Singing Under Contract, Streaming Under Pressure: The Performer's Right to Be Paid in a Post-Spotify World

Abstract

This paper critically examines whether existing international, EU, and UK legal frameworks, together with standard music industry contracts, adequately protect performers' rights to fair remuneration in the age of streaming. It analyses the Rome Convention, the WIPO Performances and Phonograms Treaty, and the EU Copyright in the Digital Single Market Directive, focusing on provisions for equitable remuneration, contract adjustment, and revocation. The discussion then turns to UK law, highlighting gaps in the Copyright, Designs and Patents Act 1988 and the findings of the UK Streaming Market Study on underpayment of performers. The paper evaluates how traditional recording contracts, recoupment clauses, and opaque royalty accounting interact with pro-rata streaming payment models to disadvantage independent and emerging artists. It concludes by proposing reforms including a statutory right to remuneration, enhanced transparency obligations, promotion of user-centric payment models, and expansion of equitable remuneration to streaming, aiming to create a more balanced and sustainable digital music economy.

Key words

1. Performer remuneration
2. Music streaming
3. Copyright and neighbouring rights
4. User-centric payment models
5. UK and EU copyright law
6. Digital music contracts

Introduction

The music industry has been experiencing a radical transition in the last 20 years as the sale of physical and digital music has been replaced with streaming music services like Spotify. Although streaming services have transformed the consumption of music, it has also posed a

considerable problem to the performers who are usually undercompensated by these services despite the massive increase in the amount of streaming revenues. This essay will discuss whether the current legislation and music industry agreements are sufficient to preserve the right to fair pay for performers in the digital era in the context of international legal frameworks, EU law, UK law, music contracts, and payment systems within the streaming environment.

The Global Legal Framework and International Agreements

International treaties such as the Rome Convention (1961)[1] and the WIPO Performances and Phonograms Treaty (1996)[2] are the basis of the protection of the rights of performers in the digital era. The Rome Convention established minimum international standards of protection of sound recordings and broadcasts, and left the details to national legislation. The WPPT revised them to apply online, and Article 15 permits countries to give a right to remuneration of digital uses, but does not require them to do so. Such optional status has the effect that some countries, including the UK, have not fully acted on it, whereas others, including Spain, have taken more robust steps to secure direct equitable remuneration to performers.

The European Union has attempted to overcome these issues in the Copyright in the Digital Single Market Directive (2019/790)[3], which offers stronger protection to performers. Articles 18, 20, and 22 are specifically concerned with the requirement of equitable compensation to the creators and the provision of the right to adjust the contracts and revoke them. These provisions signify a significant attempt to level the playing field between the streaming giants and performers whose labour is the key to the success of these services. The implementation of such laws, however, is inconsistent across the jurisdictions, and some performers in the UK and other EU countries continue to receive inadequate compensation even after such reforms.

The Struggles in UK Law

In the United Kingdom, the Copyright, Designs and Patents Act 1988[4] has been the primary legislation of performer rights. Although it is a comprehensive Act, it fails to appropriately deal with the problem of fair compensation by streaming services. The Act is mainly concerned with

[1] Vincy Fon and Francesco Parisi, 'The Formation of International Treaties' (2007) 3 Review of Law & Economics 37,

[2] World Intellectual Property Organization, 'WIPO Performances and Phonograms Treaty (WPPT)' (Geneva, 20 December 1996)

[3] Eleonora Rosati, *Copyright in the Digital Single Market: Article-by-Article Commentary to the Provisions of Directive 2019/790* (Oxford University Press 2021).

[4] Sheila J McCartney, 'Moral Rights Under the United Kingdom's Copyright, Designs and Patents Act of 1988' (1990) 15 Columbia-VLA Journal of Law & the Arts 205.

the traditional media, and it does not give any assurance to the performers in the fast-evolving digital world to be fairly compensated. The Act has some protection of performers in its sections 182D-182F, but it is not enough when considering the equitable payment of performers by digital streaming services. Therefore, it has been shown in the Streaming Market Study (2022-2023)[5] by the UK Intellectual Property Office that the majority of performers, particularly those who are not signed or are at the beginning of their careers, are underpaid by the streaming platforms.

The UK reform has been hampered by a combination of heavy lobbying by large record labels and streaming platforms, the complexity of the current systems of royalty distribution linked to international rights management, and a busy legislative agenda. Cases of streaming have been recognised by parliamentary committees, but the issue has taken a back seat to other aspects of digital economy regulation. The political conservatism and vested interests of the industry have helped in a long rate of change.

