



Study on the international dimension of the single equitable remuneration right for phonogram performers and producers and its effect on the European Creative Sector

Final report

Written by NTT DATA and ICF with the support of an external expert

NTT DATA



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ABBREVIATIONS

| | |
|---------------|---|
| ACT | Association of Commercial Television and Video on Demand Services in Europe |
| AER | Association of European Radios |
| CJEU | Court of Justice of the European Union |
| CMO | Collective Management Organisation |
| CRM | Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ('Collective Rights Management Directive') |
| CRRA | Copyright and Related Rights Act |
| EC | European Commission |
| EEA | European Economic Area |
| EU | European Union |
| FIM | International Federation of Musicians |
| GDP | Gross Domestic Product |
| GVA | Gross Value Added |
| HORECA | Hotels, Restaurants and Catering (Foodservice industry sector) |
| HOTREC | Confederation of National Associations of Hotels, Restaurants, Cafés and Similar Establishments in the European Union and European Economic Area |
| IAVM | International Association of Venue Managers |
| IFPI | International Federation of the Phonographic Industry |
| IME | Independent Management Entity |
| MS | Member State |
| NACE | Nomenclature of Economic Activities |
| PPI | Phonographic Performance Ireland Ltd., the collective management organisation for producers in Ireland |
| RAAP | Recorded Artists Actors Performers Ltd., the collective management organisation for performers in Ireland |

| | |
|----------------------|--|
| RLR Directive | Directive 2006/115/EC on rental and lending right and on certain rights related to copyright in the field of intellectual property |
| SER | Single Equitable Remuneration |
| TFEU | Treaty on the Functioning of the European Union |
| UK | United Kingdom |
| USA | United States of America |
| WIPO | World Intellectual Property Organization |
| WPPT | WIPO Performances and Phonograms Treaty |

GLOSSARY

Broadcasting – The transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof.¹

Commercial phonogram – A phonogram published for commercial purposes.

Collective Management Organisation – Organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria: i) it is owned or controlled by its members; ii) it is organised on a non-profit basis.²

Communication to the public (right of \sim) – Transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram.³ It includes not only the communication to the public at a place other than from where the communication is originated, but also the communication to the public in presence of the public or, at least, at a place open to the public, of a phonogram or a broadcast.⁴

Equitable remuneration - Remuneration of certain acts carried out in respect of a work or an object of related rights in an amount and in a manner consistent with what may be regarded a normal commercial standards in case of authorization of the same act by the owner of copyright or related rights.⁵ In the context of this study, the 'Single Equitable Remuneration' specifically refers to the remuneration that is paid by users to the relevant performers and phonogram producers when a commercial phonogram, or its reproduction, is used for broadcasting by wireless means or for any communication to the public, on the basis of Article 8(2) of the RLR Directive.

Independent Management Entity – Organisation which is authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is i) neither owner nor controlled, directly or indirectly, wholly or in part, by rightholders and ii) organised on a for-profit basis.⁶

¹ WIPO Performances and Phonograms Treaty (WPPT), 1996, Article 3(f). Last accessed on 04/03/2022 and available at: <https://wipolex.wipo.int/en/text/295477>.

² Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (CRM Directive), Article 3(a). Last accessed on 04/03/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0026>

³ WPPT, Article 2(g). Last accessed on 04/03/2022 and available at: <https://wipolex.wipo.int/en/text/295477>.

⁴ WIPO, *Guide to copyright and related rights treaties administered by WIPO and glossary of copyright and related rights terms*, 2003, p. 276. Last accessed on 04/03/2022 and available at: <https://tind.wipo.int/record/28722>

⁵ WIPO, *Guide to copyright and related rights treaties administered by WIPO and glossary of copyright and related rights terms*, op.cit., p.286. Last accessed on 04/03/2022 and available at: <https://tind.wipo.int/record/28722>

⁶ CRM Directive, op.cit., Article 3(b). Last accessed on 04/03/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0026>

Market practices – In the context of this study, ‘market practices’ are understood as the practical implementation of the single equitable remuneration right across Member States, including the payment flows, the stakeholders involved, the agreements in place, and the distribution rules applicable.

