



MEMORANDUM OF UNDERSTANDING OF 2 OCTOBER 2015

For the equitable development of music online



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PREAMBLE

Over the last fifteen years, the recorded music sector has witnessed an unprecedented drop in sales, the consequences of which have impacted all players to varying degrees.

The rapid growth of new ways of listening to music is raising hopes for stabilisation of the market and even a recovery. This is being accompanied by a profound transformation of the economic model, which is evolving from one based on the act of purchasing to one based on access and services.

With the digital transition, exploitation of music and its remuneration are taking complex circuits which are often perceived as insufficiently transparent, creating mistrust between players. Awareness of this phenomenon is reflected worldwide in the stand being taken by artists as well as academic studies and official reports.

In this context, stakeholders in the music industry have come together as part of the mediation mission entrusted by Fleur Pellerin, Minister of Culture and Communication, to Marc Schwartz, Senior Counsellor to the Cour des comptes.

Being keen to act in the best interests of the music industry and aware of the collective challenge related to a general recovery on the sector, the public authorities and all stakeholders are calling for **an equitable and mutually beneficial development of the industry, ensuring a fair distribution of the value created between all of its stakeholders, including the new digital players.**

The signatories to this Memorandum of Understanding (hereinafter the «MoU»), meeting in Paris on 2 October 2015, reaffirm their shared ambition for:

- the development and vitality of the music industry;
- the preservation of cultural diversity and the surge in innovation;
- the establishment of greater transparency in exchanges between the players;
- equitable sharing of the value created by music recordings.

To this end, they are adopting the seven constituent objectives of this Memorandum of Understanding (hereinafter the «Objectives») and undertake to implement them according to the defined schedule.



OBJECTIVE NO. 1: SUPPORT THE DEVELOPMENT OF THE LEGAL MUSIC OFFERING

The music industry has suffered a considerable decline in its volume, due to the development of new offers, which are partly illegal. In fifteen years, the world market for recorded music has lost more than 50 % of its value, the average price of an album has fallen by over 35 %, and that of a music track by over 80 %.

Against this backdrop, the public authorities and stakeholders are aware of the need to support the development of legal and fairly remunerated offers as a priority in order to ensure the recovery of the sector as a whole. As a nation which has always defended a protective vision of rights holders in all areas of creation, France bears a special responsibility in this area.

That is why the public authorities are committed to continuing their efforts to promote copyright and related rights on the national, European and international levels:

1.1.- By proactively implementing the government's strategy for the implementation of copyright and related rights, which is already reflected in the good practice charter with players in online advertising and by the setting-up of the monitoring committee with payment solution providers.

1.2.- By ensuring that the projects to modernise copyright and related rights prepared by the European Commission place due emphasis on the issue of sharing value with the new digital players. In particular, they will pull together in order to make proposals on clarifying the status of online service providers whose purpose is to make content available to users, and whose role must be recognised by inclusion in the scope of application of copyright and related rights.

1.3.- By working with the players in the cultural industries and with all stakeholders to improve the European response to infringements of intellectual property rights.

1.4.- By contributing, on the occasion of the consultation launched by the European Commission on the economic role of online platforms and debates related to the European strategy for the Digital Single Market, to the construction of a European framework conducive to the development of legal music offers.



OBJECTIVE NO. 2: MAKE THE MUSIC INDUSTRY'S ECONOMY MORE TRANSPARENT

The insufficient transparency of the music industry's economy mainly concerns the sharing of value between its various stakeholders. It is true that the increasing complexity of operating modes, globalisation of the activity and the changing economic model, which spreads revenue collection over time, is preventing a clear overview of the value chain from being obtained.

This makes it hard for artists to fully understand how they are paid as consideration for the transfer of their exclusive rights and raises questions about the fairness of this remuneration.

2.1.- The public authorities and stakeholders have decided to set up a Music economy monitoring unit, managed neutrally, whose mission will be to:

- establish and publish key economic data for the sector by bringing together and making consistent information which is currently dispersed and incomplete;
- create the conditions for a shared analysis of economic developments in the sector and regular coordination on its development issues;
- measure and monitor the flow of revenues, remuneration disparities and the sharing of value between all players: publishers of online music services, rights holders, new players, online stores;
- monitor the level of exposure of original French-language works by all the media, especially by the publishers of online music services;
- have studies of their remuneration models performed, in liaison with publishers of online music services: comparison of respective distribution patterns , volume and valuation of the back catalogue and new products, etc.

Within six months of the signing of this MoU, the public authorities will liaise with stakeholders to determine the procedures for creation of the Music economy monitoring unit, which will bring together existing resources, particularly those of the current Music monitoring unit.

