



EPP Public Hearing – Copyright – 08.06.2017

‘UGC’

Creators’ point of view

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www.composeralliance.org

About ECSA

- **European Composer & Songwriter Alliance**
 - Representing thousands of songwriters and composers of all music genres in 26 European countries
 - Main genres:
 - Popular music (pop, rock, tech, indie etc.)
 - AV music (film, TV, video-gaming, sound branding)
 - Contemporary & art music

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User-generated content

- Music creators want their works to be exploited as widely as possible in return for remuneration
- Authors' exclusive rights – i.e. the ability to control use in return for remuneration – are essential
- Generally, the more exceptions to exclusive rights, the less the remuneration
- Two main effects of '**UGC exception**':
 1. Impact on authors' remuneration
 2. Impact on authors' moral rights and cultural diversity

UGC exc. – impact on authors' remuneration

- ECSA welcomed the EC's proposal
- Proposed exceptions to exclusive rights are narrow & clearly defined (as they are under national law)
- UGC exception as discussed in the CULT Committee is highly problematic:
 - Not properly impact assessed + too wage
 - It would disrupt existing licensing agreements with platforms (indeed several agreements of rightsholders with platforms do include UGC)

UGC exc. – impact on authors' remuneration

Two scenario's: UGC exception with and without prejudice to Art. 13 (i.e. liability under copyright - CTP)

- With prejudice:
 - Platforms could make available UGC without licenses in place, thus diverting even more value away from right holders towards online platforms
 - Application of provisions set out in Art. 13 practically impossible
 - Commission's objective for better remuneration is annulled
 - Increase of legal uncertainty and disruptive effects on the market place

UGC exc. – impact on authors' remuneration

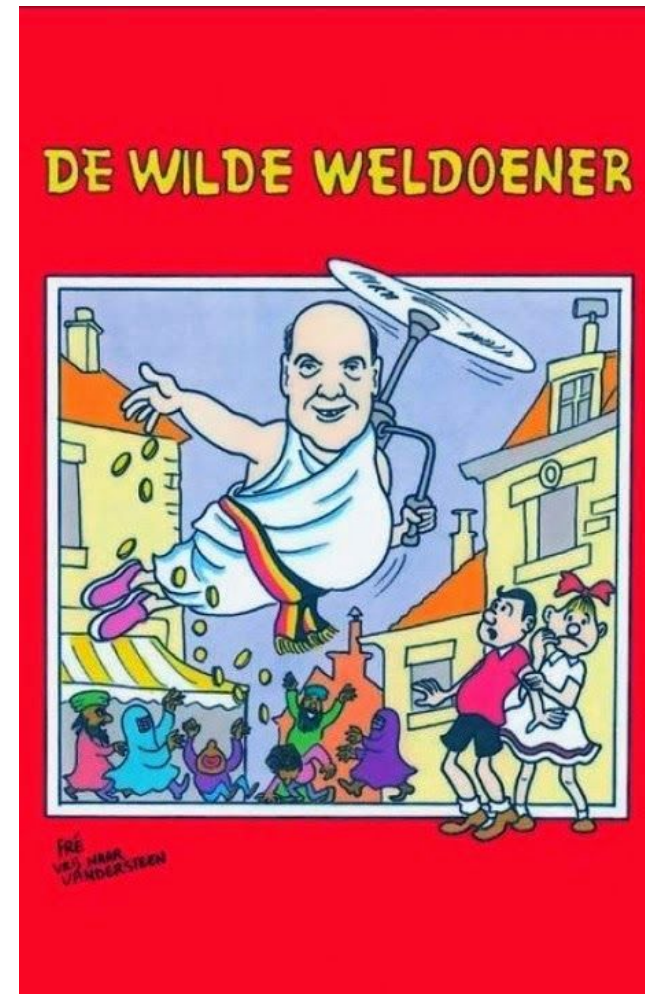
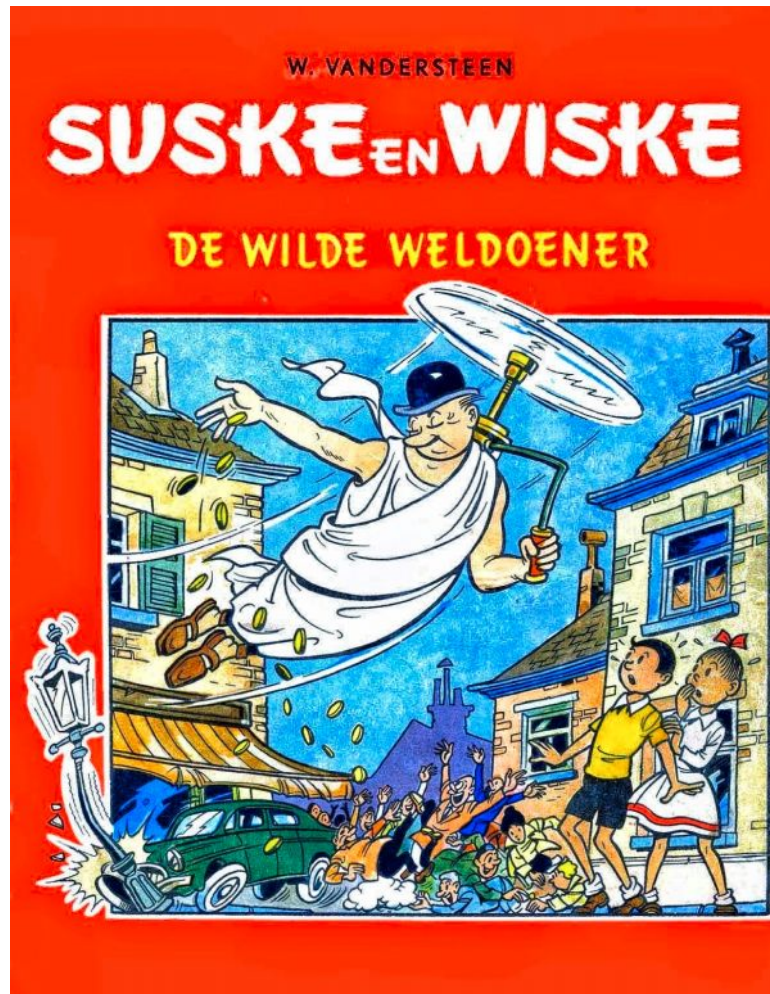
- Without prejudice to Art. 13
 - ISPs negotiation position significantly & unfairly strengthened vis-à-vis rightholders
 - UGC platforms will claim that majority of the content available on platforms falls under exception
 - thus repertoire is devalORIZED
 - Commission's objective ensuring fair remuneration and a fair marketplace annulled