Material reciprocity – Principle under international norms on copyright and related rights consisting in making protection, or the extent of protection, of nationals of another country conditional on the existence of the same (or at least similar) extent of protection granted in that other country, to the nationals of the country concerned. It is contrary to the national treatment principle.⁷

National treatment – Basic principle under international norms on copyright and related rights according to which a country must accord to the nationals of other countries, parties to the same international instruments, a treatment no less favourable than it accords to its own nationals with regard to such rights.⁸

Performer – Actor, singer, musician, dancer, and any other person who act, deliver, declaim, play in, interpret, or otherwise perform artistic works or expressions of folklore.⁹ In the context of this study this term only refers to the performers of a phonogram.

Performance rights – Term used by the recording industry to refer to the use of sound recordings by broadcasters and by public venues or venues accessible to the public (e.g. retailers, bars, hotels, gyms, nightclubs, etc.).¹⁰ This term therefore encompasses broadcasting and communication to the public uses, which are relevant for the purposes of the SER. Additionally, the ‘performance rights’ revenues presented in this report, based on data from IFPI, also include some revenues from private copying levies and internet licensing (i.e. webcasting, subscription video on demand and network PVR).

Phonogram – The fixation of the sounds of a performance or of other sounds, or of representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work.¹¹

Phonogram producer – The person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds.¹²

Points of attachment – Eligibility criteria which determine the rightholders benefiting from the protection provided in an international treaty. In the specific case of this study, the points of attachment are the criteria set out at international and at national level

⁷ WIPO, *Guide to copyright and related rights treaties administered by WIPO and glossary of copyright and related rights terms*, op.cit., p. 306.

⁸ WIPO, *Guide to copyright and related rights treaties administered by WIPO and glossary of copyright and related rights terms*, op.cit., p. 297. Last accessed on 04/03/2022 and available at: <https://tind.wipo.int/record/28722>

⁹ WPPT, op.cit., Article 2(a). Last accessed on 04/03/2022 and available at: <https://wipolex.wipo.int/en/text/295477>.

¹⁰ IFPI, *Global Music Report 2022*, p.7. Last accessed on 05/09/2022 and available at: https://www.ifpi.org/wp-content/uploads/2022/04/IFPI_Global_Music_Report_2022-State_of_the_Industry.pdf

¹¹ WPPT, op.cit., Article 2 b). Last accessed on 04/03/2022 and available at: <https://wipolex.wipo.int/en/text/295477>.

¹² WIPO, *Guide to copyright and related rights treaties administered by WIPO and glossary of copyright and related rights terms*, op.cit., p. 304.

allowing to identify the phonogram producers and performers entitled to benefit from the single equitable remuneration.

Public performances – Term commonly used by the recording industry to refer to the use of sound recordings in public venues or in places accessible to the public.

RAAP judgement – Judgement delivered by the Court of Justice of the European Union in September 2020 in relation to a case brought to it by the Recorded Artists Actors Performers Ltd (RAAP) against Phonographic Performance Ireland Ltd (PPI). The case concerned the interpretation of Article 8(2) of Directive 2016/115/EC as regards the rightholders entitled to receiving the single equitable remuneration.¹³

RLR Directive – Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which provides for a right to a single equitable remuneration for phonogram producers performers and for the use of their phonograms published for commercial purposes by broadcasters and public venues (Article 8(2)).

Rightholder – Person or entity, other than a collective management organisation, that holds a related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue.¹⁴ In this study rightholders encompass performers and producers.

Third country – Country that is not a member of the European Union or the European Economic Area.

User – Any person or entity that is carrying out acts subject to the authorisation of rightholders, remuneration of rightholders or payment of compensation to rightholders and is not acting in the capacity of a consumer.¹⁵ In the context of this study, users refer to broadcasters, bars, restaurants, discotheques and similar public venues that are required to pay a fee for playing commercial phonograms.

