

MUSIC (contemporary, popular, audiovisual)

## **The work of ECSA (European Composer & Songwriter Alliance) and the challenges for European songwriters in 2023**

### **An interview with Marc du Moulin, Secretary General of ECSA**

**[Bulletin des Auteurs](#)**: What is the key role of ECSA? What is the structure of your Alliance?  
**[Marc du Moulin](#)**: The challenges encountered by music authors are immense but often very similar within the 27 European countries we represent. Our role is to defend and promote their rights and interests at a European and international level. Our Alliance currently represents [54 member associations](#) across Europe, mostly within the European Union (EU), but sometimes beyond (Norway, Iceland, UK, etc.). SNAC, UCMF and UNAC are our three member organisations in France, who actively participate in our projects. The attractiveness of ECSA is proven by the arrival of new members from Portugal, Germany and Italy in the last few years. It also demonstrates our representativeness and influence throughout Europe.

Thanks to the support of [the Europe Creative program](#), which finances about 50% of our activities, as well as to the contributions of our members, we are well-equipped to make European institutions aware of the challenges music makers are facing and to promote their art and professions through various political and cultural activities. Our partnership with the Europe Creative program includes a work programme and activities co-financed by the EU, which allows us to finance numerous political or cultural activities. Nevertheless, our resources remain very limited compared to those of the GAFAM, audiovisual platforms, or music majors represented in Brussels.

Our association is composed of three committees: APCOE for popular music, ECF for classical and contemporary music, and FFACE for audiovisual music. This structure remains important, but we have added several working groups that deal with cross-cutting issues, such as music streaming or artificial intelligence.

In 2021, we revised our statutes in order to include more diverse goals, such as gender equality and clearer rules for the election of our board members.

Based on this new statute, our members elected a new [Board of Directors](#) in February 2022, chaired by [Helienne Lindvall](#). In addition, Alfons Karabuda was elected Honorary President of ECSA, while Bernard Grimaldi was elected Honorary Vice President of our Alliance.

In the last two years, Covid-19 and its restrictions have had negative consequences for music authors and our member organisations. ECSA has been able to adapt, and to organise its activities online with the help of digital tools. We were very happy to finally meet again during our last ECSA Session in Split (Croatia) last September, after more than two years without an in-person session. Nevertheless, we continue to use digital tools to interact with our members, especially with our working groups.

**B.A.:** What are the major objectives of ECSA's work in 2023?

**M. du M.:** We currently have three main objectives: first, one of ECSA's major goals has been the adoption of ambitious provisions within [the Directive on Copyright in the Digital Single Market in 2019](#). We have been particularly active on Article 17, which addresses the relationship between right holders and certain online distribution platforms, such as YouTube, to obtain better value-sharing and fair remuneration for all right holders.

Another major priority was the adoption of Articles 18 to 23, regulating contracts between authors and performers on the one hand and publishers, producers, and platforms on the other. Until then, the EU legislative framework protected copyright, but not creators' contracts, which are essential for authors. We have worked together with other authors' organisations (screenwriters, directors, writers) to put forward common rules that apply to all authors in the EU. Finally, we have also been vigilant about copyright exceptions, so that they do not negatively impact authors' rights, which must remain the rule, not the exception.

The final result is not perfect, but once implemented throughout the EU, this Directive will improve the remuneration and working conditions of all authors in Europe. We have also been in close contact with our members at national level to work on the implementation. At this stage, about one-third of the EU member states have not yet implemented the Directive. This is not acceptable, and we continue to urge member states and the European Commission to speed up the implementation process. In June 2022, we organised a [conference](#) on the implementation and the problem of "buy-out" contracts with other authors' organisations. It showed that there is still a lot to be done for this Directive to improve the working conditions of authors on the ground.

Our other major priorities are, on the one hand, the fight against the so-called "buy-out" contracts and coercive publishing, and on the other hand, music streaming.

