ecsa european composer & songwriter alliance

AUDIOVISUAL COMPOSERS' CONTRACTS

Current Practices, Challenges and Recommendations

A report by the European Composer and Songwriter Alliance (ECSA)

January 2025

www.composeralliance.org

Executive summary

Composers' contracts constitute the first link between their art and creativity and the exploitation of their works, setting out the rights and responsibilities of the composers and their contractual counterparts. In the audiovisual industry, the secrecy surrounding contractual practices as well as the absence of comprehensive legal or contractual guidance places these creators in vulnerable positions, especially when negotiating with large production companies or platforms with substantial bargaining power. In recent years, this problem has been compounded by the **increasingly high level of concentration** of the European audiovisual market, and the rising market share of non-European Video-on-Demand (VoD) platforms. **As a result, composers often find themselves negotiating in the dark with large entities who pressure them to give up their royalties or a significant part of them in exchange for a single (and often meagre) lump-sum payment**, reducing their remuneration and the sustainability of their professions. If they refuse such contracts or wish to challenge their terms, **they face the risk of being blacklisted and excluded from future work opportunities.**

In the EU, the legislator has recognised and sought to correct the power imbalance between authors and their contractual counterparts with the **2019 Copyright Directive**, which established, among other things, a principle of appropriate and proportionate remuneration (Article 18). However, this principle is too often circumvented in contracts by audiovisual composers' contractual counterparts. Within this context, this report looks at the two most harmful practices identified by ECSA which currently prevent composers from getting an appropriate and proportionate remuneration: **buyout contracts and pseudo-publishing (also known as "coercive publishing")**.

Chapter 2 presents an overview of **buyout contracts**, their scope, and their implications for composers. Following our 2021 report on buyouts in the audiovisual sector, which found that 53% of ECSA members had experienced buyout contracts, our Alliance has continued to regularly exchange information with our members, who confirmed that **these practices continue to proliferate across Europe**. In 2023, a consultation by ECSA has revealed that **47% of audiovisual composers find buyout practices to be one of the main challenges to their fair remuneration.** Buyout contracts can generally be described as contractual agreements through which authors surrender all rights to their work in exchange for a single, and often meagre, lump-sum payment – thereby foregoing any future revenues generated by their work. Buyouts distinguish themselves from simple lump-sum payments in that the latter do not involve the complete transfer of rights, thus allowing a composer to continue receiving income such as royalties or remuneration from the exploitation of their work. In contrast, under a full buyout contract, a composer will receive no royalties for any future exploitation, regardless of the success of the work.

The report also stresses the danger of the spread of the **US "work made for hire" doctrine**, (which designates the employer or the commissioning party as the author of the work and as such goes against the European principle of authors' rights) and identifies differences between full and partial buyouts. Furthermore, the report describes the three most insidious characteristics of buyouts contracts: the application of non-EU law and the competence of non-EU jurisdiction, the presence of non-disclosure agreements, and the circumvention of collective management organisations (CMOs).

Chapter 3 of the report describes the issue of **pseudo-publishing**, **a practice which sees producers and broadcasters requiring composers to sign away or significantly reduce the publishing rights to the works** (often representing between 30% to 75% of their potential royalties) **while not fulfilling their legal obligations nor traditional publishing services** related to the exploitation of the works and to transparency. In addition to being offered little or no compensation for this transfer, composers who refuse face the risk of being excluded from the project and jeopardising future work opportunities. Essentially, pseudo-publishers limit their activity to "rights-grabbing" by receiving a share of the royalties without engaging in any of the work duly performed by legitimate publishers. As a result, pseudo-publishing harms virtuous publishers by creating unfair competition, while simultaneously making composers' income more precarious, as publishing rights represent a critical revenue stream for composers. Chapter 4 then briefly outlines the issue of VoD platforms requiring composers to waive their **moral rights,** despite their legal recognition in all EU Member States and at international level and their importance for European authors.

Lastly, the Chapter 5 unveils **seven recommendations to tackle these harmful contractual practices** and presents good practices from which policymakers at both the national and EU level can draw inspiration. Our recommendations to tackle these important issues in composers' contracts are the following:

1. Prohibit buyout contracts and work made for hire provisions by making sure that EU law cannot be circumvented and fully applies in the EU, ensuring that Article 18 achieves its original aim.

2. Ensure that composers are properly informed about the exploitation of their works – as provided by Article 19 of the CDSM Directive.

3. Ensure that composers can protect their rights through alternative dispute resolution procedure with their contractual counterparts as set out in Article 21 of the CDSM Directive.

4. Encourage composers' counterparts to engage in collective bargaining agreements and model contracts with composers' associations.

5. Ensure that EU and Member States' public subsidies and tax incentives cannot benefit entities that circumvent laws related to the fair remuneration of creators by making this support conditional on compliance with the CDSM Directive.

6. Promote more transparency and information on contractual practices by empowering independent authorities, civil servants and academics to review and collect confidential information on contracts and to draw up anonymous reports on harmful practices.

7. Promote and support educational initiatives for composers to raise awareness about their rights and how to protect themselves from harmful contractual practices.

Having outlined these concrete recommendations, ECSA calls on all policymakers and stakeholders to renew their efforts to tackle buyouts and pseudo-publishing practices in composers' contracts, so that they can truly benefit from appropriate and proportionate remuneration from the exploitation of their works. Moreover, we encourage composers' contractual counterparts to engage in discussions and agreements with composers and their representatives' organisations to improve their contractual and working conditions.

1. Introduction

Composers' contracts constitute the first link between their art and creativity and the exploitation of their works. As such, they set out the rights and responsibilities of each party: the composer transfers or licenses rights to the contractual counterparts, who in turn will exploit the composer's work and remunerate the composer accordingly.

