

AEPO ARTIS

Study on Performers' Rights

November 2022 Update

Why the need for this study?

The [AEPO-ARTIS Study on Performers' Rights](#) is a project that started in 2013 and was revised in 2018. This 2022 update has three key purposes. These are to:

- 1 Explain the complex existing legislation and practice - whether international, European or national - that applies to performers today and the role that collective management plays in navigating these complexities.
- 2 Highlight where the legislation is working to support performers who wish to pursue a career as an actor or musician... and where it is not.
- 3 Set out key recommendations that are needed to create an environment where performers can thrive and produce the music, films and TV that enrich the lives of so many.





2018 - 2022: a progress report

Since the last AEPO-ARTIS study update was published, the world has endured a pandemic that has had a devastating impact on everyone, including performers. It is well known that loss of income from live performances hit them hard and digital exploitations were not offering a viable alternative.

Performers need custom-made rights that can provide them with a reasonable source of revenue: not just to see them through events like the pandemic, but to give them the possibility of a sustainable career. Not rights that will fuel a champagne and super-yacht lifestyle. Just rights that will give them a chance.

Despite new legislation arriving in 2019 with the notorious Copyright in the Digital Single Market Directive, **these rights still do not exist at EU level.** But there is improvement in the making. Some EU Member States have recognised the problems that performers face and have created their own legislation that gives performers the protection and rights they need.

It is now the responsibility of all national governments to deliver these rights - not principles or promises – but real rights that will give performers a chance.

Streaming isn't working... not for performers anyway

In recent years we have received more and more positive news from the entertainment industry. Music and film producers have now embraced the digital market and publish positive financial reports showing rising profits and continuous growth.

But for performers the streaming statistics are anything but positive. Not enough of these profits flow through to them, with only a handful receiving enough money to sustain a career.

Actors and musicians see their work reach a worldwide audience via streaming services, but do not share adequately in the added value that is created by this. But it can be different. Streaming has become big business. The no-budget excuse is no longer valid.

There is a **lot** of money going around.
It just isn't being shared fairly.

The deals a large majority of performers are faced with still amount to a one time buy-out payment, which means they don't get to share in the success of the work they contribute to.

In modern record contracts, some musicians receive royalties and the percentages in those contracts are certainly better than they used to be.

But these opaque contracts are constructed in such a way that makes it extremely difficult for even successful artists to **actually** receive fair payments.

The outdated legal framework of performers' neighbouring rights allows the imbalance between performers and producers to continue.

A system of equitable remuneration for on demand streaming as advocated by EU Member States, academics, politicians, grass-roots campaigns and **performers themselves** would ensure performers receive a fair amount, regardless of the contract they have signed, whenever their music or films are enjoyed.



Streaming is old wine in new bottles

Streaming is nothing new. It has facilitated the way we consume music and film, but has not in itself introduced new uses.

We still organise our library and find ways to tell our friends what we like. We make our own mixtapes but call them playlists now. **Some common features of music streaming platforms also share the same features of traditional radio.** It's certainly not something they hide:

We still pay to rent a movie. **Some film streaming platforms share the same features as the old video-rental shops.** Again, it's certainly not something they hide:

This is important because performers have a generally accepted right to be paid when their song is played on the radio.

They also have a right to be paid when their film is rented from a video-rental shop.

It is only because of **legal anomalies and outdated legislation** that they don't get paid



when this happens. Commercial practices need to change – with political intervention if necessary - to ensure that remuneration is paid for passive streaming and online video-rental. Future-proof legislation needs to be built to enable this.

21st century streaming platforms acting as radio stations or video-rental shops should pay remuneration like any other radio station or video-rental shop.

These are precarious times...

Traditional sources of revenue for performers are under threat due to ever-changing technology, current commercial practices and legislation that has fallen behind. Radio-style streaming and online rental are just some examples. Private copying remuneration is another one.

It makes up one third of performers' CMOs collection. The system works well, but needs to keep up with technology such as cloud data storage. The fact that time-shifting has now become a paid service does not mean that performers have to settle for a smaller share from the

same activity. Whether a copy of a film or song is made on a cassette or in the cloud, remuneration should be paid.

Performers remain in the dark as to how their recordings are being used, who is profiting from them, and whether they are getting the amount they are entitled to.

With more and more diverse sources of remuneration, performers need transparency if they are to have faith in the platforms, tech giants, record labels and film studios that benefit from their creativity and talent.

... and time is a relative concept.

Performers' rights need a "complete reset", but audiovisual performers are first entitled to a catch-up. While EU law is still catching up with the realities of 21st century technology, it is even further behind on the fundamental issue of treating musicians and actors equally. The fact that EU law does not give actors the same rights as musicians is

totally unjustified. The fact that rights are granted to musicians for 70 years, whereas actors only receive rights **for 50 years** is pure discrimination.

Actors deserve the same respect and protection as their performer colleagues in the music sector.

THE KEY RECOMMENDATIONS ARE:

- 1 Introduce a right to equitable remuneration for on demand streaming
- 2 Ensure that performers are adequately remunerated for passive streaming and online rental
- 3 End discrimination against performers in the audiovisual sector
- 4 Ensure that a modern future-proof system of private copying remuneration exists in all member states
- 5 Monitor performers' right to transparent information about the exploitation of their recordings

AEPO ARTIS

ASSOCIATION OF EUROPEAN
PERFORMERS ORGANISATIONS



AEPO-ARTIS is a non-profit making organisation that represents 37 European performers' collective management organisations from 27 different European countries. The number of performers, from the audio and audiovisual sector, represented by its 37 member organisations can be estimated at 650,000.

AEPO-ARTIS aspires to ensure all performers benefit from the use of all their performances. As the paramount voice of performers' collective management organisations in Europe, AEPO-ARTIS strives to promote the collective management of rights and to protect, strengthen and develop performers' neighbouring rights as well as to highlight the contribution that performers make to Europe's rich and diverse cultural sector.

We defend
performers' rights