Music Contracts: The Realities of Performer Rights

The question of just compensation of performers is not just a legal issue but also a contractual issue. Most performers are bound by conventional music contracts that are very unfavourable towards the record labels and music publishers at the expense of the performers. Standard contracts like recording contracts, 360 deals and session musician agreements are filled with clauses like recoupment, which obligate artists to repay advances before they are eligible to collect royalties. They are also usually contracts that are not very transparent in the calculation and distribution of streaming royalties. The outcome of this is that most artists, particularly those with a smaller fan base, end up getting a small percentage of the income that their music earns on streaming sites.

An instance of such a difference is that of Taylor Swift, who re-recorded her earlier albums following the disagreement she had with her label regarding the ownership rights. This re-recording enabled Swift to have control of her music and rights over the royalties earned by the music, highlighting the significance of contractual control in a digital streaming-dominated era. Equally, movements such as the Broken Record campaign have highlighted the predatory nature of specific contracts and demanded fairer deals for performers, particularly in light of streaming.

[5] Hayleigh Bosher, 'Copyright and Streaming: A UK Perspective' in Séverine Dusollier (ed), *Copyright Law and Streaming* (Brill Nijhoff 2025) 429–453.

Pro-Rata Payment Model and the User-Centric Model Demand

The pro-rata model is one of the focal points of the existing streaming payment system[6], in which the income that streaming brings in is combined and shared with all artists in proportion to their total number of plays. The model favours prominent artists who have a massive following at the expense of smaller artists who only get a tiny percentage of the revenues. As an example, streaming services such as Spotify usually take 30 per cent of the money, 55 per cent of the money goes to record labels, and only 10-15 per cent of the money goes to the performers. This system does not always fairly reward lesser-known artists whose music is played a lot.

By contrast, a user-centric payment model[7], which counts performer payments based on the particular streams of their tracks, is a fairer solution. Smaller platforms like Resonate and Tidal have tested this method; they distribute money according to the listening habits of each user. Its large scale implementation would involve restructuring of the current systems, but the model is becoming popular among independent artists and may help decrease the gap in income in the streaming economy.

The payment model employed by streaming services is one of the most controversial topics in the digital music business. The modern-day standard is the pro-rata payment model[8], wherein the income generated by streaming services is accumulated into a pool and then later allocated to the artists based on the proportion of the total streams they receive. Although this system is effective in the case of the most popular artists with huge followings, it is highly discriminatory against new and independent artists who share a minimal income.

Proposed Reforms for Fairer Remuneration

In order to resolve the problems with underpayment and unfair terms of the contract, a few reforms may be introduced. To start with, the UK should create a statutory right to remuneration, as it is provided in the EU DSM Directive, which will ensure that performers are fairly compensated when they do their work on streaming platforms. Second, royalty reporting and non-negotiable contract clauses should be made more transparent, which would enable performers to learn more and negotiate the conditions of their agreements. Lastly, developing

[6] Jari Muikku, 'Pro Rata and User Centric Distribution Models: A Comparative Study' (2017) 2 Digital Media 14.
[7] Agnieszka Zmijewska, Elaine Lawrence, and Robert Steele, 'Classifying m-Payments – A User-Centric Model' (2004) Proceedings of the Third International Conference on Mobile Business, New York, USA, 12–13 July 2004, 1–11.
[8] Xiaochang Lei, 'Pro-rata vs User-centric in the Music Streaming Industry' (2023) 226 *Economics Letters* 111111

incentives to move to user-centric payment structures may also bring a more balanced distribution of streaming revenue, whereby less well-known artists receive fair pay according to their respective audience.

The move to streaming has revolutionised the music industry, offering unmatched access to music, yet also introducing major problems of equitable remuneration to the performers. Although international and European legal systems have moved forward to ensure the rights of the performers, a lot needs to be done to correct the imbalances in the system. The existing contract formats, revenue-sharing arrangements, and legal safeguards do not usually guarantee that the performers are adequately remunerated in the digital era. The music industry can start to safeguard the performers by providing them with a more reasonable share of the revenue earned by their creative output with the help of reforms to the industry, like providing statutory rights to remuneration, better transparency, and user-based payment systems.

International Legal Instruments and Their Impact on Performer Remuneration

The two leading treaties that form the basis of the international legal framework on performer rights in the digital era are the Rome Convention of 1961 and the WIPO Performances and Phonograms Treaty (WPPT) of 1996[9]. These tools were meant to safeguard the rights of performers economically and morally so that they are paid to use their performances, particularly in cases when their performances are being aired or recorded.