In the audiovisual industry, composers often enter into binding agreements without knowing their rights and without the benefit of legal counsel or representation. The absence of comprehensive legal or contractual guidance places these creators in vulnerable positions, especially when negotiating with larger production companies or platforms with substantial bargaining power. They are compelled to navigate complex contractual terms, which can often lead to unfavourable agreements that undervalue their contributions and jeopardise their long-term interests. **This leaves them most often in a "take it or leave it" position, where negotiating a contract or refusing to sign it can have detrimental consequences for their careers.** The weak bargaining position of authors when entering into negotiations with their contractual counterparts has been recognised by the EU legislator in the **2019 CDSM Directive.**[1]

In recent years, the audiovisual sector has undergone significant transformation, with large media companies acquiring numerous independent production companies and large Video-on-Demand (VoD) and subscription VoD (SVoD) platforms increasing their market share. **This trend toward concentration** has reduced competition, limiting the number of independent entities with whom composers might negotiate fairer terms and further weakening their bargaining position. Under these conditions, it is virtually impossible for an audiovisual composer to challenge or reject unfair contracts proposed by large VoD and SVoD platforms.

In Europe, a typical composer's contract usually covers two main separate periods of time, each one representing the basis of a composer's remuneration:

- A **commissioning fee** usually covers the period during which the composer creates and develops the film score or original songs. This creative process may take months, from the development through the rewriting, revisions and recording. It also usually covers the cost of production for the composer (studio, performers, production, etc.).
- Secondly, the **remuneration (royalties)** covering the composer's share of the revenues generated by the audiovisual work. A film or TV series can potentially produce economic returns from theatres, TV, VoD, cable, merchandising, etc. for decades or longer.

[1] Directive 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

Although royalties represent an essential revenue for audiovisual composers, platforms and/or production companies are too often simply refusing royalties or acting in a way that diminishes those royalites with nothing in exchange. Composers are too often forced to give up their royalties in their contracts if they want to be selected for a project and not jeopardise their future work opportunities. It is also essential to note that commissioning fees and royalties constitute the main and only sources of income for audiovisual composers, who do not participate in any other revenues generated by the final work, including through sales for instance.

In this report, we will be looking at the two most harmful practices identified by our members that prevent composers from getting an appropriate and proportionate remuneration: **buyout contracts and "pseudo-publishing"[2]**. Composers often unknowingly accept opaque and harmful contracts, sometimes relinquishing all or a very significant part of future revenue rights to their works in exchange for a single (and often meagre) lump-sum payment. These contracts are seldom accompanied by disclosures about their financial implications or explanations of alternative structures that could afford greater protection and remuneration.

In 2021, ECSA published a report on buyouts in the audiovisual sector, which found that **53% of its members had experienced buyout contracts and that 66% of them had been offered contracts which forced them to sign away partial rights such as synchronisation or mechanical rights**.[3] ECSA has continued to regularly exchange information with its members in order to provide an updated overview of the challenges faced by audiovisual composers. This is a very difficult task. Due to confidentiality and non-disclosure agreements imposed by composers' contractual counterparts, it is often impossible for our members to share information about their contractual agreements. Despite those difficulties, ECSA was able to exchange information about contracts and survey its members about their experience to collect evidence for this report. Following those exchanges, it is clear that these harmful practices continue to proliferate across Europe.

In 2023, a consultation undertaken by ECSA revealed that **47% of audiovisual composers who responded to the survey found buyout practices to be one of the main challenges to their fair remuneration**.[4] These practices – which involve creators giving up their rights to their work in exchange for a lump-sum payment, preventing them from receiving future revenues generated by their work – not only weaken the fair remuneration of composers, but also often undermine the integrity and recognition of their creative work.

[2] Previous work by ECSA made reference to these practices as "coercive publishing" (from the French "édition coercitive").
[3] ECSA (2021), *ECSA's vision on how Europe can prevent buyout contracts*, May 2021, https://composeralliance.org/media/250-ecsas-vision-on-how-europe-can-prevent-buyout-contracts.pdf
[4] ECSA (2024), *Navigating the Path to Fair Practice*, https://composeralliance.org/media/1571-ecsa-survey-on-fair-practice-summary-of-results.pdf

Harmful contractual practices can take different forms of rights-grabbing, from a full buyout with "work made for hire" clauses to partial buyouts and "pseudo-publishing". Pseudo-publishing can be defined as a mandatory publishing rights transfer **where producers and broadcasters systematically require composers to transfer their publishing rights to them or their nominated publishing company as a non-negotiable condition for being commissioned, without respecting key provisions of the CDSM Directive related to transparency nor providing the essential services traditionally associated with music publishing**.

Last but not least, audiovisual composers **are too often pressured into signing away moral rights** without fully understanding the consequences. Although moral rights have not been harmonised at EU level, those practices are often contrary to national laws protecting moral rights.

Despite the transposition of the CDSM Directive now having been completed by all EU member states, **audiovisual composers continue to report and suffer from the spread of buyouts and pseudo-publishing practices, preventing them to get a fair remuneration from the exploitation of their works**. The Directive, which harmonised contractual copyright law in the EU, explicitly recognised the fundamental asymmetry in bargaining power between authors and their contractual counterparts. In particular, Articles 18 to 23 (Chapter 3) of the Directive sought to correct power this imbalance by establishing, among other things, a transparency obligation and a principle of appropriate and proportionate remuneration of authors for the use of their works. **As reported by our members, and indicated by the evidence in this report, it is clear that both the provisions and the true spirit of the CDSM Directive are often being circumvented or simply ignored**.

In recent years, **numerous reports by policymakers across the three main EU institutions** have underlined the need to implement the CDSM Directive in an efficient way to prevent these harmful practices. The European Parliament (EP) first expressed **concerns about buyouts** in a resolution on the situation of artists adopted in October 2021.[5] In November 2023, the EP adopted a report on the social and professional situation of artists and workers in the cultural and creative sectors (CCS), which highlighted the threat of buyouts and called on member states to ensure compliance with the CDSM Directive, and on the European Commission to assess the situation and the need to address these practices.[6]

[5] European Parliament (2021), European Parliament resolution of 20 October 2021 on the situation of artists and the cultural recovery in the EU (2020/2261(INI)), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021IP0430

[6] European Parliament (2023), "EU framework for the social and professional situation of artists and workers in the cultural and creative sectors" 2023/2051(INL), https://www.europarl.europa.eu/doceo/document/TA-9-2023-0405_EN.pdf

