

NAVIGATING THE PATH TO FAIR PRACTICE



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NON C D O R T N

Composers and songwriters are the very source of artistic music creation. However, they are frequently confronted with insecure economic and social conditions including precarious working conditions, low and fluctuating income, and weak bargaining power with their negotiating counterparts, placing them in a position of vulnerability and insecurity.

Indeed, although the music industry generates billions of dollars in revenue each year¹, many creators struggle to make a living wage out of their work and attain a sustainable livelihood. The reasons for this are multifaceted, but they often stem from issues such as unfair contractual practices, copyright infringement, and a pervasive lack of transparency and accountability in the music industry. To further investigate the situation, in September 2022, ECSA initiated a consultation on Fair Practice to explore the working and living conditions of music creators in the European market. This follows on from the awareness-raising and advocacy efforts undertaken by ECSA for several years on authors' remuneration and fair share in the exploitation of their works, as well as their social protection and recognition for their artistic contribution. These efforts are in line with ECSA's overarching aim to strive for a fairer and more sustainable future for music creators.

¹ According to the latest 2023 IFPI Global Music Report, global revenues from streaming continued to benefit from a double-digit growth (+11.5%) in 2022, after a rocket growth of +23.9% in 2021, in large part due to the COVID 19 pandemic.
https://www.ifpi.org/wp-content/uploads/2020/03/Global_Music_Report_2023_State_of_the_Industry.pdf

Methodology

This online survey targeted individual composers and songwriters **within and outside the ECSA network** and aimed to gather data on a broad spectrum of issues impacting music creators, encompassing fair remuneration, harmful or unfair contractual practices, working and employment conditions, social protection, funding opportunities, and the potential for collective actions and agreements in the music industry. To achieve this, our survey featured a combination of closed-ended and open-ended questions, allowing respondents to provide detailed insights. We received extensive responses from 247 participants, hailing from 24 different European countries. Our intention was to conduct an extensive and relatively representative consultation that sheds light on the issues that composers and songwriters are confronting nowadays.

The **demographic breakdown** revealed that almost 90% of participants identified themselves as composers, with a significant portion also working as songwriters (25.9%), performers (26.7%), or music producers (29.6%). The survey captured the perspectives of experienced individuals in the music sector, as a large majority had been working in the industry for over 15 years (62.8%). Furthermore, a significant majority (87.9%) of participants received higher education in the form of a bachelor's, master's, or PhD degree. The age distribution showed that 53.8% of participants were above 45 years old, with a notable portion (29.9%) falling into the above 55 years old category (29.9%), while 20.6% were under 35 and only 0.8% of participants were aged between 18 and 24 years old. The survey showed an underrepresentation of female and non-binary identified gender identities (22.3%), as well as participants from Eastern European countries, who constituted 14.6% of the respondents.

Definition

Referring to the Dutch Fair Practice Code, published in 2019, we decided to approach the notion of fair practice as the protection of a “fair, sustainable and transparent operational management” which guarantees that all stakeholders’ interests are equally acknowledged and considered “with respect, solidarity and trust, in the service of a strong sector that fully utilises and makes profitable the potential and opportunities of creative professionals and artists.”² Building upon these principles, we further define the notion of fair practice based on the core values – as identified in the Dutch Fair Practice Code – of Solidarity, Transparency, Sustainability, Diversity, and Trust.³

² Fair Practice Code (2019), <https://quickscan.fairpracticecode.nl/en/fair-practice-code>

³ *ibid.*

This report on Fair Practice also seeks to build upon the valuable insights and recommendations put forward by the **Open Method of Coordination (OMC) report on 'The Status and Working Conditions of Artists and Cultural and Creative Professionals'**⁴. As stated in the report, precariousness is an important factor underlying a wide range of unfair practices at stake within the cultural and creative sectors (CCS). The "rise in precarious work practices across other sectors has also put fairness on the agenda as a wider societal and employment issue", exemplified by its incorporation into the European Pillar of Social Rights, launched by the European Commission in 2017. Additional key factors – such as power dynamics (and the weak negotiating position in which most of the artists find themselves in), unfair contractual terms (including fixed-fee contracts and buy-out clauses), unpaid artistic work, the rise of online platforms and transformations induced in an age of digital distribution, the lack of representation, and legal restrictions around collective actions and agreements for self-employed workers – have been identified in the OMC report as contributing to unfair practices and increasing the vulnerability of artists and cultural and creative professionals.

