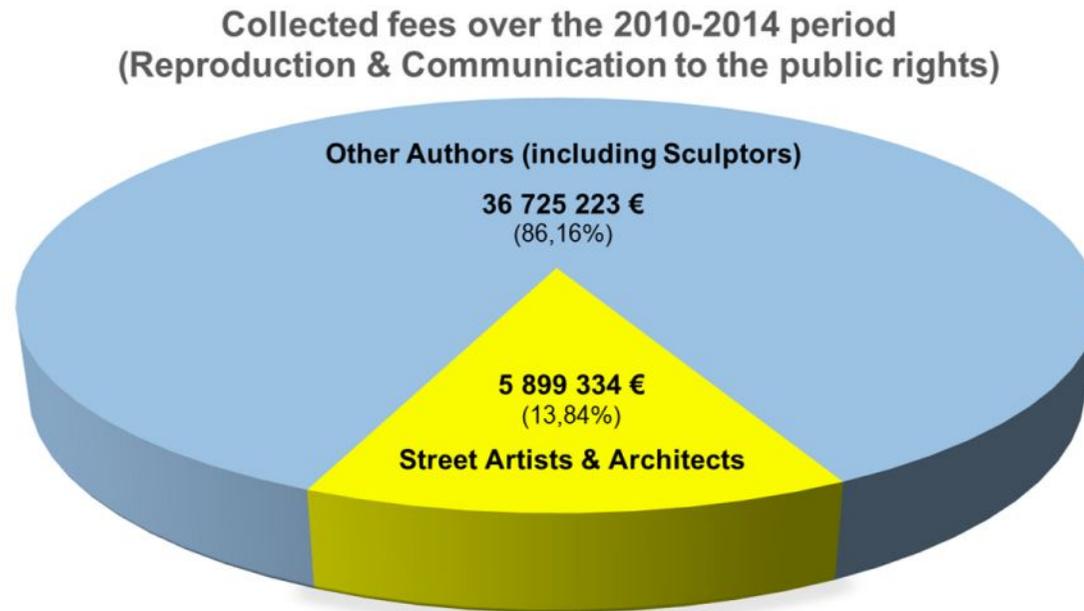
Is the panorama exception just about selling postcards without paying for content?

Answers: NO

**Many products rely on works that include panorama use:**  
magnets, printed clothing, mugs, advertising, apps, online magazines, games etc.

Highly valuable

# French artists would lose considerable income



Actual share of income lost would be higher because sculptors are not included in the yellow part; estimation: 10-12 mio € p.a. lost for authors in France

# Panorama Exception

## FAQ

So, who is asking for a harmonised panorama exception?

## Answers

To the best of our knowledge, and despite being a non-profit organisation, Wikimedia is one of the main stakeholders of this political campaign and has the support of large internet companies like Mozilla (Firefox) and Google. It is essentially attempting to force EU legislation to align with their user terms and conditions

Wikimedia has refused to accept anything that is less than an authorisation that includes commercial re-use of works, the right to use them in any modification or context, and in high definition, without permission or remuneration. The need for such an authorisation without commercial purpose is non-existent, and would unfairly harm artists.

# Swedish Surpeme Court Ruling

- Bildupphovssrätt vs Wikimedia Sweden 2016
  - Case: Wikimedia Sweden built up interactive map with images of Swedish art work in public places and refused a license from BUS
  - Supreme Court applied 3-step-test: ***the economic value of the image data base belongs to the authors***; Wikimedia had to buy a license



The current situation does not impact the internal market or pose real obstacles.



Consumers can already freely post their pictures or videos of public places on social media.



Balanced solutions exist for creators and professionals, that are adapted to each country's social and cultural context.



Professional users have easy access to works thanks to existing licensing mechanisms.



In some countries, the commercial use of works in public places generates substantial revenues for creators.

# Panorama is rightly not part of the draft Copyright Directive

# Thank you

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Secretary General

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EVA

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VISUAL  
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