¹³ Case C-265/19, Recorded Artists Actors Performers Ltd v Phonographic Performance (Ireland) Ltd, 20 September 2020. Last accessed on 04/04/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0265>

¹⁴ CRM Directive, op.cit., Article 3(c). Last accessed on 04/03/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0026>

¹⁵ CRM Directive, op.cit., Article 3(k). Last accessed on 04/03/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0026>

ABSTRACT

Phonogram producers and performers receive a single equitable remuneration (SER) when their phonograms are played in public and broadcasted on radio and TV. In September 2020, a judgement by the CJEU in the RAAP PPI case challenged the common understanding among Member States of their discretion to apply material reciprocity as regards the recognition of this right towards third-country rightholders, based on permitted reservations in relevant international law. The interpretation by the CJEU has challenged existing national rules and practices not extending the right to SER to rightholders from third countries which did not recognise this right to EU performers and producers. This study has found that at least eight Member States are directly impacted by the current interpretation of EU law. However, so far only three of these Member States have either modified their legislation and/or their market practices to comply with the CJEU's interpretation. There are divergent views amongst stakeholders about the need for or the scope of an EU intervention to address the judgement effects. This study has attempted to quantify the economic impact of two scenarios: the application of national treatment across the EU (reflecting the CJEU's interpretation of EU law) and the introduction of material reciprocity at EU level.

RÉSUMÉ

Lorsque les phonogrammes sont joués en public et diffusés à la radio et à la télévision, les producteurs de phonogrammes et les artistes interprètes ou exécutants reçoivent une rémunération équitable unique (SER). En septembre 2020, un arrêt de la CJUE dans l'affaire RAAP PPI a remis en cause la compréhension commune des États membres quant à leur pouvoir discrétionnaire d'appliquer le principe de réciprocité en ce qui concerne la reconnaissance de ce droit de rémunération envers les ayants droit des pays tiers, sur la base des réserves autorisées dans le droit international. L'interprétation de la CJUE a remis en cause les règles et pratiques nationales existantes n'étendant pas le droit à la SER aux ayants droit des pays tiers qui eux ne reconnaissaient pas ce droit aux artistes interprètes ou exécutants et aux producteurs de l'UE. Cette étude a révélé qu'au moins huit États membres sont directement touchés par l'interprétation actuelle du droit communautaire en vigueur. Cependant, à ce jour, seuls trois de ces États membres ont modifié leur législation et/ou leurs pratiques commerciales pour se conformer à l'interprétation de la CJUE. Les parties prenantes ont des avis divergents sur la nécessité ou la portée d'une intervention de l'UE pour remédier aux effets de l'arrêt. Cette étude a tenté de quantifier l'impact économique de deux scénarios : l'application du traitement national dans toute l'UE (reflétant l'interprétation du droit communautaire par la CJUE) et l'introduction du principe de la réciprocité matérielle au niveau de l'UE.

BESCHREIBUNG

Tonträgerhersteller und ausübende Künstler erhalten eine Vergütung (SER), wenn ihre Tonträger öffentlich wiedergegeben und in Rundfunk und Fernsehen gesendet werden. Im September 2020 stellte ein Urteil des EuGH in der Rechtssache RAAP PPI die allgemeine Auffassung unter den Mitgliedstaaten infrage, wonach es ihnen freistünde, bei der Anerkennung dieses Verwertungsrechts gegenüber Wahrnehmungsberechtigten aus Drittländern das Prinzip der materiellen Gegenseitigkeit anzuwenden, und zwar auf der Grundlage zulässiger Vorbehalte im internationalen Recht. Die Auslegung des EuGH stellte bestehende nationale Vorschriften und Praktiken infrage, die das Recht auf SER solchen Rechteinhabern aus Drittländern vorenthielten, welche dieses Recht ihrerseits nicht gegenüber ausübenden Künstlern und Tonträgerherstellern aus der EU anerkannten. Die vorliegende Studie hat ergeben, dass mindestens acht Mitgliedstaaten von der aktuellen Auslegung des EU-Rechts direkt betroffen sind. Bislang haben jedoch nur drei dieser Mitgliedstaaten ihre Rechtsvorschriften und/oder ihre Marktpraktiken geändert, um der Auslegung des EuGH zu entsprechen. Unter Stakeholdern gibt es unterschiedliche Ansichten über die Notwendigkeit oder den Umfang einer EU-Intervention, um die Auswirkungen des Urteils anzugehen. In der vorliegenden Studie wurde versucht, die wirtschaftlichen Auswirkungen zweier Szenarien zu quantifizieren: die Anwendung der Inländerbehandlung in der gesamten EU (entsprechend der Auslegung des EuGH) und die Einführung des Prinzips der materiellen Gegenseitigkeit auf EU-Ebene.