In the same month, the EP's Legal Affairs Committee commissioned a study on buyout contracts in the CCS, mapping the harms posed by these practices and offering potential solutions.[7] During the French Presidency, the Council of the EU highlighted the widespread use of buyout practices and the circumvention of the CDSM Directive in a 2022 consultation on the effectiveness of the EU copyright framework.[8] Additionally, in a report published in May 2023, the European Commission identified buyouts in the audiovisual sector as a key trend and called for the issue to be further examined.[9]

Against this background, this report will outline **the current state of these practices and put forward solutions for policymakers to tackle them and to encourage dialogue and agreements with audiovisual composers' counterparts**. It will first present current trends affecting composers contracts, including the issues of buyouts and pseudo-publishing before outlining concrete recommendations for policymakers and composers' contractual counterparts. In light of these practices affecting the legitimacy and efficiency of EU law, **we call on European policymakers to continue and renew their efforts on audiovisual composers contracts to ensure they can truly benefit from appropriate and proportionate remuneration from the exploitation of their works. Lastly, we encourage composers' contractual counterparts to engage in discussions and agreements with composers and their representatives' organisations to improve their contractual and working conditions**.

"Knowing your rights is as important as knowing your music software. The long-established and hard-won royalty model is by far the fairest way of music creators sharing in the success of their intellectual property. Our music is our future – don't sell it out".

Kevin Sargent
Film Composer, Ivors Academy Member, UK

[7] Carre, S., Le Cam, S., Macrez, F. (2023), *Buyout contracts imposed by platforms in the cultural and creative sector*, European Parliament, https://www.europarl.europa.eu/RegData/etudes/STUD/2023/754184/IPOL_STU(2023)754184_EN.pdf
[8] Council of Minister of the EU (2022), *Summary of the Stocktaking Exercise on the Effectiveness of the European Copyright Framework*, 30 June 2022, https://data.consilium.europa.eu/doc/document/ST-10629-2022-INIT/x/pdf
[9] European Commission (2023), *The European Media Industry Outlook*, May 2023, p. 5, https://digital-strategy.ec.europa.eu/en/library/european-media-industry-outlook

CURRENT TRENDS IN THE EUROPEAN AUDIOVISUAL MARKET

After the devastating impact of the pandemic in 2020, the European audiovisual sector has shown strong recovery and transformation. The European Commission's European Media Industry Outlook, a report that explores trends in the EU media markets, estimated the size of the EU audiovisual market to be EUR 91 billion in 2021. While the EU audiovisual market is formed by a large number of small and independent companies, most of the economic value is highly concentrated among the top 100 companies. While only around 13% of the revenues were generated by VoD and subscription VoD (SVoD) platforms, these companies are growing faster than other services like TV and cinema.[10] The SVoD market is not only the fastest growing market, but also the most concentrated one.[11]

For instance, the combined revenues of exclusively VoD platforms such as Netflix, Amazon Prime, DAZN, and Apple TV+ grew sixfold from 2016 to 2022, representing over 40% of total revenues of the top 100 companies.[12] VoD companies are also increasing their investments in European content: in 2022, global VoD platforms released 186 original European fiction titles in 2022, an increase from 137 in 2021, with 4 out of 5 of these being commissioned by Netflix (62%) and Amazon (20%). In 2022, global streaming platforms also significantly increased their spending by 70% compared to 2021, reaching EUR 4.9 billion and accounting for 24% of all spending on European original content.

US companies account for a substantial share of market revenues, and their share has been rising, mostly due to their presence in SVoD services. Out of the top 100 companies active in Europe, US companies accounted for 30% of all revenues (and represented 44% of revenues of the top 20). Among SVoD, US companies are also particularly dominant, and in 2021 they represent the top three services with over 70% of total subscriptions to these services.[13] Furthermore, global streamers have ramped up their investment in Europe in recent years, accounting for 26% of spending on European original content in 2023.[14] As US streamers increasingly expand their business in Europe, 74% of producers reported increasing business with them and expected the exploitation of intellectual property linked to streaming to increase in the next few years.[15] The 2023 European Media Industry Outlook report also provided evidence of full buyout contracts, with streamers keeping all the intellectual property on average in 38-62% of contracts (compared to 11-35% for broadcasters). Respondents also indicated a perceived trend among streamers to seek full ownership, and that non-EU streamers and broadcasters would be much more likely to retain the intellectual property than their EU counterparts.[16]

While the audiovisual market grows and non-EU SVoD platforms invest billions to expand their operations in Europe, audiovisual composers keep getting the short end of the stick. Overall, these data are a cause of concern for composers, as they signal a general increase in the use of buyout practices. Furthermore, these market dynamics are fundamentally challenging European cultural sovereignty, particularly in the film music sector where traditional rights management systems are being systematically challenged.

[10] European Commission (2023), *European Media Industry Outlook*, p. 4
[11] ibid., p. 14
[12] Iancu, L. E. (2024), *Top players in the European AV industry Ownership and concentration: 2023 Edition,* European Audiovisual Observatory, April 2024, https://rm.coe.int/top-players-in-the-european-av-industry-2023-l-ene-iancu/1680af3205
[13] European Commission (2023), *European Media Industry Outlook*, pp. 6-7
[14] Fontaine, G. (2024), *Audiovisual services spending on original European content: 2024 edition,* European Audiovisual Observatory, September 2024, https://rm.coe.int/investments-in-original-european-content-2024-edition-september-2024-g/1680b17ccf
[15] European Commission (2023), *European Media Industry Outlook*, p. 49
[16] ibid.

2. Buyout contracts: definition, scope, and implications for composers

Buyout contracts are contractual agreements through which **authors surrender all rights to their work in exchange for a one-time (and often meagre) lump-sum payment**, thereby foregoing any future revenues generated by their creation. They usually consist of a one-time payment proposed to the composer to compensate them, now and forever, for their contribution to the audiovisual work, in exchange for the transfer of all rights for the full duration of copyright.