In 1961, the Rome Convention was adopted, which set the minimum standards of the protection of performers' rights regarding sound recordings and broadcasts. It also proposed the idea of fair compensation of performers, which meant that the performers would get paid whenever their works are performed publicly, but it did not specify many details, leaving it to national law. The Rome Convention provisions have, however, lost their relevance in the modern context as the music industry has evolved, particularly with the emergence of digital streaming, and as such, the WIPO Performances and Phonograms Treaty (WPPT) came into force in 1996. The WPPT modified these provisions to the online age, especially concerning the streaming of music. Article 15[10] is one of the most important provisions of the Convention as it enables countries to grant a right to remuneration, which is essential in the modern music ecosystem to

[9] Chanin Meephokee, 'Thailand and the WIPO Performances and Phonograms Treaty (WPPT): An Economic Point of View' (2022) 8(1) *Thammasat Review of Economic and Social Policy* 67–94.
[10] Christophe Geiger and Oleksandr Bulayenko, 'Creating Statutory Remuneration Rights in Copyright Law: What Policy Options under the International Legal Framework?' in Henning Grosse Ruse-Khan and Axel Metzger (eds), *Intellectual Property Ordering Beyond Borders* (Cambridge University Press 2022) 408–462.

performers. The right is not, however, a requirement, which means that many countries, such as the US and the UK, have not fully embraced it.

Although these global frameworks offer critical safeguards, they do not have much effect due to the absence of enforcement and cross-country implementation. As an illustration, the right to payment of digital performances in the UK and other European Union countries is not strong compared to other countries, such as Spain, where performers are better placed. Thus, the international legal instruments are not sufficient to guarantee fair compensation to performers, especially in the streaming era.

The Role of the European Union and UK Law in Performer Rights

The Copyright in the Digital Single Market Directive (2019/790) of the European Union[11] has established some essential measures that seek to enhance the rights and remuneration of performers in the digital era. The problem of fair compensation is covered explicitly in Articles 18, 20 and 22 of this Directive, where Article 18 requests that performers whose work is utilised on digital platforms such as streaming services should be fairly compensated. Also, Article 20 allows performers to modify their contracts when they are underpaid, and Article 22 offers a performer revocation right to end contracts in specific instances, especially when the terms no longer reflect the digital realities of music distribution. The purpose of these provisions is to make sure that the performers receive fair compensation due to streaming becoming the prevailing form of music consumption.

Nevertheless, the enforcement of these laws has been uneven, especially in the UK, where performers are continuing to struggle to receive equitable payment by streaming services. UK legislation, which is mainly regulated by the Copyright, Designs and Patents Act 1988[12], does not provide any assurance of payment towards streaming. Though the underpayment of performers was acknowledged in the Streaming Market Study by the UK Intellectual Property Office (2022-2023)[13], no significant legal changes have been implemented on the matter.

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[11] Jonathan Griffiths, Tatiana Synodinou, and Raquel Xalabarder, 'Comment of the European Copyright Society Addressing Selected Aspects of the Implementation of Articles 3 to 7 of Directive (EU) 2019/790 on Copyright in the Digital Single Market' (2023) 72(1) *GRUR International* 22–36

[12] Hazel Carty and Keith Hodkinson, 'Copyright, Designs and Patents Act 1988' (1989) 52(3) *The Modern Law Review* 369–379.

[13] Hayleigh Bosher, 'Copyright and Streaming: A UK Perspective' in Séverine Dusollier (ed), *Copyright Law and Streaming* (Brill | Nijhoff 2025) 429–453.

The UK Copyright Act does little to protect the rights of performers, targeting the traditional media, such as radio and television broadcasts. Nonetheless, with streaming, which was not a reality when the Copyright Act was written, performers remain the victims of exploitation through older contract models and the prevalence of extensive streaming services. It has used the current system of law to pay as few royalties as possible to artists, which is part of the debate about whether the law requires reform to safeguard the performers better.

The Evolution and Problems with Music Contracts

The contracts involving music, especially recording contracts, are critical in the determination of how performers should be compensated. As the years have gone by, the music industry has moved away to the point of selling physical records to digital streaming. Yet, there remains several performers locked into contracts originated when the primary source of revenue was in physical recordings, such as CDs and vinyl. These old agreements, which usually include the recoupment clause, demand that the performers refund the advances before earning royalties. With streaming, where the amount of revenue per stream is tiny, most performers do not pay back their advances, resulting in low or no payments.