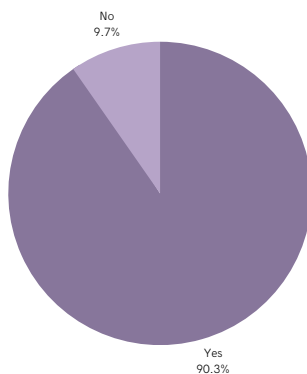
The results of our consultation further confirm these findings, highlighting the need to ensure fairness within the music sector and the CCS more in general, to acknowledge the intrinsic value of music and the fundamental role music creators play in our societies.

⁴ Report of the OMC (Open Method of Coordination) Working Group of Member States' Experts: 'The Status and Working Conditions of Artists and Cultural and Creative Professionals' (June 2023), <https://op.europa.eu/en/publication-detail/-/publication/01fafa79-1a13-11ee-806b-01aa75ed71a1/language-en>

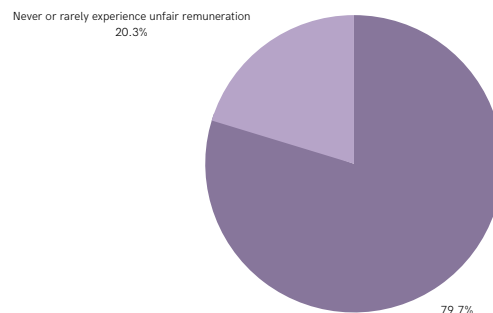
OVERVIEW OF KEY FINDINGS

The most consistent results are those concerning the lack of improvements stemming from the **late or incomplete implementation** of Articles 18 to 22 of the Directive on Copyright in the Digital Single Market (Directive (EU) 2019/790 or CDSM Directive).⁵ According to the results, only 20.3% of music creators claimed to never or rarely experience unfair remuneration. At the same time, 90.3% of them claimed to have experienced completely unpaid work at least once in their professional career. Less than a third of respondents (26.7%) claimed to earn sufficient income exclusively from their main work of artistic creation (e.g. composition, songwriting). Consequently, most of them are obliged to have multiple jobs, relying on music or art neighbouring professions – such as teachers (49.8%), event organisers (13.4%), managers (10.5%) or administrators (7.3%) – to make ends meet. Music-related work, however, still represents the main source of income for a large majority of respondents as our findings revealed that 18.6% of the participants – who are not able to earn sufficient income exclusively from their composer and songwriter profession – reported to make a living outside of the arts.

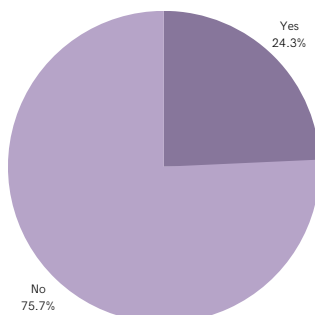
As a composer and songwriter, have you ever experienced unpaid work?



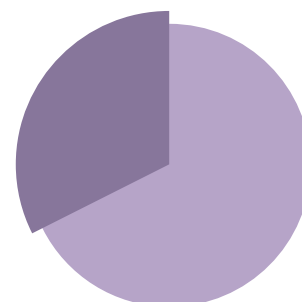
As a composer and songwriter, how often have you experienced unfair remuneration?



Are you able to earn sufficient income exclusively from your composer and songwriter profession?



Only 31.3% of respondents working in the music sector are convinced that their career will provide a sustainable future for them.



⁵ Art. 18 of the CDSM Directive stipulates that "Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration".

On top of this, the **discontinuity** of professional opportunities and the subsequent irregularity of income are struggles that seem to be almost unanimously faced by music creators. It is hardly surprising that only 31.3% of respondents working in the music sector are convinced that their careers will provide a sustainable future for them. The majority seems to pinpoint the decrease in royalties due to the issues related to streaming and unfair contracts as the main cause of their hardship. These challenges are inherently connected with the **digitalisation** of music platforms, which render professional music spaces overcrowded, hyper competitive, and particularly demanding in terms of artistic production. As a result, less-known authors are forced to accept **coercive publishing, buy-out practices⁶, or other unfair terms** as the only means to land a job. Referring to a report published in 2021 on those practices (preventing music authors from a fair and proportionate remuneration), 53% of ECSA members reported to have experienced buy-out contracts, while 66% of them have been offered contracts which forced them to sign away partial rights such as synchronisation or mechanical rights. In addition to this, 63% have experienced an increase of those contracts in the last three years.⁷ Thus, to the multiple-choice question: "What do you perceive as the main challenges in your current employment as a composer and songwriter?", respondents stressed in particular unfair contractual practices such as buy-outs, coercive publishing, and unfair deals with record labels and/or publishers.