It is also important to note that **buyout contracts are different from simple lump-sum payments**, or "minimum guarantee": in contrast to buyouts, lump-sum payments do not involve the complete transfer of rights, thus allowing composers to retain some ownership and to receive income such as royalties or additional remuneration from the exploitation of their work.[17] A **full buyout contract** provides that **the composer will receive no royalties for the exploitation of the work**, neither performing nor mechanical right, **regardless of the success of the work**. As such, these practices represent a fundamental departure from traditional royalty-based remuneration, and their financial implications for composers are severe: while traditional licensing can generate a considerable amount of royalties, **buyouts eliminate this long-term revenue potential.**[18]

"My fellow screen composers and I are witnessing every day the buy-out contracts imposed by US based VoD platforms to deprive us from our rights and the royalties we deserve. In a global audiovisual market, royalties from different countries are increasingly important to get a fair share from the successes of our works. European policymakers have a duty to prevent buy-out contracts and ensure that appropriate and proportionate remuneration is a reality for European composers."

Manel Santisteban
Film Composer, Spain

[17] Lacourt, A., Radel-Cormann, J., Valais S. (2023), *Fair remuneration for audiovisual authors and performers in licensing agreements,* European Audiovisual Observatory, December 2023, https://rm.coe.int/iris-plus-2023-03en/1680adec3c
[18] CISAC (2020), *Guidelines on Copyright Buyouts (Public version),* p. 2, https://members.cisac.org/CisacPortal/cisacDownloadFileSearch.do?docId=39884&lang=en

A typical buyout clause reads as follows:

> *"Composer hereby grants, transfers and assigns to Producer, exclusively, throughout the universe, for the maximum duration of copyright protection, all rights known to date or conceived subsequently (including copyrights, trademarks, performers' rights and all rental and hire-purchase rights)."*
>
> *"The Assignors are members of the collective management and/or mechanical rights in musical compositions entity(ies) XXX in XXX and it is agreed that the compensation referred to in the foregoing considerations constitutes a full buyout of all public performance rights (known in the United States as "public performance rights"), and any other rights, in all territories and regions and no additional clearance or payment will be required in relation to the exploitation of the Music."*

2.1. Types and scopes of buyouts

Buyout contracts can be generally divided into three categories: full buyouts based on "work made for hire" provisions, other kind of full buyouts, and partial buyouts. Originating from US copyright law, the "work made for hire" doctrine **designates the employer or commissioning party, rather than the creator, as the original owner and author of the work**. As explained by Cornell Law School, this doctrine applies in two scenarios: works created by employees within their employment scope, or specially commissioned works falling within specific categories.[19] In contrast to other full or partial buyout contracts, under which composers transfer most of their economic rights but maintain some others, work made for hire contracts deny authorship to composers and are thus incompatible with European law, whereby authorship is inalienably attached to the actual creator.[20] Unfortunately, the growing presence of giant US streaming platforms in Europe has seen these contracts become more popular in the European audiovisual sector.

A typical work made for hire clause states:

> *"All results and proceeds of Composer's Services (...) will be deemed specially ordered or commissioned by Producer for inclusion in audio-visual works and, as such, constitute a "work made for hire," within the meaning and interpretation of the applicable copyright laws, for Producer, and Producer is deemed the author thereof."*

[19] Cornell Law School, "Work made for hire", http://law.cornell.edu/wex/work_made_for_hire
[20] European Audiovisual Observatory (2024), *Yearbook 2023/2024: Key Trends*, p. 12, https://rm.coe.int/yearbook-key-trends-2023-2024-en/1680aef0c0

This doctrine fundamentally contradicts EU copyright law based on the European principle of authors' rights, where authorship is inalienably attached to the actual creator. Under US law (17 USC § 201(b)), "the employer or other person for whom the work was prepared is considered the author"[21], effectively negating moral rights and long-term economic rights recognised under European law.

While buyouts and work made for hire contracts share the ultimate effect of depriving composers of their ongoing rights, their legal mechanisms and implications differ significantly.

SIMILARITIES AND DIFFERENCES BETWEEN BUYOUTS AND WORK MADE FOR HIRE CONTRACTS

Similarities

- Both result in a complete transfer of economic rights
- Both typically involve one-time payments
- Both are increasingly imposed by SVoD platforms
- Both circumvent collective management systems
- Both contradict European remuneration principles

Differences

- **Legal basis:** Buyouts operate through contractual transfer, while work made for hire affects initial ownership
- **Moral rights:** Buyouts generally preserve moral rights, while work made for hire can eliminate them entirely
- **Jurisdictional application:** Buyouts function in both copyright and authors' rights systems, while work made for hire is specific to US copyright law
- **Reversibility:** Buyout contracts may be subject to termination rights, while work made for hire status is permanent
- **Scope:** Buyouts can apply to any work, while work made for hire has specific categorical limitations[22]

Furthermore, a distinction exists between full and partial buyouts. A full buyout is when the composer surrenders all their rights in exchange for a small lump-sum payment, meaning:

- No ongoing participation in royalty income whatsoever
- Complete transfer of all exploitation rights
- No public performance rights income
- No mechanical rights income
- No future revenue regardless of the work's success

[21] US Copyright Act, 17 USC § 201(b)
[22] Ernest Goodman (2023), *The Doctrine of Work for Hire is Often Misunderstood*, Ernest Goodman Law Firm, https://ernestgoodmanlawfirm.com/the-doctrine-of-work-for-hire-is-often-misunderstood/

Example clause:

> *"The assignors... accept that the compensation referred to in the foregoing considerations constitutes a full buyout of all public performance rights and any other rights, in all territories and regions and no additional clearance or payment will be required".*

By contrast, a **partial buyout** preserves certain rights or revenue streams for the composer that might include:

- Retaining public performance rights through CMOs
- Keeping mechanical rights for specific exploitations
- Maintaining rights in certain territories
- Preserving specific types of use

Example clause:

> *"Composer will be entitled to the writer's share of performance income (pro-rated), and collect directly from Composer's PRO."*

2.2. Main characteristics

Due to their unique position as both authors and potential performers of their work, audiovisual composers face particularly aggressive rights transfer practices. The CDSM Directive's principle of appropriate and proportional remuneration (Article 18) is particularly challenged when composers transfer both authorship and neighbouring rights without specific compensation for the future exploitation of their works. In addition to the transfer of all rights, buyout contracts most often include a series of other provisions that make it more difficult for composers to revendicate their rights under European/EU law.