2.2.- The stakeholders undertake to cooperate with the future Music economy monitoring unit, by providing it with access to the information and data necessary to carrying out its mission. At its first meeting, the Monitoring unit adopted internal regulations which stipulate its operating procedures, in compliance with the obligations incumbent upon stakeholders.

2.3.- As of now, the stakeholders concerned undertake to actively collaborate in the study launched by the DGMIC (General Directorate of Media and Cultural Industries) in order to measure the distribution of value on the basis of a sample of contracts and a methodology selected by mutual agreement.

1 - Comparison between the so-called *pro rata numeris* and user centric models.



OBJECTIVE NO. 3: IMPROVE THE EXPOSURE OF MUSIC AND CULTURAL DIVERSITY

The almost infinite number of works available on digital platforms (over 30 million tracks accessible) is creating a paradoxical challenge for the diversity of music distribution. The exposure of works by platforms and recommendation algorithms have a determining influence on the choice for users who, more so than in the past, seem to be focusing on a narrower selection of famous artists and hit tracks.

To preserve cultural diversity and facilitate the creation and exposure of all talents, the public authorities undertake to:

3.1.- Confirm and improve the effectiveness of distribution of original French-language songs in order to enhance musical diversity on the radio.

Publishers of online music services will:

3.2.- Ensure that their offer permits significant exposure of original French-language works and so ensure the promotion and enhancement of the diversity of music catalogues and works. The diversity of catalogues and works will be measured in terms of exposure of musical genres and the renewal of talent and creation.



OBJECTIVE NO. 4: PROMOTE GOOD CONTRACTUAL PRACTICES THROUGH A CODE OF PRACTICE

The «13 commitments for online music» signed in January 2011 as part of the mediation mission led by Emmanuel Hoog sparked real progress in terms of contractual relations between record producers and publishers of online music services.

This negotiated approach is effective because it is based on voluntary undertakings by the players. It is a prelude to the development of sector-specific «codes of practice», as recommended in the Lescure report and which is provided for in the bill on freedom of creation, architecture and heritage. But the charter of the 13 commitments, whose duration was two years, has not been renewed.

4.1.- Publication of the general terms and conditions of sale. All record producers undertake to make public their general terms and conditions of sale in the context of electronic exploitations of music.

4.2. - Durability and stability of contracts. Record producers undertake to act in good faith to promote the renewal of contracts with the publishers of online music services in conditions similar to existing contracts, subject only to taking account of the following undertakings.

4.3. - Justification of advances. Record producers undertake to:

4.3.1. Limit advances to amounts closely linked to actual data for the digital music market or specific and identified costs or services (technical services for access to catalogues, marketing costs, etc.).

4.3.2. Facilitate the staggering of payment of advances throughout the entire contract period and without any consideration in return; in the event of a significant outstanding sum, publishers of online music undertake to withdraw catalogues from record producers.

4.3.3. Act in good faith to define reasonable performance targets from the first contract renewal.

4.3.4. Define the procedures for allocation and payment to performing artists of the advances which they receive from publishers of online services.

4.4. - Transparency of guaranteed minimums. Record producers undertake to:

4.4.1. Limit the guaranteed minimums requested of publishers of online music services to amounts founded on transparent calculation methods based on the actual data of the digital music market.

4.4.2. Act in good faith to define reasonable performance targets from the first contract renewal.

4.4.3. Define the procedures for allocation and payment to performing artists of the guaranteed minimums which they receive from publishers of online services.

4.5.- Pay-for services. The publishers of free on-demand music services undertake to implement pay-for value-added services, in order to develop the cross-over of users from free services to pay-for services.

4.6.- Diversity of platforms and emergence of new players. For publishers of online music services meeting the Community definition of small and medium enterprises, record producers also undertake:



4.6.1. To limit any advances demanded of publishers of online music services to a significant proportion of guaranteed minimums, as defined in 4.4., but without them being able to attain their level in total let alone exceed them.

4.6.2. To allow publishers of services to continue being able to cross-check the advances paid under previous contracts indefinitely.

4.6.3. To ensure that the cumulative amount of guaranteed minimums, in whatever form (guaranteed minimum or pre-purchase, by period and/or by use, by stream, downloading and/or subscriber, etc.) are fixed in good faith based on proportional remuneration stipulated by the contract for the year n-1, excluding guaranteed minimums, indexed according to actual variations of the digital market concerned, the market for Internet advertising and significant changes in the economic model of the online service.

4.6.4. To promote the development of legal music offers online, to limit the guaranteed minimums requested from publishers of new online music services, the year of their launch, to reasonable amounts based on the costs of setting up the contract.

4.6.5. To define and apply, for online listening services (streaming), methods for calculating guaranteed minimums based on actual data from the online music market and on the actual data of the Internet advertising market.