EXECUTIVE SUMMARY

Context and legal background of the right to a single equitable remuneration

International and European copyright legislation confer a right to a single equitable remuneration (SER) to phonogram producers and performers for the use of their phonograms published for commercial purposes for broadcasting or any communication to the public. Under the relevant international agreements on the matter (i.e. the Rome Convention and WPPT), the general principle for the recognition of this right towards third-country rightholders is national treatment. This implies that countries must accord to nationals of other countries, parties to the same agreement, a treatment no less favourable than they accord to their own nationals with regard to the rights under consideration. However, both treaties allow Contracting States to derogate the application of national treatment by use of permitted reservations and apply material reciprocity instead.

Until recently, Member States considered the application of material reciprocity as a national prerogative. As a result, they followed different approaches regarding the acknowledgement and payment of the SER towards third-country rightholders. Some Member States did not extend this right to third-country rightholders whose countries did not or not fully recognise this right to EU phonogram producers and performers pursuant to a reservation made under the Rome Convention and/or under the WPPT. Other Member States granted instead this right to any relevant rightholder, regardless of their nationality

In a recent judgement in September 2020, the Court of Justice of the European Union (CJEU) ruled that the concept of 'relevant performers' enshrined in Article 8(2) of the RLR Directive is to be given an autonomous and uniform interpretation throughout the EU. The Court also ruled that any limitation on the exercise of SER must be provided for by EU law through a clear and precise provision. Consequently, some national provisions and/or market practices in the EU Member States have been challenged.

Supporting the Commission in understanding the implications of RAAP

This study aims at supporting the European Commission in understanding the state-of-play and emerging issues related to the remuneration of performers and phonogram producers stemming from the RAAP judgement. As such, it aims at complementing the broader evidence collection that the Commission is carrying out, while considering an initiative on this matter. More specifically, this study seeks to:

- Provide an overview of the national rules and market practices regarding the collection and distribution of the SER to third-country phonogram producers and performers before and after the Court's judgement;
- Quantify the amounts of SER collected in the EU and distributed to third-country phonogram producers and performers;
- Identify potential impacts of the application of national treatment on performers, producers and users in the EU, following the current state of EU law as interpreted by the RAAP judgement;
- Present and assess the impact of possible policy options to address the actual and/ or potential effects of the application of national treatment by the EU.

Methodological approach and research limitations

This study covers the whole EU through information and data gathered during the desk research and the interviews with EU umbrella organisations and a pan-European independent management entity (IME). The national fieldwork focused on a sample of 18 EU Member States: Belgium, the Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Lithuania, Hungary, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden. The findings reported in this study are based on three main sources:

- Desk research at EU level on the relevant literature and in the selected Member States to gather information on the national rules and publicly available economic data;
- Sixty-nine in-depth interviews with umbrella organisations representing relevant stakeholders in the music value chain, with CMOs managing performers' and/or record producers' rights in the target countries, experts in copyright law, and relevant national authorities, as well as with a set of record producers' associations and users' associations in six focus Member States. These Member States were selected based on a set of criteria determining where the impact of the RAAP judgement was anticipated to be most significant;
- An online workshop bringing together a total of 47 participants including representatives from 13 Member States and from EU umbrella organisations, practitioners and academics in the music sector, organised on the 19th of May 2022.