This section will break down and address each of these specific issues. While these examples are taken from various contracts offered by SVoD platforms to European composers, it is worth noting that not all of these services follow the same practices across all territories, with some of them having recently improved their contractual practices with composers.

2.2.1. The application of non-EU law through the competence of non-EU jurisdictions

Through the application of international private law, **buyout contracts are generally based on non-EU law provisions and are subject to the competence of non-EU jurisdictions**, which prevent authors from enforcing their rights under national or EU law. These clauses are strongly associated to the spread of the US work-for-hire model, since work-for-hire contracts are incompatible with European copyright law. Similarly to what happens in other areas of EU law, such as consumer protection where the consumer is considered as the weakest contractual party and cannot be subject to non EU-laws, we consider that VoD platforms should not be able to pick and choose which law and jurisdiction are applicable in Europe. Composers are clearly the weakest party in their contractual relationship and their contracts should not be subject to foreign laws.

Applying non-European laws is even more unacceptable when the audiovisual works benefited directly or indirectly from public funding through tax incentives, investment obligations, and inclusion into quotas for European works. This is all the more true when considering that the practices deployed by large US VoD companies contradict their own self-declared commitments to respect the law of the country in which they conduct business. These considerations make it clear that a more stringent approach should be considered, making it mandatory for all exploitation contracts that the applicable law be European.

2.2.2. Non-disclosure agreements

Secondly, buyout contracts always include **confidentiality (non-disclosure) clauses** that prohibit authors from disclosing the terms of the contract. A typical example:

> *"Composer will at all times keep confidential, and will not disclose, or use in any manner that is detrimental to Producers' interests any information relating to the [Work] (including (…) the terms of this Agreement) (…)."*

These clauses make it difficult to accurately report on the circumstances, frequency and scope of buyouts. In addition, composers fear denouncing these contracts as they could be considered responsible for disclosing these clauses and face harsh retaliation from big VoD platforms, making it very dangerous for them to even discuss, let alone denounce, the situation. As a result, these non-disclosure clauses are particularly problematic for composers and their representative organisations, as they make it virtually impossible for them to share these contracts, taking away their power to denounce these issues to their associations. Last but not least, those non-disclosure agreements prevent policymakers, public authorities, arbitration bodies, and academics to measure and study the impact of those agreements on composers and other stakeholders.

2.2.3. Circumvention of collective management organisations

Thirdly, another concerning aspect of buyout practices is their undermining of the collective rights management system that has traditionally protected authors' rights in Europe. Indeed, the recent proliferation of buyout clauses in SVoD platform contracts reveals systematic attempts to circumvent collective management organisations.

Such clauses fundamentally undermine the European author's rights system and bypass collective management organisations' mandates as these buyouts are frequently executed without CMO knowledge or involvement.[23] **This circumvention can take several documented forms, for example by:**

- Directly including provisions in SVoD contracts with composers that read as follows:

> *"… constitutes a full buyout of all public performance rights… and no additional clearance or payment will be required."*
>
> *"… neither Producer, nor [SVoD platform], nor any other third party will be required to pay any compensation to Composer… in connection with any use of Collective Management Rights."*

- Requiring composers to withdraw from their CMO membership or restrict their membership rights, directly contradicting Directive 2014/26/EU which protects authors' freedom of choice in rights management.[24]
- Applying US law outside the United States to bypass local CMO protections.
- Including clauses that make the composer "recognise and accept that the basis for proportional remuneration cannot be determined" in territories where they haven't entrusted rights management to a CMO, or clauses stating that "remuneration cannot be determined where the composer has not entrusted a CMO", for example:

> *"For the use of the series in territories where the Author has not entrusted the management of his remuneration to a collecting society, and on the XXX Services generally which do not involve the payment of an individualized price by the public to access the Series and/or the Work, the Author acknowledges and accepts that the basis for calculating the proportional remuneration cannot be determined."*

[23] CISAC (2020), Guidelines on Copyright Buyouts (Public version), p. 4, https://members.cisac.org/CisacPortal/cisacDownloadFileSearch.do?docId=39884&lang=en
[24] Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

- Creating parallel exploitation systems that avoid traditional CMO licensing schemes:
    - VoD platforms have increasingly bypassed CMOs through strategic contractual and operational mechanisms. Platforms may exploit territorial gaps, acquiring rights in jurisdictions where CMO membership is non-mandatory or using US jurisdiction to avoid CMO participation.[25] Additionally, platforms may leverage the "work made for hire" doctrine globally to claim content ownership, bypassing rights transfers that would otherwise involve CMOs.
    - Moreover, VoD platforms manipulate payment structures by opting for lump-sum buyouts or internal accounting systems that avoid reporting to CMOs.[26] They may offer global buyout fees that purportedly cover all territories, reducing reliance on individual CMOs. Platforms also fragment rights by separating streaming from traditional broadcasting rights, creating new categories of use outside CMO mandates, and developing platform-specific distribution models.[27] These strategies have led to a situation where 74% of composers never receive royalty statements and 97% of publisher-producers never fulfil their publishing obligations,[28] effectively reducing the role of CMOs and limiting their control over rights management and remuneration distribution.
- Requiring composers to declare themselves as "direct members" of performing rights organisations in the US.
- Including provisions that bypass CMO involvement "in territories where no PRO is authorised."
- Establishing direct licensing schemes that exclude CMO oversight.

[25] CISAC (2020), Guidelines on Copyright Buyouts (Public version), p. 4
[26] ibid., p. 3
[27] SNAC, U2C, UNAC (2021), *Édition des musiques à l'image: liberté ou édition coercitive?*, p. 8, https://www.snac.fr/site/wp-content/uploads/2021/09/SNAC-enqu%C3%AAte-%C3%A9dition-musique-%C3%A0-limage.pdf
[28] ibid., pp. 7-8

3. Pseudo-publishing

This practice usually occurs **when composers are required by pseudo-publishers ("producer-publishers", "broadcaster-publishers") to give away the publishing rights of their works, often representing between a 30% and 75% of their potential royalties, in exchange for very little or no compensation, as the commissioning fee paid to the composer is not meant to cover the transfer of the publishing rights**. Once the publishing rights are transferred, composers lose future earnings that would normally be payable by CMOs and/or from secondary use. Composers thus lose substantial revenue opportunities that could otherwise arise from the work's success. As these pseudo-publishers are directly linked to the broadcaster's or producer's core business, these requests are often a non-negotiable condition for project participation, and as such they impose significant financial and professional burdens on composers.