4.7.- Taking account of market shares. Record producers undertake to ensure that the conditions contractually negotiated, including with regard to the guarantees of share of voice, reflect the reality of the market shares of producers.



OBJECTIVE NO. 5: GUARANTEE FAIR REMUNERATION FOR ARTISTS

Like other creative industries, the music industry is undergoing a digital transition which represents a switch from an economy of acquisition (act of purchasing musical works) to an economy of use (flat rate for access to unlimited consumption).

In today's music industry, online music services are continually launching new formulas and remuneration of access to works is taking on different and diverse forms. In fact, contractual relations have emerged whereby holders of catalogues obtain from publishers of digital services, in exchange for access to these catalogues, significant flat rate payments (advances and guaranteed minimums) and can buy stakes in these service publishers.

These developments illustrate the profound transformation of business models. Remuneration of platforms primarily consists of monthly subscriptions paid by their customers, and no longer the purchase of tracks or albums, which were easily attributable to their rights holders. To calculate the remuneration of rights holders, platforms implement revenue distribution models, which are raising questions among artists.

Added to this is the fact that the digital music economy still remains significantly smaller in scale than that of the physical world: the market is a long way from regaining its level of the early 2000s, and remains affected both by the scale of free use (legal or otherwise) and lower unit prices.

The community of artists is expressing growing concern about the effect of these developments on its own revenues. For artists, the complexity of the financial channels of the new music economy is creating considerable incomprehension as to the actual sharing of value, difficulty in tracing the justification of their revenues and a growing scepticism about the treatment reserved for them.

Keenly aware of these developments, **thestakeholdersbelieve that it is essential, in the interest of the entire sector, to restore confidence by ensuring the most transparent and fairest sharing possible of all revenues generated from the digital exploitation of musical works.**

5.1.- Common interest of the parties. The contracts between record producers and performing artists provide for the transfer of exclusive rights of the latter. Record producers undertake to perform the contracts in the common interest of these parties and particularly that of performing artists.

5.2.- Remuneration base for artists². Record producers undertake to share with the artists all revenues or remunerations which they receive for digital broadcasting and music distribution services, as part of the monetisation of their recordings. «Revenues or remunerations» should be taken to mean the benefits, monetary or non-monetary, which are directly related to the monetisation of the recordings, including cases where these benefits are not specifically attributable to a rights holder. By way of illustration, the remuneration base also includes the non cross-checked portion of advances and guaranteed minimums obtained from publishers of online music services («breakages»).

5.3.- Equity holdings. The signatories of this MoU are aware of the questions raised by the artists concerning holdings, optional or otherwise, owned by record producers in the share capital of

2 - The issue of equity holdings is dealt with in point 5.3.



the publishers of online music services. The signatories recognise that this issue³ is part of an international dimension which must be taken into account.

The public authorities and artists' representatives are calling for the initiation and early conclusion of negotiations to address the issue of equity holdings.

Record producers support efforts to address, in an appropriate international framework to be defined by the parties present, the questions which could be raised by cash-generating transactions concerning the share capital of online music publishers in which record producers hold stakes acquired in exchange for a digital catalogue distribution agreement.

The stakeholders will familiarise themselves with and discuss, in the context of the music industry steering committee⁴, the outcome of these exchanges, and their possible consequences for the artists benefiting from a contract with French record producers.

5.4.- Contractual deductions. The definition of contractual deductions will respect the following principles: (i) deductions fixed at a reasonable level, and corresponding to duly justifiable grounds as part of digital exploitation, by the implementation of specific actions; (ii) absence of structural deductions (not justified by a specific action) related to digital exploitations; (iii) consideration for the calculation of deductions of net expenditure actually incurred by record producers (e.g. advertising campaigns).

5.5.- Guarantee of minimum remuneration. Record producers undertake, in individual and collective negotiations on the remuneration of performing artists, to accord them a guarantee of a minimum remuneration in return for the digital exploitation of their recordings. This guarantee may take various forms, such as a minimum proportional remuneration or a minimum advance. The procedures and the level of this guarantee of minimum remuneration will be set by a collective agreement which must take into account the diversity of situations for companies on the sector.

5.6.- Transparency of artists' revenues. Record producers and royalty collection and distribution companies undertake to report to artists' on revenues due to them in a manner which is transparent, understandable and easily usable by artists and their managers. The format of the reports will be considered in the framework of a working group with representatives of artists, managers, and royalty collection and distribution companies to tailor this format to the needs of artists and adopt a common standard.

Regarding the statements of royalties, record producers undertake as of now to (i) make the statements available for consultation in electronic form; (ii) show the charges by major distributors, by types of sales and by territory; (iii) to appoint, for companies with more than ten employees, a representative for any question relating to these statements and (iv) to include in the statements an overall summary of deductions clearly setting out their cumulative effect on the revenues of the artist, by value and/or rate⁵.