**B.A.:** What is a "buy-out" contract?

**M. du M.:** Different types of "buy-out" contracts exist and can be very complex. But, to put it simply, a buy-out is a contract that covers all the rights and services performed by an author, as well as future exploitations, in exchange for a single lump-sum payment. Such a contract means that the author will not receive any royalties in the future, regardless of the success of the work. Under such a contract, the composer is often required to accept that his or her contribution will be qualified as a "work made for hire", under extraterritorial legislation, most often American, contradicting the European model of authors' rights. This phenomenon became more common with the growth of US VOD platforms across Europe. If an author refuses or opposes such a contract, this can have serious consequences on his future professional opportunities. His or her freedom of choice becomes non-existent, and only the law and collective organisations can stop this. We have worked extensively on this issue with the European institutions and published a [report](#) on the issue in May 2021, outlining different challenges posed by these contracts and possible solutions to address them.

**B.A.:** Were you heard? What was the role of France in this area?

**M. du M.:** France was a pioneer in this field with an ambitious provision adopted in May 2021 as part of the 2019 Directive's implementation process. This provision prohibits contracts that would deprive music authors of the protection by French law, regardless of the

law “chosen” by the parties of the contract. This is a very positive provision which should serve as an example at the European level. France also played a key role during the French Presidency of the Council of the EU by carrying out an unprecedented stocktaking exercise on the effectiveness of the European copyright framework with all EU Member States. [The final report](#) (in French and English - page 22) has highlighted the numerous attempts to impose buy-out practices, aiming to circumvent national laws protecting authors rights at the European and national levels.

The European Parliament has also adopted three resolutions denouncing these practices and asking the European Commission to take action. With [GESAC](#), we organised an [event](#) on November 8, 2022, to organise an exchange between composers and several Members of the European Parliament and raise awareness about this issue. At this stage, the ball is now in the court of the European Commission. We have recently met with their representatives to encourage them to take action. Despite the very strong opposition of non-European platforms to any initiative, I am reasonably optimistic that this issue will be on the agenda of the European Commission in the future.

**B.A.:** What about coercive publishing? How can we fight against it?

**M. du M.:** Coercive publishing is a major problem for all music composers across Europe. Very often, composers (about two-thirds of them according to our surveys) are confronted with “fake” publishers (“producer-publishers”, “broadcaster-publishers”) who force them to give away some of their rights, often representing more than a third of their royalties, without any compensation. They do not respect their legal obligations of transparency and exploitation. These practices have a very negative impact on the remuneration of composers and constitute unfair competition for real and virtuous publishers. In case of insufficient exploitation, the transparency obligations and the right of revocation included in the 2019 EU Copyright Directive should improve the situation. These provisions also encourage collective agreements, such as [the Code of Fair Practice for Music Publishing](#) (*Code des Usages*), signed by our members and publishers' organisations in France.

This Code, as well as [the report](#) of our French associations (SNAC, UCMF, UNAC) on the subject, is very useful, and I hope that it will produce positive results for composers in France, which may inspire their European counterparts. Until now, certain agreements were often limited by a strict interpretation of competition law, but we have worked hard to convince the European Commission to remove some of these obstacles to facilitate the signing of such agreements. We were largely heard, since the European Commission adopted [guidelines](#) last September that now allow articles 18 to 23 of the 2019 Directive to be applied through collective agreements, without the obstacles imposed by competition law. But this is only a first step. We now need to convince publishers and producers to negotiate and sign such agreements to improve the situation of authors on a national level.

**B.A.:** You have also mentioned music streaming, what about it?

**M. du M.:** Music authors are the primary creators of the music but are “the fifth wheel on the wagon” when it comes to the distribution of music streaming revenues.

The music streaming platforms have grown exponentially recently and have developed along the lines of the CD distribution model, with about 55% of the revenues going to the record labels/producers and about 30% to the platforms. This leaves only 15% to the publishing

rights, which are usually shared between publishers and authors. It means that authors often receive only a very small percentage (less than 10% at best) of the revenues, even though they are the primary creators of music. This is not acceptable.

The current situation is even more worrying because of the very low music streaming subscription prices, which have not increased in recent years, despite the rise of prices and increasing inflation in Europe. How can a 9.99 euros monthly subscription provide for a fair remuneration for the entire music value chain, starting with authors but also performers? The remuneration rates for free streaming and online content-sharing service providers are even worse.

