

**W I P O**  
CONFÉRENCE  
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3-5 novembre 2015



# MUSIC AND AUDIOVISUAL AT THE CROSS ROADS

TRENDS AND STRATEGIES

## I. FIM:PRESENTATION

- Founded in 1948 – Headquarters in Paris, France
- Objectives
  - ✓ Unite professional musicians organizations worldwide
  - ✓ Protect and promote their economic, social and IP rights
- Members in 65+ countries (unions, guilds, associations)
- 3 Regional groups (Africa, Latin America, Europe)
- Accredited NGO (WIPO, UNESCO, ILO...)
- Advocacy, training, networking

## II. SITUATION OF MUSICIANS

- Producers consider that they need the ownership on the performers' exclusive rights in order to safely organise the exploitation of their productions
- Most performers carry out their professional activity under precarious conditions
  - ✓ Short terms contracts
  - ✓ Uneasy access to social security if at all
  - ✓ No pension or unemployment schemes
  - ✓ Low wages
- IP revenues may be vital to make ends meet
- Weak bargaining position: transfer of rights is not fairly compensated

## III. PROTECTION OF PERFORMERS IN INTERNATIONAL TREATIES

International IP norms tend to adapt protection to technological changes:

Rome Convention (1961), WPPT (1996)

- Both treaties combine exclusive rights + a right to equitable remuneration
- When properly implemented, the rights of Art.12, Rome & Art.15, WPPT are a vital source of income for performers
- The WPPT was a significant step forward to meet the challenges of the Internet in the audio field, but failed to achieve a similar protection for AV performances
- The WPPT did not anticipate the development of streaming services, which in practice have become a modern form of broadcasting.

## IV. ROME VS WPPT (I)

### Similarities and differences between Rome-12 and WPPT-15

- In both cases, the right to remuneration for broadcasting and communication to the public applies to performers and producers, for phonograms published for commercial purposes
- According to Rome-16 / WPPT-15.3, a party may decide to not apply the provisions of Rome-12 / WPPT-15.
- In Rome-12, the right to equitable remuneration may be granted to performers, to producers or to both, whilst WPPT-15 establishes the principle of a single remuneration for performers and producers
- WPPT-15.4 broadens the concept of “published for commercial purposes”, which now also covers the making available on demand

## V. ROME VS WPPT (II)

- WPPT-15.1 (default option) is the only viable option for performers. Reservations can void this article from any benefit to performers.
- Unfortunately, WPPT-15 does not make an equal split compulsory. However, in the vast majority of cases, its implementation in national legislation provides a 50/50 split between performers and producers.
- Unbalanced situations may result from inadequate implementation of 15.2 or reservations under 15.3 (worse).
- Joint collection of ER is possible through either a joint CMO or a joint body entrusted by the stakeholders's respective CMOs

## VI. MUSIC IN A/V PRODUCTS

### **Musical performance in A/V**

- The musical performance is fixed and embodied for the specific purpose of an audiovisual product
- A pre-existing sound recording/phonogram is synchronized with images
- **Musicians may be “audiovisual performers”, but they do not necessarily have a contractual relationship with the AV producer**
- 3 possibilities:
  - ✓ Simultaneous fixation of sound and image
  - ✓ Fixation for the purpose of an audiovisual work
  - ✓ Re-use of existing sound fixation
- Audio legal framework / AV legal framework

## VII. THE BEIJING TREATY (BTAP)

The Beijing Treaty closes a gap. However, ratification without adequate implementation would be meaningless for performers

- This treaty is about the protection of **AV performances**. It would make no sense if its implementation was to leave performers without an adequate remuneration
- As in the music sector, most performers don't have the bargaining power to negotiate a fair remuneration against the transfer of their exclusive rights
- Except in countries with a strong tradition of social dialogue and robust collective agreements, only remuneration rights can result in fair payments for performers



## VIII. WHAT DO WE EXPECT FROM THE BEIJING TREATY?

- Beijing-11, Rome-12 and WPPT-15 refer to the same right. However, in Beijing-11, the exclusive right is the default option. We see it as a weakness from the performers' perspective.
  - ✓ A fair transposition should be based on Art.11.2.
  - ✓ A mere transposition of the default option (Art.11.1) would result in most performers being deprived from any remuneration
  - ✓ Except in a very limited number of countries with balanced collective agreements in place, the default option (Art.11.1) would void the treaty from its very purpose.