5.7.- Law audit. Performing artists automatically benefit from the right for auditing of the accounts relating to their recordings, within the framework of the implementation of contracts and the anticipated economic conditions therein.

3 - Provided that it can be properly dealt with at the level of the profession with regard to competition law

4 - Whose creation is stipulated under Objective 7 herein

5 - This measure, of which the procedures and implementation timetable must be discussed by the working group, aims to provide artists with greater visibility as regards the impact of deductions on their earnings and to permit, if appropriate, discussions with their producer, on the trigger point for the most significant deductions.



5.8.- Use of data. Companies collecting and distributing royalties for performing artists and record producers undertake to participate in the working group on metadata led by the DGMIC (General Directorate of Media and Cultural Industries) and particularly aimed at permitting better identification of rights. They also undertake to raise their members' awareness of good practice in terms of filling in metadata and the legal deposit of recordings.

5.9.- Implementation of Objective 5.

The provisions contained in Objective 5 are applicable to all principal performing artists, whatever their status and manner of exercising their art.

Since this concerns the provisions intended to be included within the national collective agreement of the record publishing sector (CCNEP), the social partners are committed to opening discussions in order to arrive at, within a maximum period of one year, a new version of the collective agreement, in particular to take stock of implementation of the CCNEP, to provide for the taking into account of clauses resulting from 5.1 to 5.7. and to determine the terms and level of the minimum remuneration guarantee provided for in commitment 5.5.

The provisions of Objective 5 are automatically applicable to any new contract and any renewal of a contract whose conditions will be determined as of the date of signature of this MoU, and as and when the collective agreements signed under the said MoU are implemented.



OBJECTIVE NO. 6: DEPLOY THE RESOURCES AVAILABLE TO FACILITATE THE DIGITAL TRANSITION

The new models of the digital age are creating development opportunities for artists and producers, and challenges related to the transformations which they allow, such as the extension of self-production. This transition deserves to be supported.

6.1.- Continued streamlining and modernisation of public interest organisations at the service of the music industry. The government has initiated a process of streamlining and modernisation of public interest organisations in the music industry, in which stakeholders are involved. Together they are committed to pushing ahead with these efforts around shared objectives, in search of a simplified and streamlined organisation, and implementation of common means. In this context, the public authorities are committed to significantly increasing the resources of the Bureau export de la musique française.

6.2.- Producers propose creation of a direct employment support fund. This support fund should enable the management of part of the revenues of music performing artists, particularly those employed by very small enterprises in the recording sector. This fund would be managed jointly by the social partners. Stakeholders are given six months from the signature of this MoU to define implementation of procedures as well as the resources allocated to this Fund.

6.3.- Mobilise the artistic and cultural action in favour of priority actions. The Code of Intellectual Property stipulates that royalty collection and distribution companies dedicate a share of their resources to assisting creation and dissemination of the performing arts as well as actions to train artists. The royalty collection and distribution companies which are signatories of this MoU undertake to deploy part of these means, in a coordinated manner, for issues recognised as major ones by and for the music industry.

Among the actions targeted it is worth mentioning⁶: assistance with the direct employment of performing artists as part of independent recording production ensured by very small enterprises, as long as these artists are hired under legal conditions of employment and in compliance with their intellectual property rights; support for export of music in all its forms (live and recorded); assistance with independent recording production ensured by very small enterprises; assistance with development of online music.

6 - Provided that they benefit, at least indirectly, performing artists or producers, in accordance with Community jurisprudence.



OBJECTIVE NO. 7: ENSURE EFFECTIVE AND SUSTAINABLE IMPLEMENTATION OF THE MoU

7.1.- This memorandum of understanding, which is renewable, is applicable from the date of its signature for a period of 3 years.

7.2.- A music industry steering committee, chaired by the Minister of Culture and Communication, and composed of all the signatories of this MoU, will meet at least once a year to monitor the implementation of the Objectives, and take the steps necessary to ensuring that they remain operational and durable. The Director General of Media and Cultural Industries ensures the General Secretariat of the steering committee and prepares its meetings. He is responsible for establishing monitoring of implementation of this MoU.

7.3.- The first meeting of the music industry steering committee will be held no later than six months after the signing of this MoU, in order to monitor its implementation, particularly concerning the commitments made in respect of this timescale.

7.4.- The music ombudsman, a post whose creation is provided for by the bill on freedom of creation, architecture and heritage, may be called to rule on any question or dispute relating to the implementation of this memorandum of understanding.

Drawn up in Paris on 2 October 2015.

The English translation is made for information purposes, only the original French version is authentic.