One way in which pseudo-publishers operate is by **making signing of the first contract conditional to the signing of another contract**, covering the transfer of the publishing rights to the producers or the broadcasters (or their publishing company). Often, by the time an author receives the second contract, the music has been delivered and it is virtually impossible for them to exit the relationship without seriously negative consequences for the author and his/her music. This situation impacts composers in a very negative manner. **In France, one study by ECSA members SNAC, U2C and UNAC reported that composers who sign these contracts lose approximately 37,5% of their potential income from performing and mechanical rights. Exchanges with the ECSA membership have shown that those practices are widespread across Europe and can lead to composers losing as much as 75% of their potential royalties in the case of online digital exploitation.**

Crucially, the pseudo-publishers ("producer-publishers", "broadcaster-publishers") who engage in these practices **do not exploit properly the works nor fulfil their legal obligations for the works for which they have obtained the rights**. Most often, they do not comply with their obligations on transparency (no information about the exploitation of the works). From a commercial perspective, **they basically limit their activity to "rights-grabbing" by receiving a share of the royalties without seeking to properly exploit the work for other productions or publishing the score for other exploitations**. By doing so, they prevent the work from being exploited by another serious and legitimate publisher who possess the infrastructure and expertise to ensure continuous and effective exploitation of their works, or directly by the composer. Concretely, this means that once the composer's work is embedded in the final production, it cannot be exploited beyond without the permission of the pseudo-publisher, who is generally neither interested nor competent to seek further exploitation. **This makes it impossible, for instance, for a composer to publish their own work as a soundtrack or a stand-alone work or turn to a legitimate publisher**.

In a nutshell, by taking publishing rights without acting like proper publishers, pseudo-publishers take on responsibilities beyond their expertise, limiting the potential exploitation and revenue of a composer's work.

On the other hand, legitimate music publishing entails a range of specialised functions such as promoting, tracking, and re-licensing works. Many composers have established long-standing relationships with legitimate publishers, who are uniquely equipped to promote, manage, and advocate for their works over the long term. As a result, pseudo-publishing also **harms virtuous publishers by creating unfair competition and reducing the role of publishers to mere "rights-grabbing" entities unable to properly exploit the works**.

In the aforementioned report by SNAC, U2C and UNAC, 70% of the surveyed composers indicated that their works are never re-exploited beyond their initial use in the audiovisual production, while 65% reported that the publisher had not made their music available online, and 97% reported that the scores had not been published.[29] These problems are compounded by the lack of transparency, with 74% of respondents not being provided the mandatory annual statements with information over the exploitation and promotion of their works.[30] Without proper reporting, this **fails to comply with the transparency obligations set out in Article 19 of the CDSM Directive**, which provides that Member States shall ensure that authors and performers receive, at least once a year, detailed information on the exploitation of their works with a "**high level of transparency**".

Moreover, pseudo-publishing makes composers' income more precarious. Publishing rights represent a critical revenue stream for composers, often comprising between 33% to 50% of the income generated by collective management organisations (CMOs). When forced to relinquish these rights, composers experience a substantial reduction in income for their commissioned works, with little to no opportunity to recoup these losses through additional revenue streams from the producer. This loss is compounded by the common exclusion of composers from any future profits generated by the audiovisual work's success, limiting their ability to participate in the upside of their creative contributions. It is also important to highlight that music publishing rights represent only a marginal fraction of the overall producer revenues in comparison with other revenues (e.g. theatrical exploitation, VoD/SVoD rights, TV broadcasting rights, international sales, merchandising, etc) but constitute a significant revenue stream for composers: according to the same French study,[31] 54% of the audiovisual authors sampled have seen their commission fees decrease due to pseudo-publishing. Among the authors affected by this issue, those composing for fiction and TV series are the most affected, with over 60% of them saying that they experience pseudo-publishing systematically.

[29] SNAC, U2C, UNAC (2021), *Édition des musiques à l'image: liberté ou édition coercitive?*, pp. 7-8
[30] Ibid.
[31] Ibid.

Regular consultations with ECSA has shown that those practices are widespread across Europe, as 66% of them had been offered contracts which forced them to sign away partial rights such as synchronisation or mechanical rights.

As these numbers testify, these practices not only have a seriously detrimental impact on the remuneration of composers, but also create unfair competition for real and virtuous publishers.

Pseudo-publishing practices deprive composers of their fair share of publishing rights, representing anywhere from 30% to 75% of their potential royalties, without maintaining a proactive relationship with the composer or providing any of the services traditionally performed by publishers. Furthermore, they also take away work from legitimate publishing and rendering it more difficult for media composers to attract and maintain a strong publisher team for the whole of their career and work. It is time to act against these harmful practices."

Sarah Glennane
CEO of Screen Composers Guild of Ireland, Ireland

4. Moral rights

Additionally, experiences of ECSA members indicate that VoD platforms are often requiring composers to waive their moral rights, in accordance with the US "work made for hire" doctrine. Moral rights are particularly important for authors, as they include at the very least the right to be credited as the author of their work (right of attribution), and the right to object to any alteration or distortion of their work (right of integrity). Unlike traditional economic rights under copyright law, the scope and protection of moral rights vary quite significantly across Europe and **have not been harmonised at EU level**. However, all European countries are signatories of the Berne Convention, which guarantees certain moral rights. As authors tend not to exercise these rights because they are exercised *a posteriori,* SVoDs usually include clauses to protect themselves against any claims based on the infringement of moral rights:

(1) "Additionally, Composer also confirms that all rights pertaining the Works are **fully owned by the Producer, including, but not limited to, moral rights**. Without prejudice to the foregoing, to the maximum extent permissible by applicable law, **the Composer hereby waives all moral and analogous rights** (and rights of enforcement thereof) regarding the Works."