The very low rate of royalties is also often due to the three music majors - who act as both record labels/producers and music publishers - generally favour the recording rights of labels over publishing royalties because they get more revenue from the first ones. This conflict of interests has a very detrimental impact on music authors and explains to a large extent their low remuneration. Policy makers and competition authorities should carefully examine the impact of the majors on the music streaming market.

Many other issues are very worrying, for example, the lack of algorithms' and playlists' transparency, the lack of authors' works visibility on those platforms, and numerous cases of streaming fraud regularly denounced in the press. Moreover, it is urgent to improve the identification of authors not only to improve their remuneration but also to ensure more diversity and transparency on those platforms. We want to ensure the efficient registration as well as a complete and correct identification of authors' works on streaming platforms.

We have expressed our [position](#) on these issues. The report from [the UK House of Commons](#), as well as [the recent GESAC study](#), have all highlighted the numerous issues at stake with music streaming.

We call on the EU and European countries to address all these issues and to propose solutions, including through the promotion, visibility, and diversity of European works and less popular repertoires. Many virtuous mechanisms exist in the audiovisual sector to promote European works. Why don't we take inspiration from them to build an ambitious policy for music in Europe?

**B.A.:** Is ECSA well-heard by the European institutions?

**M. du M.:** We are in constant dialogue with them on a wide range of issues and have achieved important successes. For example, Articles 18 to 23 of the Directive would have never been adopted by the EU without ECSA and other authors' organisations, with whom we have formed a coalition. We felt quite isolated when we promoted an improvement of our contracts. We faced the opposition of numerous publishers, producers and other platforms, which were opposed to revenue transparency and an appropriate and proportional remuneration. But I believe that the result is very positive overall, especially for European countries whose legislation was previously very unfavourable to authors. Another example is the issue of the "buy-out" contracts. We have been very active on this subject and our concerns have been partially heard, even if there is still a lot to do.

In general, the political climate towards the Big tech has also changed. In the early 2000s, regulating platforms was almost a taboo and the 2000 E-commerce directive was very

platform-friendly. The EU partially rectified this approach, with the adoption of Article 17 of the 2019 Copyright Directive, and more recently, with [the Digital Services Act](#) and [the Digital Market Act](#). There is still hope that the EU past experiences regarding digital regulation will serve as lessons for the future, especially on artificial intelligence. In some national policy areas (social policy, taxation, etc.) that are not within the EU's competence, we also exchange with our members to promote good practices, but it is not really at the European level that we can change things. This is a reality we need to work with.

**B.A.:** Are ECSA sessions important moments?

**M. du M.:** They are fundamental. We have two sessions per year, which include a presentation of our activities, meetings of our three committees, a general assembly, working groups and political and/or cultural events. These sessions are essential because they promote exchanges between our members and allow us to develop and refine a common strategy. The winter session takes place in Brussels, usually in February-March, while the second one takes place in September in the country of one of our member organisations. The next edition will take place on 22 and 23 March in Brussels and will be preceded by [the "Creators Conference"](#), on March 21, which aims to promote our objectives to the European authorities. These sessions involve a lot of logistics, as we usually welcome about 80 authors and composers from all over Europe. We also encourage bilateral exchanges with our member organisations in each country as we sometimes lack the time to address all the issues during our sessions. This was the case with our French organisations who welcomed us (our President and myself) on November 9, 2022, in Paris.

Lastly, we publish a [monthly newsletter](#) that presents our and members' activities. Please [subscribe](#) on our website!

**B.A.:** What do you think about the future of authors' rights and working conditions of composers in Europe ?

**M. du M.:** In addition to the topics already mentioned, there are important challenges, such as the increasing use of artificial intelligence and the issues it raises for authors' rights and composers. As Joshua Darche (composer, vice-president of SNAC) pointed out, referring to Laurent Juillet (President of UNAC) in the last edition of the [Bulletin des Auteurs](#), audiovisual platforms are asking for more and more information from composers, in addition to their works. Thanks to the information obtained and artificial intelligence, those platforms could create limitless musical catalogues, without working with authors anymore. This is an issue of great concern to all our members across Europe and we have recently discussed it in our working group on technology and artificial intelligence. Having said that, I think the situation is quite positive for authors rights at the European level because there has been some notable progress which I have already mentioned. I am hopeful that there will be more in 2023, but my experience with the EU has taught me to be patient...