The data on actual and/or potential economic implications of the matter on rightholders, users and CMOs in the EU is limited. There are several reasons for that. Firstly, the available evidence suggests that the revenues collected by CMOs can be distributed one or two years after the year of collection, or even later. Secondly, the SER figures for 2020 and 2021 for which data has been gathered may be altered by the impact of the COVID-19 pandemic on these revenues and, as such, cannot be directly compared with pre-RAAP volumes. Lastly, the data on the SER provided by CMOs in some of the selected Member States is often partial and offers variable degrees of granularity and timeframe coverage, thereby making it difficult to compare and draw conclusions valid for the whole EU. Nonetheless, a minimum set of data was collected for the majority of the Member States analysed that includes: the annual SER revenues collected and distributed over 2017-2021, including breakdown per type of use, the average annual share of SER revenues collected for the use of non-EEA repertoire in the EU, and the average annual share of SER revenues received from third-country CMOs for the use of EU repertoire abroad. Therefore, it is expected that impacts will only start to show from 2022 or later. Thirdly, to date only one Member State has so far modified the relevant legal provisions and one Member State has changed its market practices in line with the CJEU's decision. The main findings of our research are summarised hereafter.

The specific uses eligible for the SER slightly differ across Member States

The specific uses triggering the payment of the SER that are encompassed within 'communication to the public' and 'broadcasting' slightly differ across Member States. Such differences have an impact on the volume of users that are subject to the payment of fees for the use of music in each Member State, which can shape the overall figures across countries.

- Broadcasting: All Member States with the exception of Belgium collect the SER from both radio and TV broadcasting. Several Member States go beyond the

traditional broadcasting uses defined in international law and in the RLR Directive and grant this remuneration also for webcasting, simulcasting, and/or cable retransmission.

- Communication to the public: Hospitality venues (e.g. hotels, restaurants, cafes, nightclubs) and shops are eligible public venues across countries. Additionally, some Member States also collect the SER for the use of phonograms in professional transportation means (e.g. taxis, ships, buses or airplanes), in work spaces or offices, and in special places open to the public such as day-care, hospitals, retirement homes or churches.

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Half of the Member States analysed apply material reciprocity for the recognition of the SER to third-country rightholders, or did so until the RAAP judgement

The study departs from the assumption that Member States applying material reciprocity are going to be the most impacted by the interpretation of EU law endorsed by the RAAP judgement. 13 of the Member States analysed envisage material reciprocity in their national legislation with respect to third-country rightholders, either directly or by means of an indirect reference to reservations permitted under international law. However, only half of these Member States apply this exception in practice as regards the SER. In the other Member States the envisaged material reciprocity is not applied due to various reasons, such as: (i) material reciprocity is only envisaged in the absence of applicable international treaties (ii) material reciprocity is only envisaged for authors' rights (iii) material reciprocity has been amended by a subsequent law, or (iv) the law is interpreted in the light of the RAAP judgement.

Member States apply different eligibility criteria to determine the rightholders who are entitled to the SER

'Points of attachment' are the criteria which, alongside the principles of national treatment and material reciprocity, determine the third-country rightholders who are eligible for the SER in each country. The Rome Convention provides for different points of attachment for phonogram producers and performers and gives contracting parties the opportunity to choose the ones they wish to apply through a system of permitted reservations. 11 of the 18 Member States examined as part of this study have made notifications in order to exclude the application of one or more of the points of attachment envisaged in the Rome Convention. This, has resulted in a high diversity of eligibility criteria for the SER across Member States' legal frameworks.

Only two Member States have modified their legislation as a result of the RAAP judgement

Our research has only found evidence of two Member States having amended their legislation in response to the RAAP judgement. In the Netherlands, the Copyright Act was amended in January 2021 to ensure that national treatment as regards the SER is granted to rightholders from WPPT contracting states, irrespective of any reservations made under Article 15(3) of that Treaty. However, the Dutch Neighbouring Rights Act still provides for material reciprocity with regard to the Contracting States of the Rome Convention. In France, the legislator amended a sectorial law to minimise the financial impact of the retroactive effect of the judgement. Some national authorities interviewed in the Member States consider that changes to their respective laws are not necessarily required, as national provisions can be interpreted in the light of the judgement. The impact is therefore to be expected rather on the market practices.