As an illustration, in a standard contract, record labels may get 55 per cent of the streaming income, platforms, such as Spotify, 30 per cent, and only 10-15 per cent of the stream goes to the performers. This design is disproportionately in favour of labels, as they exercise the bargaining power and have more control over the distribution of revenues. The case of Taylor Swift, where the singer has re-released her old albums to have control over her music, shows how restrictive the terms of the contracts can be when it comes to earning money from their music.

The Broken Record campaign has played a critical role in raising awareness of these problems and promoting improved contractual terms and more equitable remuneration schemes for performers. The campaign states that most of the performers are being underpaid because of the opaque nature of the royalty calculation procedure and the dominance that record labels have over the earnings of the performers. On the same note, the pro-rata payment system, where artists receive payment depending on the percentage of overall streams, has been accused of favouring the established artists at the expense of the smaller independent artists. This model is very effective in watering down the income of less popular artists who frequently have difficulties in receiving visibility and streams.

Recommendations for Reform: Ensuring Fair Remuneration in the Streaming Era

Although this has been achieved to a great extent by the European Union and international legal framework, there is still a lot to be done in order to make sure that the performers receive fair payment for their work in the digital era. It should also be considered to improve the financial rights of artists because of the lopsidedness in revenue allocation between streaming providers, record labels, and artists.

1. Introducing a Statutory Right to Remuneration for Streaming Performers

The creation of a statutory entitlement for performers to be remunerated in streaming, which was suggested in the Streaming Market Study by the UK Intellectual Property Office (2022-2023)[14], is one of the most urgent reforms to be made in the UK. This reform would look like provisions of the UE Directive on DSM, which underlines that performers must be well remunerated. The statutory right to remuneration that requires streaming services to redistribute revenues more equitably among performers would be legally binding since those individuals whose activities bring value to the company in the form of revenue would receive their share based on such contributions.

At the moment, the UK system does not ensure that performers receive a fair portion of the revenue that the streaming companies generate. It is primarily a problem with unsigned artists/ independent artists without the resources or bargaining power to negotiate better terms. A legal guarantee enshrined across a statutory right would tip the power scale back in the direction of performers, giving them a legal guarantee, and pressuring streaming providers to use more open and more equitable methods.

2. Improving Transparency and Contractual Reforms

The other most crucial measure that can promote fair payments to performers is the enhancement of transparency concerning the reporting of royalties and the reduction of complicated contract elements. Royalty accounting can be unclear, and the performers are usually ignorant of the process of their earnings calculation. It would also give performers a chance to trace and be more aware of their earnings by demanding clear and detailed reports of the amount earned by the particular tracks by streaming facilities and record companies.

Also, it would benefit to reform the music contracts so that recoupment provisions that hold artists' earnings in shackles over the period of years would be avoided. Such provisions, i.e. advancing money against liability to recoup it to labels before artistic receipt of royalties,

[14] Tonia Damvakeraki, Catarina Ferreira da Silva, Sergio Gonzalez Miranda, Ioannis Revolidis, and Daniel Szego, *Intellectual Property Management* (European Blockchain Observatory and Forum, May 2024)

commonly keep the artists in debt to the labels, especially in the period concerning streaming with small payments per stream. The contracts must be modified to reflect the conditions of music consumption, which consists of the significant reliance on streaming as a music delivery mechanism, and more open and equitable payment systems, that would allow performers to prosper.

3. Encouraging the Shift to User-Centric Payment Models

The popularisation of user-centric payment models is considered one of the most radical transformations that may help to solve the unequal distribution of streaming revenue. In this model, the revenue is shared according to the listening behaviour of particular users, so that performers are paid directly according to the streams they produce[15]. This model differs from the current pro-rata system, where all the revenue is pooled and then distributed to all the artists depending on their percentages of total streams. Although the pro-rata model has been used in music streaming, it has increasingly been criticised as not being equitable, especially in the manner in which it favours prominent artists and record labels disproportionately.

The user-centric model suggests a direct and personalised way of distributing payment. Under this model, instead of all streams being pooled together, the money paid by a user who subscribes to the streaming service would come to the particular artists that they listen to. As an example, when a user listens to the songs of a specific artist during a month, the artist would benefit more than others whose songs the user did not hear, in terms of subscription fees. This makes the payment of artists closer to the real demand.