2) "Producer waives any claims based on infringement of Producer's "moral rights" in and to the Master(s)"

Within the EU, France has recently taken significant legislative steps to protect composers' rights against buyout practices, particularly through mandatory contractual clauses required for accessing funding by the *Centre national du cinéma et de l'image animée* (France's primary film-funding mechanism). Through two landmark agreements signed in 2023,[32] French law now requires producers seeking public funding to include specific clauses in their contracts with composers that explicitly protect both moral rights and proportional remuneration. These clauses acknowledge composers' unique legal status compared to other co-authors of audiovisual works, particularly noting "the absence of presumption of transfer of their exclusive exploitation rights to the producer" and the specific protection provided by Article L.132-24 of the French Intellectual Property Code. Given that many SVoD platforms rely on European public funding and tax incentives for local content production, similar requirements at the EU level could significantly impact industry practices.

[32] *Clauses types compositeurs audiovisuel 13/04/23* and *Clauses types compositeur cinéma 22/08/23*

5. Recommendations and examples of good practices

In the context outlined in this report, and in order to tackle the abovementioned challenges, ECSA calls for the roll-out of ambitious policy solutions as well as more dialogue and agreements between audiovisual composers and their contractual counterparts to ensure and promote fairer and more sustainable contractual practices in the audiovisual sector. As set out in the introduction of this report, it is worth recalling that the European Parliament and the Council have already adopted initiatives to improve composers contracts. In particular, during the French Presidency of the Council, EU Member States have participated to a stocktaking exercise on the effectiveness of the European copyright framework, looking in particular at the cases of circumvention of European copyright rules and attempts to impose new models. The findings and recommendations of this exercise (available here) have gained even more relevance today and have inspired this report.

1 Prohibit buyout contracts and work made for hire provisions by making sure that EU law fully applies in the EU, ensuring that Article 18 achieves its original aim

We consider that policymakers must ensure that Article 18 is truly enforced in contracts in a way that ensures its original aim by limiting the ability to circumvent it through the application of non-EU laws and the competence of non-EU jurisdictions. To accomplish this, the European Commission could draw inspiration from Member States who have given teeth to Article 18 in their national implementations. One notable example is **the case of France**, who implemented the CDSM Directive in May 2021 in a manner that prohibits contracts that could deprive screen composers of their right to proportional remuneration under French law, regardless of the choice of applicable law by the parties. It is worth noting that the same approach is already in place in other areas of EU law, such as consumer protection, where consumers are shielded from the application of less protective foreign law. Such an objective could be reached through several possible mechanisms:

- **Make Article 4.3 of the Rome I Regulation applicable to transparency and remuneration provisions**. The article declares that "Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply". This article provides an additional tool to ensure that EU copyright law is applicable to all exploitation contracts in Europe.

- **Make it compulsory to stipulate that such transfers are prohibited and cannot be circumvented by choosing the applicable law.** Certain other national laws prevent the circumvention of these provisions through the application of a foreign jurisdiction. For instance, Germany and the Netherlands have enacted even stronger measures explicitly prohibiting or restricting buyout practices through overriding mandatory rules. In the case of Germany, these measures apply to the fixing of fair remuneration, transparency obligations and the bestseller clause (Art. 18, 19 and 20 CDSM Directive), as long as the activities "have a connection with Germany". In the second case, Dutch copyright law applies, irrespective the law governing the contract in two instances: (1) in the case in which Dutch law would have applied in the absence of a different choice of law; (2) in the case where the exploitation takes place mostly or entirely in the Netherlands.[33]

- **Stipulate that buyout provisions cannot be implemented on the territory of the EU or that foreign law cannot be applied when the work has been produced within the EU**.

2 Ensure that composers are properly informed about the exploitation of their works – as provided by Article 19 of the CDSM Directive

Article 19 sets out transparency obligation for authors' contractual counterparts to provide "relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights" on a regular basis, and at least once a year. This information should include "modes of exploitation, all revenues generated and remuneration due". If implemented correctly, Art. 19 of the Directive should have already provided a solution, albeit partial, to the issue of pseudo-publishing by sanctioning these publishers. However, Article 19 has been implemented without proper sanctions or revocation mechanisms in case of non-compliance, which allows rogue actors to disregard the transparency obligation set out in Article 19.

- **It is therefore essential that the European Commission closely monitors the implementation and enforcement of the transparency obligation – which is often described as the "cornerstone" of the remuneration chapter (Articles 18 to 23 of the CDSM Directive).**

- **It is also paramount that EU Member States ensure this obligation is properly respected and that non-compliance can effectively lead to meaningful and deterrent sanctions, including effective revocation mechanisms – as set out in Article 22 of the CDSM – if the work is not properly exploited.**

[33] French Presidency of the Council of the EU (2022), Summary of the Stocktaking Exercise on the Effectiveness of the European Copyright Framework, 30 June 2022, p. 30, https://data.consilium.europa.eu/doc/document/ST-10629-2022-INIT/x/pdf

3 Ensure that composers can protect their rights through alternative dispute resolution procedures with their contractual counterparts, as set out in Article 21 of the CDSM Directive

Today, composers and their representatives often do not have access to voluntary, alternative dispute resolution procedure, despite the obligations set out in Article 20 and 21. Dispute resolution mechanisms could benefit both composers and their contractual counterparts by avoiding costs and time spent in otherwise lengthy legal procedures that are often overseen by courts who often lack specific copyright knowledge. **We therefore urge Member States and composers' contractual counterparts to put in place or support such mechanisms and to include them in contracts with audiovisual composers.**

As an example, in 2017, German music CMO GEMA set up an **arbitration board** between authors and publishers who are member of the organisation.[34] The board acts as an internal dispute resolution body of the organisation and is formed by representatives of music authors and publishers, as well as a chairperson. The arbitration board has two main functions:

- First, it can be called upon in individual disputes between authors and publishers on the question of whether a publishing service has been provided.
- Second, since 2023, as part of a so-called "collective review procedure", it has also been responsible under certain conditions for cases in which several authors report a systematic failure by a publisher to provide publishing services of commissioned works in television and radio (so-called "compulsory confiscation").

