

# FALSE BARGAIN FOR EUROPEAN CREATORS!

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5 POINTS ON WHY AND  
HOW TO ADDRESS  
BUY-OUT CONTRACTS  
IN THE VOD SECTOR



Fair remuneration for creators is crucial for the protection and enhancement of European creation. However, the growing and extremely harmful practices known as “buy-out” and “work-for-hire” imposed on creators endanger the European model of authors’ right as well as the principle of “appropriate and proportionate remuneration” guaranteed by EU law.

## WHAT IS A BUY-OUT?

Buy-outs and work-for-hire are coercive practices imposed on creators in which creators sign off their authors rights/copyrights, in perpetuity in exchange for a typically very low one-time upfront payment. This phenomenon has grown in recent years, with big non-EU based VOD platforms using them as their primary practice in their relations with European composers, subjecting their contracts to the competence of US law and US courts or other non-EU countries in order to circumvent the protective measures of EU law and its Member States. These “take it or leave it” deals prevent authors from exercising their authors’ rights and receiving royalties for the use of their works. The creators even lose ownership of their work in the case of “work made for hire”.

## 1. WHAT IS THE PROBLEM?

VOD platforms based in the US, such as Netflix, Disney+, and Amazon Prime, have become a popular way for European consumers to watch movies, series, and TV shows. While this opens up new working opportunities for European composers who write music for those productions, it comes at a cost of losing their authors’ right and, in some cases, the possibility of being associated with their works. This is because, unfortunately, those non-EU-based platforms are imposing contracts on creators, either directly or indirectly through their own producers, in which creators must waive their copyright/authors rights, in full or in part.

Such clauses preclude them from receiving future royalties for the use of their work, depriving them of a fair and sustainable remuneration as well as their moral rights. It severely undermines their ability to earn a living through their artistic work.

Authors are given no choice but to accept those unfair clauses. Where they oppose, they are usually black-listed and excluded from any future work.

In doing so, non-EU VOD platforms are exploiting the vulnerability of European creators and circumventing the principle of fair and proportionate remuneration adopted at EU level.

## 2. WHAT IS THE SCALE OF THE PROBLEM?

The scope of these coercive practices by non-EU based VOD platforms is enormous. Contractual clauses granting total buy-outs for all rights in perpetuity and across the universe are now included in “standard agreements” between platforms and composers.

According to a recent survey conducted by European Composer and Songwriter Alliance (ECSA) among their members, 53% have been offered buy-out contracts, which increased in the last three years in the context of VOD, and 66% have been asked to sign away partial rights.

With the pandemic of the last three years, VOD has become one of the main modes of AV content consumption, on which media composers have become increasingly reliant. With a thriving AV streaming market and big non-EU VOD platforms and services, the buy-out phenomenon is growing dangerously, threatening composers’ livelihoods.

### 3. WHY IS IT A EUROPEAN ISSUE?

## EUROPEAN AUTHORS RIGHT/ COPYRIGHT MODEL OF PROTECTION

According to the EU and national laws, an author has an exclusive right in his or her work and is entitled to royalties/remuneration for each usage of his/her work. Moreover, the principle of appropriate and proportionate remuneration is protected by EU law. European music authors typically mandate these rights to their “authors’ society” (Collective Management Organisation). In doing so, they secure fair remuneration throughout their careers and benefit from the power of collective negotiations to prevent coercive practices that would otherwise be more difficult to resist. In addition, authors have moral rights in their work that ensure attribution, the integrity of their work, and their moral interests in their work as creators.

Non-EU based VOD platforms are circumventing these rules by subjecting their contracts to the law and the courts of the US or other non-EU countries where such clauses are legally possible. By doing so, VOD platforms are exporting their unfair practices into Europe and deliberately bypassing the EU’s carefully and democratically adopted rules.

Certain platforms even require composers and songwriters to leave their authors’ societies as a condition to work with them, thus eliminating the possibility of collective resistance against such practices in the absence of necessary laws prohibiting them.

As a principle of EU’s strategic autonomy, the intervention of EU decision makers is necessary to put an end to this unfairness and vulnerability of European creators.

## 4. WHAT IS THE EU DOING TODAY AGAINST THIS PROBLEM?

The buy-out issue has already been raised in three different Parliamentary Reports<sup>1</sup> recently adopted by the European Parliament, which has requested that the European Commission investigates this issue further in order to ensure adequate and continuous remuneration of creators based on authors' rights.

Several Member States have expressed the need to address the buy-out phenomenon and its impact on the value chain. Moreover, the French Presidency of the EU issued an important working document last summer, flagging the problem, identifying its scale, and conveying the request from several Member States to ask the Commission to investigate it further<sup>2</sup>.

Commissioner Breton has consistently emphasised the necessity of addressing market “vulnerabilities” as well as ensuring that all companies, European or non-European, play by the rules of the Internal Market. During his speech to the European Parliament, he also committed to continue working on the harmful buy-out contracts imposed on authors by external big players in the market.

## 5. WHAT STILL NEEDS TO BE DONE?

It is now time to start working concretely on this issue and finding solutions, as all EU institutions and a number of Member States have expressed a willingness to address it at EU level. Encouraged by the work of the European Parliament and the Council, the European creators community expects the Commission to provide a clear and concrete working plan on this issue.

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<sup>1</sup> Initiative Report on the situation of artists and the cultural recovery in the EU; Report on Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation; Report on IP Action Plan

<sup>2</sup> Synthesis of the Stocktaking exercise on the Effectiveness of the European Copyright Framework, June 2022

## 1. WHAT IS THE PROBLEM?

European creators are forced to give-away all their rights in perpetuity to be included in the programmes of non-EU based VOD players.

## 2. WHAT IS THE SCALE OF THE PROBLEM?

66% of composers have been offered contracts in the last three years in the context of VOD that required them to sign away all (53%) or partial rights (66%).

## 3. WHY IS IT A EUROPEAN ISSUE?

Non-EU based VOD platforms are circumventing EU rules by referring their contracts to the law and the courts of the US.

## 4. WHAT IS THE EU DOING TODAY AGAINST THIS PROBLEM?

The European Parliament and several Member States have already requested that this issue has to be tackled at EU level.

## 5. WHAT STILL NEEDS TO BE DONE?

The European creators' community expects the Commission to show its commitment to fairness and proper application of EU rules, and to provide a clear and concrete working plan to stop these coercive practices.



GESAC (European Grouping of Societies of Authors and Composers) groups 32 authors' societies from across the European Union, Iceland, Norway, and Switzerland. As such, GESAC defends and promotes the rights of more than 1 million creators and rights holders in the areas of music, audiovisual, visual arts, and literary and dramatic works.

For more information:

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The European Composer and Songwriter Alliance (ECSA) represents 55 associations of composers and songwriters in 27 countries. 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:

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