Such a change would especially benefit independent and up-and-coming artists, who tend to be under-represented in the pro-rata regime. These artists in the present model are most likely to be buried by a massive catalogue of popular songs, giving them a small piece of the total revenue pie. The pro-rata system has the potential to be very skewed in the distribution of payments, as all the streams are pooled together. The independent musicians, who do not enjoy millions of streams, get much less than the more famous artists with a wider following.

As an example, an artist with a small following may only have a few thousand streams in a single month. Yet, due to the fact that they are competing with international superstars who take up most of the pro-rata pool, they are entitled to a small portion of the revenue. This has resulted in a vicious cycle whereby independent artists find it hard to have enough traction to make it

[15] François Moreau, Patrik Wikström, Ola Haampland and Rune Johannessen, 'Implementing a User-Centric Payment Model in the Music Streaming Market: A Comparative Approach Based on Stream-Level Data' (2024) Information Economics and Policy 101103

financially in the music industry. With a user-centric model, on the other hand, the independent artist would receive more payment on a per-stream basis of their song, which is a fairer compensation method.

This payment structure has already been tested on a smaller scale by several smaller streaming platforms, such as Resonate and Tidal. Such services have been somewhat successful in allocating funds according to the individual user behaviour, and it has attracted the interest of different stakeholders in the music industry who think it may be a more sustainable and more equitable method of compensating artists. Although not yet standard, the potential to give performers more direct and transparent compensation has made the model an increasingly popular proposal with artists, independent labels, and music advocates.

Moving to a user-centric model[16] would necessitate drastic restructuring of the infrastructure of primary streaming services. Still, it would hold the potential of a system that more closely matches performer pay to real audience demand. It would guarantee that musicians are compensated appropriately according to the interest that they get, and this could enable the balance of the stage between mainstream and indie performers. Directly connecting the payment of a performer to the number of fans they have, this model would motivate platforms to promote a broader selection of artists and make sure that small-time musicians can continue working.

4. Expanding the Scope of Equitable Remuneration

Inclusion of streaming platforms in equitable remuneration[17], as in some countries such as Spain, would also guarantee payment of performers for the use of their music on the internet. According to the rules of Spain[18], artists have the right to receive payment directly through the streaming platforms, whether they are signed to a record label or not. The model has not been popular in the UK or beyond. Still, it is one of the possible ways of seeing that performers are compensated each time their work is used, even in digital environments such as streaming platforms.

Although record labels and platforms might oppose such developments, the growth of equitable remuneration would create a direct source of payment to performers, outside of the established

[16] Mark Culverhouse, *User-Centric Quality of Service Provisioning in IP Networks* (PhD Thesis, University of Plymouth 2012)
[17] Martin Senftleben and Elena Izyumenko, 'Author Remuneration in the Streaming Age – Exploitation Rights and Fair Remuneration Rules in the EU' (2024) Joint PIJIP/TLS Research Paper Series No 137.
[18] Frederik Juul Jensen, 'Rethinking Royalties: Alternative Payment Systems on Music Streaming Platforms' (2024) 48(3) *Journal of Cultural Economics* 439–462.

distribution systems, which tend to undercompensate performers. It would make sure that the performers are adequately compensated due to the exploitation of their works, especially in the fast-growing streaming market.

Conclusion:

Digital transformation of the music industry has seen numerous positive changes, like the access to music that has never been seen before by listeners all over the world. Nonetheless, this change has left most artists, especially independent artists, scrambling to get reasonable compensation for their music. The existing legal frameworks, such as international agreements, EU directives, and UK law, offer specific protection, but they are not always enough to deal with the streaming platforms problem.

Music contracts, payment models, and royalty distribution systems have not been able to change quickly enough to make sure that performers are remunerated fairly. The existing industry is structured to unfairly favour the record labels and platforms with recoupment clauses and a pro-rata payment model that leaves performers with little to no earnings, despite their work being consumed by the global audience.

These imbalances require meaningful reforms to be corrected. Statutory right to remuneration of streaming performers, enhancing transparency in royalty reporting, user-centric payment models, and extending equitable remuneration would do much towards making sure that performers are fairly compensated in the digital age. Such reforms would not only offer a more equitable system to the performers. Still, they would also lead to a more sustainable and fair music industry that considers contributions of all artists, both small and big.

With the ever-changing music industry, these changes will be essential in making sure that the industry, which is composed of performers, does not get left behind in the streaming era.