This arbitration board is an example of a good practice that can be adopted by CMOs to prevent and deal with cases of pseudo-publishing within their country, while supporting both composers and the essential work of virtuous publishers who truly exploit composers' works. GEMA has also usefully supported legitimate publishers and prevented pseudo-publishing by defining and incorporating publishers' obligations in its statute. By doing so, CMOs can provide composers with minimum set of publishing requirements that they can use to denounce pseudo-publishers that fail to meet the obligations.

[34] GEMA (2025), *Urheber-Verleger-Schlichtungsstelle,* https://www.gema.de/de/aktuelles/verlegerbeteiligung/zusatzinformationen/urheber-verleger-schlichtungsstelle

4 Encourage composers' counterparts to engage in collective bargaining agreements and model contracts with composers' associations

In a 2023 consultation by ECSA, a majority of respondents indicated that they found collective bargaining agreements to have improved their contractual positions.[35] To tackle the issue of pseudo-publishing, collective agreements such as the 2017 Code of Fair Practice for Music Publishing (*Code des usages et des bonnes pratiques de l'édition des oeuvres musicales*) between national authors' societies and publishers' organisations can provide a useful framework based on a mutually agreed understanding on the role and responsibilities of authors and publishers. In other countries, discussions have started between music authors associations and their contractual counterparts representative bodies.

In the same vein, the dialogue between music authors and industry players can lead to model contracts that specify the publisher's obligations with regards to exploitation and transparency. Such contracts can be very useful to tackle pseudo-publishing by outlining the role and responsibilities of music publishers. One example of this is the model contracts published by the *Chambre syndicale de l'edition musicale* (CSDEM) in 2019. These models offer a blueprint for publishing contracts covering various types of works, from songs and instrumental works to soundtracks of audiovisual works.

5 Ensure that EU and Member States' public subsidies and tax incentives cannot benefit entities that circumvent laws related to the fair remuneration of creators by making this support conditional on compliance with the CDSM Directive

Too often, audiovisual producers, broadcasters or platforms can benefit from public funding without respecting EU or national laws related to the fair remuneration of authors. This is simply unacceptable for the composers we represent – and should be prohibited by public authorities.

In France, recent initiatives, such as mandatory contractual clauses for accessing funding by the CNC (France's primary film financing mechanism). Through two landmark agreements signed in 2023 (on 13 April for audiovisual works, and on 22 August for cinematographic works),[36] French law now requires producers seeking public funding to include specific clauses in their contracts with composers that explicitly protect both moral rights and proportional remuneration. These clauses acknowledge composers' unique legal status compared to other co-authors of audiovisual works, particularly noting "the absence of presumption of transfer of their exclusive exploitation rights to the producer" and the specific protection provided by Article L.132-24 of the Intellectual Property Code.

[35] ECSA (2023), *Navigating the Path to Fair Practice*, https://composeralliance.org/media/1571-ecsa-survey-on-fair-practice-summary-of-results.pdf
[36] *Clauses types compositeurs audiovisuel 13/04/23* and *Clauses types compositeur cinéma 22/08/23*

This recognition effectively prevents the application of buy-out practices by ensuring that: (1) composers must receive proportional remuneration for each mode of exploitation (Article 3 of both agreements), explicitly limiting any flat-rate payments to the exhaustive cases listed in Article L.131-4 of the French IP Code; (2) moral rights are comprehensively protected, including the right of attribution (mandatory credit in both opening and closing credits) and the right of integrity of the work through a requirement for mutual agreement on the final version and protection against unauthorised modifications; (3) any clauses contradicting these protections are explicitly forbidden, including in additional agreements or amendments (Article 4 of both agreements).

As many broadcasters and SVoD platforms rely on European public funding and tax incentives for local content production, such as funding from the Creative Europe MEDIA programme, similar requirements at the EU level could significantly improve industry practices, creating a powerful economic incentive for compliance, effectively using public funding leverage to protect authors' rights.

6 Promote more transparency and information on contractual practices by empowering independent authorities, civil servants and academics to review and collect confidential information on contracts and to draw up anonymous reports on harmful practices

Non-disclosure agreements prevent music authors associations but also policymakers and academics to simply have access to contracts, and be informed about the contractual challenges faced by composers. **It is therefore essential that independent authorities or civil servants can have access to contracts in order to report on the situation and propose recommendations based on those findings**. This could be performed by an independent authority tasked with regulating the market and notifying violations in each country.

7 Promote and support educational initiatives for composers to raise awareness about their rights and how to protect themselves from harmful contractual practices

Policymakers at national and EU level should promote and support educational initiatives that help composers to learn about their rights and how they can protect themselves from buyouts and pseudo-publishing practices. Professional composers associations and CMOs have already engaged in such initiatives. For instance, in 2021, UK ECSA member The Ivors Academy and the Musicians' Union launched Fair Score, a campaign aimed at creating a fairer environment for composers by tackling buyouts and promoting fair commissioning. To aid composers, Fair Score offers a specimen contract for use in TV commissioning, a manifesto calling for an end to buyouts, and guidelines on buyouts for media composers.

In 2021, a similar campaign called Your Music Your Future International was launched by the International Confederation of Societies of Authors and Composers (CISAC) in collaboration with Your Music Your Future to educate creators around the world about buyouts, and specially the negative ramifications of accepting total buyouts of their work. As of 2022, the campaign had more than 20,000 subscribers and was available in six languages (English, French, Spanish, Portuguese, Finnish and German).[37]

[37] CISAC (2022), *Your Music Your Future buyouts campaign launches in German,* 29 June 2022, https://www.cisac.org/Newsroom/news-releases/your-music-your-future-buyouts-campaign-launches-german

ECSA compiled this report in collaboration with Guillaume Clement, whom we thank for the expertise he provided in reviewing this report. We also extend our gratitude to our Members, whose invaluable insights and contributions have been instrumental in shaping this report.

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 29 European countries. With 58 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/.

Co-funded by the European Union