Amongst the biggest challenges mentioned, respondents also highlighted the unfair distribution of revenues coming from streaming platforms. Various studies show that music authors are generally getting approximately less than 10% of the streaming pie⁸, and this is only when their works are properly identified⁹. In this digitalised era, to strive for better fair practices hence means first and foremost to recognise and value the fundamental role played by music authors in the streaming market, to understand the legal nature of a stream and to push for a more sustainable distribution of the streaming pie. In a recent position paper¹⁰, ECSA has presented a set of recommendations and solutions aimed at rebalancing the "song economy"¹¹, restoring the essential role played by composers and songwriters, and thereby advancing fair practice for songwriters.

⁶ "A total 'buy-out' contract refers to a contract covering all 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 receive no royalties in the future, regardless of the success of the work. In addition, the composer is often required to accept that his or her contribution will be qualified as a "work made for hire" (pursuant to the provisions of a non-EU law) and be subject to foreign non-European jurisdictions." from "ECSA's vision on how Europe can prevent buy-outs: An insight into buy-outs affecting audiovisual composers and actual solutions to prevent them", May 2021, <https://composeralliance.org/media/250-ecsas-vision-on-how-europe-can-prevent-buyout-contracts.pdf>

⁷ *ibid.*

⁸ Among those studies, we refer in particular to:

- The Research for CULT Committee: 'Cultural diversity and the conditions for authors in the European music streaming market: a bibliographical review', June 2023, [https://www.europarl.europa.eu/thinktank/en/document/IPOL_BRI\(2023\)747252](https://www.europarl.europa.eu/thinktank/en/document/IPOL_BRI(2023)747252)
- GEMA/Goldmedia GMBH, "Music streaming in Germany: Revenue distribution in the German music streaming market 2022", September 2022, https://www.gema.de/documents/d/guest/user_upload-dokumente-aktuelles-pressemittelungen-2022-gema_goldmedia_study_music_streaming_in_germany_key_findings.pdf
- Digital, Culture, Media and Sport (DCMS) Committee: Economics of music streaming. Second Report of Session 2021-22 'Allocation of revenues from music streaming (after VAT)', CC Young & Co Limited, July 2021, <https://committees.parliament.uk/publications/6739/documents/72525/default/>

⁹ Indeed, the accurate identification of music creators and individual works on streaming services is another pressing issue. The lack of proper credit data results in increasing administration costs when processing royalties, slow or missing payments, and the infringement of the author's moral right to attribution. It therefore deprives authors of both fair remuneration and proper recognition of their works.

¹⁰ ECSA Position paper on music streaming and its impact on music authors, July 2023,

<https://composeralliance.org/media/1380-ecsas-report-music-streaming-and-its-impact-on-music-authors.pdf>

¹¹ Mark Mulligan, Keith Jopling and Björn Ulvaeus, "Rebalancing the Song Economy", April 2021, MIDIA Research, <https://www.midiaresearch.com/reports/rebalancing-the-song-economy>

When examining the industry's structural issues such as streaming revenue distribution, competition, and unfair contractual practices, it becomes apparent that these challenges are prevalent across all music genres. Nevertheless, by analysing responses from music creators active in different genres, some disparities emerge. Less than half (48.6%) of creators involved in audiovisual musical content state that they earn enough income from their composing and/or songwriting profession.

Creators involved in other music genres face an even more alarming reality. Indeed, the percentage of music creators in the popular music sector who declare to earn sufficient income is slightly higher than the average, reaching 27.4%. Comparatively, the percentages are significantly lower for contemporary music (13.2%) and classical music (12.1%). Notably, among the few composers in contemporary or classical music who claimed to earn sufficient income, the majority are also active in the audiovisual or popular music sectors. None of the respondents who compose solely classical music reported that they were earning sufficient income from their main artistic activity.

