



## FIM Statement on Online Music

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Since the 2000s, the development of download platforms, then streaming services, has both contracted and expanded the music market. However, despite recently accelerating growth, the value thus created is not shared fairly. Indeed, the performers whose music creates this value receive little or no revenue when their recordings are used online with relatively few exceptions.

The implementation of the fundamental principles set out below is essential to, at last, guarantee the payment of a fair remuneration to music performers for the value transfer from their work. Such implementation must, in particular, rely on the proven mechanisms of collective management or collective bargaining.

### 1. Right to a fair remuneration

All music performers, whether featured or non-featured, should receive fair remuneration for each online use of their recordings, regardless of the technology used to access or distribute them.

### 2. Scope of the right of making available on demand

The right of making available on-demand (article 10 of the WPPT) provides performers with “*the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them*”.

This right was formulated at the time of the transition from physical to digital distribution by download. The technological evolution that has allowed the development of streaming offers since 2008 was in no way anticipated when the WPPT was adopted in 1996. Article 10 could never have been the subject of a consensus if the community of performers had measured the risk of its erroneous application to all the uses offered by streaming platforms.

The right of making available on-demand is designed for cases where end-users choose what music they want to listen to, when to listen to it and where to listen to it. Thus, any act that does not meet the conditions for a download (choice of track + choice of time + choice of location) should not be covered by the right of Article 10.

In particular, it should not apply when a selection of tracks made by a third party (a natural person or an algorithm) is offered for listening to the consumer, following a personalization based on the choice of a style, an atmosphere, an artist or any other criterion leading to a limited and pre-established “playlist”.

### 3. Adaptation of remuneration schemes

Performers’ economic precariousness – highlighted during the covid-19 pandemic – demonstrates that the exclusive right of making available on-demand (art. 10 of the WPPT), which can be assigned individually without any real compensation, is in itself unfit for embracing the current technological environment. The unilateral choice of platforms and the phonographic industry to apply this right to all forms of streaming, regardless of their level of interactivity or personalization, obviously serves the interests of these industries.

Non-featured performers generally receive a one-time, often purely symbolic, lump-sum payment in return for the transfer of their exclusive rights to the producer. Such unfair practice deprives them of a fair share of the revenue and value generated by their creative contribution. This structurally unbalanced contractual relationship can be corrected by resorting to collective bargaining.

More generally, collective bargaining constitutes a legitimate and effective means of improving the conditions for the transfer of a performer’s exclusive rights and their remuneration once assigned to the producer.

As grassroots protests by performers illustrates, the status quo is untenable. The streaming economy must switch paradigms to ensure fair remuneration for all performers and all types of online uses. Concerning non-interactive or partially interactive uses (playlists), the right to remuneration under Article 15, WPPT, which leads to an equal

split of the equitable remuneration received from broadcasters and other users, constitutes a relevant reference model and precedent.

#### **4. Transparency and access to information**

All performers must receive and be able to access detailed information concerning the use of their recordings and the payments to which they are entitled. Payment of sums due to the artist must occur on the dates specified, must be subject to a compliance examination of platforms by performers to help assure correct payments, and must be accounted for regardless of the amount and without payment thresholds. National laws must include provisions guaranteeing the exercise of these rights.

#### **5. Value of Music**

Price competition between platforms and the priority they give to enterprise market valuation (as reflected in share price) over revenue may induce a devaluation of music in a race to the bottom on royalty payments while share price is booming. Access to a repertoire through output licenses set to grow endlessly for a flat-rate subscription – which has remained at the essentially same price point for more than ten years – does not seem capable of providing long-term sustainability for the creative sector given the dominant pro-rata royalty model.

#### **6. User-centric model**

In the vast number of cases, the pro-rata distribution of streaming revenues does not remunerate the featured artists' right of making available, even when their contract provides (after the transfer of this right) for the payment of royalties. Instead, it creates a hyper-efficient market share distribution of revenue. This is not acceptable. It is also not acceptable for end-users to pay for music that they do not listen to, or that the music they listen to does not generate commensurate income for the artists concerned. This lack of direct correlation between listening and payment is a fundamental problem. Only the universal adoption of the "user-centric" distribution model can redress this injustice to both the fan and the performers. By allowing "niche" recordings, works or styles to generate remuneration, it also supports diversity and promotes local cultures. It should therefore be implemented, and the economic models adapted accordingly.

#### **7. Duration of reference for the count of plays**

The length of the tracks varies considerably according to the genre of music. Durations can range from less than two minutes for a variety track to several tens of minutes for a jazz or classical music track. The count of plays entitled to payment should take these differences into account by introducing a dose of proportionality. A longer track should trigger several payments as listening reaches certain thresholds to be negotiated.

By limiting the economic return on very short tracks, such an adaptation would avoid an excessively uniform offer. It would also positively affect diversity by partly redirecting payments towards less popular musical genres such as jazz or classical music. More generally, artistic creativity could be expressed more freely, without time constraints motivated by profitability objectives.