



FAIR INTERNET FOR PERFORMERS

A European campaign for the
fair treatment of performers
in the digital environment

AEPO-ARTIS | EuroFIA | FIM | IAO

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The issue

Performers bring life and soul to artistic works. Without them, Europe would not enjoy the vibrant cultural scene it does today and the creative content sector, which makes a vital contribution to Europe's economy, would simply not exist. However, performers are still not properly rewarded when their performances are exploited on digital media.

How is the online creative sector unfair to performers?

European legislation (such as the "Information Society" Directive 2001/29/EC) was drafted with the intention of protecting performers and allowing them to receive a fair share of the revenue derived from the online exploitation of their creative contribution. To this end, a specific type of right was introduced: the "making available" right, which gives performers the exclusive right to authorise or prohibit the making available of their recorded performances to the public on demand. Pursuant to this legislation, commercial entities may not provide services such as video on demand, interactive streaming or music/film downloads without being first authorised to do so by all the performers involved. Regrettably, in practice this legislation is largely ineffective.

As performers' exclusive intellectual property rights are not adequately protected by the current EU legislative framework, it is easy for businesses to exclude in practice performers from any financial reward when their sound and audio-visual performances are commercially exploited online. In many EU countries, statutory presumptions of transfer, often combined with less powerful unions and ineffective social dialogue, mean that performers often have to sign away all their rights from the start, for any future use of their performances, anywhere and in perpetuity in return for not more than inadequate compensation if any at all. This situation is both unfair and unacceptable.

AEPO-ARTIS, EuroFIA, FIM and IAO call for an update of European law in order to ensure that the making available right generates meaningful revenues for performers.

A European initiative is necessary

A new provision should be introduced in EU law, complementary to the existing relevant provisions of Directive 2001/29 (the "Information Society Directive").

Such a measure should guarantee that performers, in the event that they transfer their exclusive right and independent of the terms for such transfer, enjoy an unwaivable right to receive equitable remuneration for the making available of their performances on demand.

Such equitable remuneration should be collected from the users and managed by performers' collective management organisations.

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The proposal is both simple and easy to implement. Existing contractual practices, whether individual or collective, between performers, producers and users would be left unchanged, albeit with the additional safety of a guaranteed remuneration for performers for on-demand use, subject to mandatory collective management.

Performers' collective management organisations already work together well, in a framework that allows collection and cross-border distribution to the rightholders they represent.

What are the expected effects of such a solution?

For performers

Performers would receive a guaranteed payment whenever their recorded performance is made available on demand online. They would therefore no longer be excluded, as is currently the case for most of them, from receiving a just reward from the online exploitation of their performances and the opportunities that Europe's digital environment has to offer.

For producers

Existing business models would be preserved. Producers would still acquire the exclusive making available right of performers, through individual or collective bargaining, enabling them to license the digital use of these performances.

For users (streaming services, VOD and other online distribution platforms)

Equitable remuneration would be paid by users and not by producers. It would be paid independent of and in addition to any contractual payments that are made by producers in respect of performers' exclusive making available rights. User entities would pay the equitable remuneration to a performers' collective management organisation entrusted with the collection and distribution of such remuneration to performers.

For consumers

There is a perception among consumers that the money they spend to access content online goes exclusively into the pockets of "big corporations" i.e. major record companies or film studios. This has been shown to be a disincentive for them to turn to legal offers. Once it can be demonstrated that all performers are fairly rewarded for the online exploitation of their performances, consumers are likely to perceive legal commercial services as more fair and attractive and this may dissuade them from using illegal sources to access creative content.

At a time when more and more online, on-demand commercial services are being developed, the now undisputed gap between the protection that European law originally intended for performers and their limited possibilities to enjoy it in practice needs to be urgently resolved.



GIVE PERFORMERS THEIR FAIR SHARE!



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