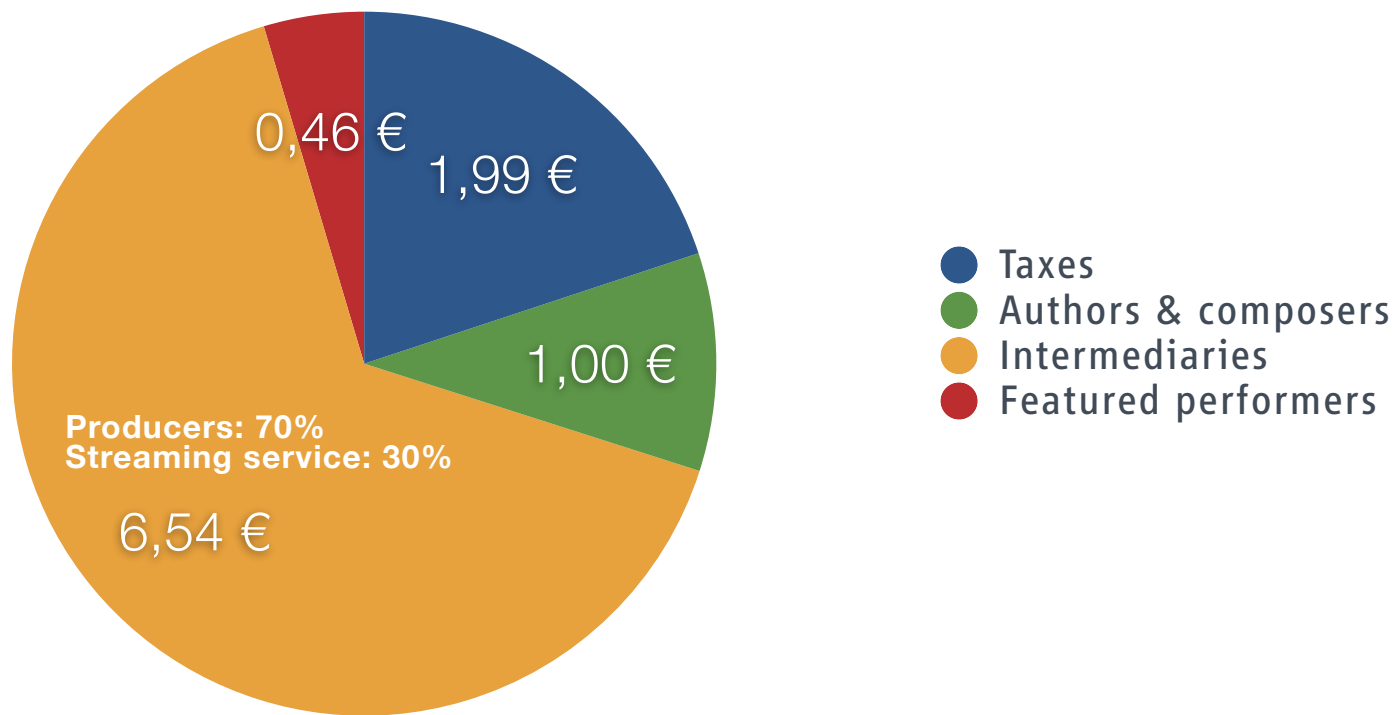
## IX. WHAT DO WE EXPECT FROM THE BEIJING TREATY? (2)

- In 2000, the lack of consensus re. a reference to the transfer of rights was the main reason for the failure of the Diplomatic Conference
- In 2012, parties agreed upon a balanced wording of Art.12, with options aimed to fit different national contexts
- Option 12.1 is inspired by the US system, where trade unions hold a strong bargaining position
- Option 12.2 sets a minimum guarantee for performers when trade unions are able to conclude collective agreements (rare cases)
- Option 12.3 provides for the payment of royalties or an equitable remuneration. it is a relevant option for all countries, which would ensure that the objectives of the treaty are reached.

## X. WHAT DO WE EXPECT FROM THE BEIJING TREATY? (3)

- Art.12.3 may also be combined with Art.10 (right of making available of fixed performances)
- In practice, such a measure would allow performers to enjoy an unwaivable right to receive a royalty or an equitable remuneration when their performances are made available on demand, even after the transfer of their exclusive right
- We therefore recommend to transpose Art.12 with option 3, as a basis for adequate remuneration schemes, given the growth of music and AV streaming services

# XI. THE MUSIC STREAMING MARKET



- For a €9.99 monthly suscription to a streaming service (source: ADAMI, France)
- Share of non-featured artists: 0

## XII. OTHER PROBLEMS

- Recordings are exploited online by record companies without authorization (court decisions in Finland and Sweden) = **piracy**
- Uses that should fall under the right of communication to the public (ER) are treated as making available: not compliant with the WPPT
- Deductions inherited from the physical market continue to be applied to digital royalties
- Lack of transparency

## XIII. THE FAIR INTERNET PROPOSAL: A BALANCED SOLUTION

- In Europe, 4 performers' organisations (AEPO-ARTIS, FIA, FIM and IAO) have come together to put forward a modern solution to the unfair situation that performers are facing.
- **Problem:** the right of making available on demand does not create revenues for the vast majority of performers.
- **Solution:** add a right to equitable remuneration on top of the existing exclusive right of making available on demand, for performers only and collectively managed, following the model the rental right already in place in EU legislation.
- **<http://www.fair-internet.eu>**





# Nick Mason

Musician, UK

*Pink Floyd*

“No more time must be wasted. The European Commission is currently preparing to modernise the EU copyright rules and any such effort cannot deny young people coming into our industry the chance to get properly paid for their work”.





# Javier Bardem

Actor, Spain

“An unbalanced industry, whose workers are not adequately protected, will fail sooner or later. What we ask is to be able to participate in the economic results of the works [...] We, the actors, are the most interested in the audiovisual works reaching the broadest possible diffusion and economic results”.





THANK  
YOU!



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