Additional findings enhance our understanding of the challenges faced by music creators, taking into account various factors such as country, profession, experience, age, and gender. In Eastern Europe, a mere 5.5% of music creators reported to earn sufficient income, whereas in Western Europe, the percentage rises to 30.3%. It should be noted, however, that these results may be influenced by the underrepresentation of Eastern European countries in the respondents' pool, accounting for only 14.6% of participants. Concerning the profession, working as a performer in addition to being a composer/songwriter does not appear to alleviate the structural problems and challenges faced by music creators regarding their working and social conditions. When it comes to experience, respondents with less than 10 years of experience have a lower likelihood of earning sufficient income, with only 18.5% of them reporting satisfactory earnings, predominantly among those with over 5 years of experience.

Finally, only 16.6% of female music creators indicated earning sufficient income from their composing and/or songwriting professions, while the percentage rises to 33.8% when considering male composers and songwriters exclusively.

Last but not least, the majority of respondents are aware of public funding opportunities and resources (grants) for the professional development of composers and songwriters in their country (mainly concerning non-popular music). Only a minority (4.1%), however, believe that those fundings sufficiently meet their needs and more than a third (34.2%) think they partially meet their needs.

EXISTING INITIATIVES AND FAIR PRACTICE MODELS

In such a context, our alliance considers that it is of paramount importance to promote a fairer and more sustainable ecosystem for music creators. This includes notably to ensure better licensing agreements, encourage **collective actions and agreements**, such as code of conducts or model contracts between music authors' organisations and their contractual counterparts (e.g., publishers, labels). ECSA's survey shows that some European countries already acted in this sense via authors organisations or collective management organisations (CMOs) such as GEMA, SUISA and SIAE – German, Swiss and Italian CMOs.

Additional initiatives and encouraging **fair practice models** were highlighted by respondents. As an example, in Denmark, the Danish Composers' Society or *Dansk Komponistforening* founded a new **Fair Practice Prize** given to musicians, ensembles, orchestras, or concert organisers who stand out for the fair contractual and production practices they offer to composers. In the Netherlands, the Dutch professional association for composers *Nieuw Geneco* launched the **Fair Practice Award** in 2021, praising good commissioning practices in new music. Criteria, based on the *Nieuw Geneco* Fair Practice Code for Composition Commissions (a specification of the 2019 Dutch Fair Practice Code) include among others: fair payment for commissioned compositions; respect for authors' rights and copyright; clear communication and agreements; and free artistic space for composers. In the United Kingdom, the Ivors Academy and the Musicians' Union published the **Fair Commissioning Manifesto**, calling for the end of buy-out practices, for a fair distribution of royalties to composers and for the exclusive assignment of performing rights by authors. This Manifesto is part of the **Fair Score campaign**, which seeks to create a fairer environment for media composers (building on the work of a previous campaign 'Composers Against Buyouts').

In addition to those initiatives, we can also point to examples highlighted in the OMC report. These include the **Fair Art Campaign** in Finland, which "promotes fair practices and increases information about issues related to the livelihood of professional artists."¹² To that end, a set of guidelines and procurement models have been established in order to assist consumers, commissioners and clients in budgeting and artists in determining pricing and negotiating contracts. National artists' associations are consulted in developing those guidelines.¹³ In Germany, the public sector agreed on introducing funding regulations "that include bringing minimum remuneration when commissioning freelance artists and creative professionals".¹⁴ Last but not least, Austria's **Fairness process**, launched in September 2020, is another great example highlighted in the report. This initiative seeks to involve "all affected actors at all governance levels" and established two parallel committees: one working group with representatives from federal, regional and local governments on one hand, and a Fairness Forum gathering stakeholders in arts and culture on the other hand.¹⁵

¹² *op. cit.* 2023 OMC report, p. 55

¹³ *ibid.* p. 55

¹⁴ *ibid.* pp. 54-55

¹⁵ *ibid.* p. 57

In addition to this, several targeted measures have been adopted, including a “Fairness Codex with general guidelines for the sector” as well as a 6.5 million EUR budget provided by the Austrian ministry in 2022 aimed at reducing the fair pay gap¹⁶.

In France, in October 2017, music authors’ and publishers’ organisations came to an agreement and signed a **Code of Good Practices for the Publication of Musical Works** (or *Code des usages*¹⁷) which aims to provide a balanced legal framework for both sides: publishing contracts are clarified with regard to publication, the permanent and ongoing use of the work, the methods for calculating remuneration and also the transparency of accounts. Without the involvement of all the relevant stakeholders, in fact, code of conducts or model contracts with no binding force would risk remaining simple recommendations without the authority to prevail over contractual counterparts’ negotiating power. That is why ECSA strongly encourages the participation of publishers, labels and more generally all authors’ contractual counterparts, in **collective discussions and/or negotiations about fair practices** with associations of authors. ECSA also encourages spreading awareness, possibly with public support, about authors’ rights/copyright law amongst composers and songwriters who, as the Fair Practice consultation demonstrates, sometimes lack a thorough understanding of their rights as authors. Indeed, composers and songwriters are often too isolated to fully understand their rights on contracts that are subject to non-disclosure agreements. Their associations also often lack the resources to provide legal advice to their members and engage in complex collective actions and agreements.

