



NORDIC FILM MUSIC DAYS

Panel discussion: What are they and how do they affect composers?

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What can be done at EU level?

Presentation by Marc du Moulin, ECSCA Secretary General





ECSA (European Composer and Songwriter Alliance) represents over **30,000 professional composers and songwriters in 27 European countries.**

With 55 member organisations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), **film and audiovisual music**, as well as popular music.

ECSA's main objective is to **defend and promote the rights of music authors** on a national, European, and international level.





In 2021...

- Early 2021: launch of a **survey towards ECSA members** and Internal Lounge
- In the last 3 years: **increasing number of buy-out contracts** proposed to screen composers by audiovisual companies
- Launch of a **Report** (May 2021): **recommendations of measures** that can easily be adopted to protect European composers, preserve their artistic freedom by enabling them to receive an appropriate and proportionate remuneration for their work





In 2021...

▲ **53%**

of ECSA members have experienced buy-out contracts

▲ **63%**

of ECSA members have experienced a growth of buy-outs in the last 3 years

▲ **66%**

of ECSA members have been offered contracts which forced them to sign away partial rights such as synchronization and mechanical rights

▲ **+21%**

Revenues generated by global OTT, TV and video platforms in top markets increased by 21 %
(source: DigitalTV Research)



Challenges of buy-out contracts

Why is it legally possible to impose this buy-out system on European creators? Some **loopholes in the European legal framework.**

1. **Lack of harmonisation of copyright laws**, especially in the field of authors' economic rights authors economic rights: the majority of EU member countries lack clear legal provisions prohibiting buy-outs.
2. **Choice of law applicable to the contract**: some contracts are under the jurisdiction of a foreign law, for example US copyright law but not only, where the "work for hire" is the rule.
3. If we let these unfair practices affect more composers working in the audiovisual industry, the practice will **expand to other new media.**



Implementation of the 2019 Copyright Directive

- **Art. 18: Principle of appropriate and proportionate remuneration**

The provisions transposing this article in each member country legislation should be mandatory. If not, abusive practices circumventing the principle of appropriate and proportionate remuneration will continue.

- **Art. 19: Transparency obligation (mandatory)**

By implementing in each EU member country this mandatory provision, composers will finally be given the means to objectively estimate the value of their contribution and the remuneration that they should receive.

- **Art. 20: Contract adjustment mechanism (mandatory)**

Creators should have the possibility to renegotiate a fair remuneration in case of disproportionately low payment at the moment of signing his or her contract.

- **Art. 21: Alternative dispute resolution mechanism (mandatory)**





- Thanks to these provisions, **every member country had (or still has) an opportunity to provide all creators** a fair and proportionate remuneration, in **accordance with the economic impact** of the works that they create.
- But the potential **application of extra-territorial laws can remain.**
- Good example of the **French implementation of Art. 18** by prohibiting contracts that could deprive screen composers from their right to a proportional remuneration under French law **regardless of the choice of applicable law** by the parties.
- Certain provisions of EU law and national laws already limit the choice of applicable law in contracts, for example for European consumers.



Updates from the Commission

- The European Commission has recognized that buy-out practices raise a challenge for both audiovisual producers and creators, as they **impose an extra-territorial application of foreign law** in contrast with the Copyright Directive and national copyright laws (European Media Action Plan).
- **Collective bargaining agreements** and competition law
 - **Guidelines published by the European Commission** (29 September 2022) clarify that authors' associations can negotiate and sign collective agreements with their contractual counterparts as per the EU Copyright Directive (Art. 18-23).

Updates from the Parliament

- 3 European Parliament reports expressed **strong concerns against buy-out contracts** and ask the Commission to take action.
- MEPs also asked the European Commission to assess the **role and impact of streaming services** – both VOD platforms and music streaming services.
- They also called for EU Member States to **speed up the implementation of the Copyright Directive** and ensure **access to collective bargaining**.
- **EP question on buy-outs** to put pressure on the Commission (January 2022).

Updates from the Council

- **French Presidency initiative/questionnaire** to all EU Member States.
- Unanimous observation of practices of **circumventing copyright laws** or attempts to **impose new models**, and in particular "buy-out" practices.
- Possible **solutions**:
 - Prohibit such transfers and the circumvention by choosing foreign law.
 - Make public aid conditional on compliance with the EU legislative framework.
 - Stipulate that the provision on remuneration is of public order.



ECSA advocacy activities (1/2)

- **Call for evidence** on buy-outs and other harmful contractual practices
- **ECSA Conference** on 2019 Copyright Directive and contracts (June 2022)
 - Co-organised with European Writers Council (EWC), European Federation Screen Directors (FERA), Federation of Screenwriters in Europe (FSE) with the French Presidency
- Launch of the **Fair Practice survey** (September 2022)
 - EU Fair Practice **Manifesto**
- High-level meetings with the **European Commission** (September-November 2022)
- **Roundtable discussion** on buy-outs between composers and Members of the Parliament (MEPs)
 - Co-organised with GESAC (European Grouping of Societies of Authors and Composers) at the European Parliament (9 November 2022)



ECSA advocacy activities (2/2)

- ECSA presence at various **music events and festivals** (IMPF Music Entrepreneurial and Creative Industry Summit, World Soundtrack Awards, Copyright Conference in Cyprus, Eurosonic among others)
- Next steps: European Commission initiatives, possibly with a study or a mention in the **forthcoming European Media Outlook Report?**
 - Composers will have to **share confidentially their contracts** in order to **provide evidence**
- **Panel at the Creators Conference** (21 March 2023) on 'Preventing buy-out contracts and ensuring a fair and proportionate remuneration for music creators'





Thank you!

Marc du Moulin, marc.dumoulin@composeralliance.org