Only way in ensuring fair remuneration from online platforms is Art. 13 without UGC exception

UGC exc. – impact on moral rights & cultural diversity

- Berne Convention Article 6bis
 - Attribution right, integrity right (minimum standards)
- Most EU MS 27: Berne 6bis +
 - Right to protection of honour and reputation
 - Right to withdraw the work from public access
 - Right to object to false attribution
- Moral rights are unwaivable, i.e. you cannot assign or transfer them
- Not harmonised in EU law (well, CJEU *Deckmyn*)

Case C-201 /13 Deckmyn – parody



Moral interests of artist & cultural heritage

Integrity of the work

- Sweden Democrats (Sverigedemokraterna) made a political campaign film and used the music composer Börge Ring
- Börge Ring had not been approached for permission to use his work

Cultural heritage

- Sehgal vs Union of India [2005 (30) PTC 253]
- Litigation in favor of the author (mutilation and derogatory treatment of his sculpture)
- Necessity to protect moral rights
- Culture is supposed to enter the public domain once
- The public has a right that it enters in its original form (cultural heritage)

Conclusion

- An UGC exception bears great risks, economically and culturally
- Proposal from ECSA:
 - Let's not add an exception which bears such great risks: UGC is already widely available and the Commission's proposal includes a 'redress mechanism if potential issues related to UGC need to be addressed'
 - Let's ensure that online platforms cannot hide behind safe harbour and UGC: let's create a fair marketplace for all, for the benefit of creators, cultural diversity and cultural heritage

Thank you for your attention!

References

- **Smita Kheria** – Moral Rights in the Digital Environment: „Authors“ absence from Authors' rights debate
- **Mira T. Sundara Rajan**, DPhil (Oxon), Canada Research Chair in Intellectual Property Law, Associate Professor of Law, University of British Columbia – articles on 1709 Moral Right Blog
- **Case C-201/13** *Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others*
- *Sehgal vs Union of India* [2005 (30) PTC 253]