¹⁶ “In 2022, the ministry provided an additional budget of EUR 6.5 million for fair pay measures to support artists, artistic projects and organisations, aimed at reducing the fair pay gap. This additional money was only distributed on certain conditions, such as improving the income of existing employees and artists. Applicants also had to fill out a data sheet to analyse their current personnel costs. Finally, the corporate fair pay strategy – an agreement of all federal states to implement their own strategies and efforts in their respective spheres of responsibility.”, *ibid.* p. 57

¹⁷ *Code des usages et des bonnes pratiques de l’édition des oeuvres musicales*, <https://csdem.org/les-usages-et-les-bonnes-pratiques-de-ledition-musicale/>

In the same spirit, ECSA also encourages EU countries who have implemented Articles 18 to 23 to **favour collective bargaining agreements**, which has the potential to improve the remuneration of music authors in the music sector. In September 2022, the European Commission published guidelines on the application of EU competition law to collective agreements for solo self-employed people, including authors and performers¹⁸. ECSA welcomed those guidelines, as they removed the obstacle of competition law for agreements between authors organisations and contractual counterparts. However, the competition law obstacles remain notably on the publication of recommended rates, songwriters fees, or model contracts, which have proved to be beneficial to music authors but are too often challenged – as anti-competitive – by national competition authorities. Indeed, despite the European Commission guidelines, competition law still prohibits the publication of recommended rates/fees, even in situations where negotiations with contractual counterparts to establish agreed rates of remuneration had proved impossible either because of a refusal to negotiate or because of a failure of negotiations. This prevents music authors' associations from providing recommendations and advice to their individual members on commissioning rates. Allowing **recommended rates/fees** would help improving the negotiation process and the fairness of commissioning contracts for music authors, who find themselves usually isolated in their contractual relationships.

As the OMC report states in its recommendations, we need to “promote awareness of new guidelines [...] and analyse how they will operate at Member State level.”¹⁹ Again, ensuring the success of collective agreements also implies that contractual counterparts will also seize the opportunity of the guidelines to engage in **negotiations with authors' organisations**. That being said, it is important to recall that public authorities also have a key role to play in encouraging those agreements and mapping existing and fair practices.

¹⁸ European Commission, Guidelines on collective agreements by solo self-employed people (Press release), September 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5796

¹⁹ *op. cit.* Report of the OMC (Open Method of Coordination) (June 2023), p. 61

CONSULTATION

This consultation on Fair Practice has shed light on pre-existing issues, the challenging working and living conditions faced by composers and songwriters in the European music market.

- Despite the music industry generating substantial revenues, many creators struggle to benefit from a **fair, appropriate and proportionate remuneration** from the exploitation of their works. Therefore they face insecure economic and social conditions.
- The findings highlight the persistent problem of unfair practices and remuneration, with a significant number of music creators experiencing **unpaid work and/or insufficient income** from their main artistic endeavours.
- The **digitalisation** has further exacerbated those challenges, leading to a decrease in royalties for music creators and stronger competition.
- Raising awareness on existing fair practice initiatives from different countries is key to demonstrate the **potential for positive change** in the industry and encourage more of them to be implemented.
- The report emphasises the need for more **collective actions and agreements**, to promote fair practice and protect the rights of music creators. Both **authors' contractual counterparts and policy makers** have a role to play to ensure those agreements become a reality and can improve the working conditions of music authors.
- Allowing **recommended rates** would help improving the negotiation process and the fairness of commissioning contracts for music authors.

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 European countries. With 56 member organisations across Europe and beyond, the Alliance speaks for the creators of art and classical music (contemporary), film and audiovisual music, as well as popular music. ECSA's core mission is to defend and promote the rights and interests of composers and songwriters with the aim of improving their social and economic conditions, as well as enhancing their artistic freedom.

For more information about our organisation, please visit: <https://composeralliance.org/>.

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