Different parameters are used for calculating the SER tariffs depending on the type of user and sector, with national authorities generally playing a supervisory role

In the case of broadcasters, tariffs are either calculated as a share of their turnover or on the basis of the actual music played, whereas public venues typically pay a lump sum based on their surface or seat capacity. In some Member States the relevance of music for the user's activities is also taken into account in the tariff. In some Member States national authorities are involved in this process.

There exist at least four organisational models for the collection and distribution of the SER

This study has identified four schemes for the collection and distribution of the SER in the examined Member States: (i) joint societies model, where one CMO collects and distributes the SER for and to both producers and performers; (ii) separate societies model, where distinct CMOs represent the rights of producers and phonograms and each of them collects the SER for a set of relevant uses and transfers the corresponding share to the other CMO; (iii) one-stop-shop model, where separate CMOs offer a centralised place to ease the collection of the SER (and/or other rights) from users, and the collected sums are then distributed by each CMO to their respective rightholders; and (iv) a mixed model combining features of the one-to-shop with features of the separate societies model.

Three schemes have been observed for the distribution of the SER to third-country rightholders

There are three main approaches across Member States regarding the distribution of SER revenues collected to third-country rightholders:

- Ten (10) Member States **unconditionally pay out** the collected sums for the use of foreign repertoire in full amount to the corresponding rightholders, irrespective of their nationality and of any reservations made by their countries to the Rome Convention and/or WPPT;
- Two (2) Member States set **different eligibility criteria** for the collection and for the distribution of the SER to third-country phonogram producers and/or performers. As a result, some SER revenues collected in these countries for the use of international repertoire are not distributed to the corresponding third-country rightholders, but are allocated instead to other means or subjects;
- Six (6)¹⁶ Member States **neither collect nor distribute the SER** for the use of international repertoire that is considered as non-eligible for protection in their territory on the basis of material reciprocity.

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State of play regarding the collection and distribution of the SER

Over the period 2017-2021, the SER collected by CMOs in the Member States considered slightly increased by 5.5 % per year on average in 2017-2019, with a sharp decrease in 2020 as a result of the health pandemic. Data for 2021 shows that the effects of the economic downturn caused by the Covid-19 pandemic persist, albeit to a lower extent.

¹⁶ The Netherlands belonged to this model until January 2021, when the amendment to the Copyright Act was made following RAAP judgement. It is still counted in this figure.

In the same period, the amount of SER distributed by CMOs also slightly increased by 5.2 % per year on average in 2017-2019 in most of the countries considered. Communication to the public accounts for the most important source of the SER in most of the Member States considered (over 58 % of total SER collection), but in recent years the importance of broadcasting uses in the SER has increased. Member States also collect the SER from third countries for the use of national repertoire abroad, and this constitutes a part of the SER collected and then distributed by CMOs. These international revenues only represent a marginal share of the total SER collected by CMOs in the countries considered, often below 10 %. The US and the UK are the most important music markets for EU Member States. These countries account altogether for 50 % to 80 % of the SER collected from third-country CMOs in most of the analysed Member States. On the distribution side, despite the data limitations, CMOs pay over half of the total SER collection to national rightholders, while the distribution to EU/EEA and to third-country rightholders accounts on average for 19 % and 26 %, respectively. Within the revenues paid by EU CMOs to third-country rightholders, 30 % to 50 % goes to the US and the UK.

In two Member States market practices have significantly changed as a result of the RAAP judgement

Based on the evidence gathered as part of this study, at least in two countries market practices have been so far significantly adapted as a result of the judgement by the CJEU. Following the amendment to its legislation in January 2021, the relevant Dutch CMO negotiated a RAAP surcharge to its applicable tariffs with public users that implied a 26.6 % cumulated increase for 2021 and 2022 on account of the additional music repertoire previously not protected in the country. In the case of Austria, while the Austrian Copyright Act has not been amended, the national CMO has ceased to apply material reciprocity for the payment of the SER to third-country rightholders due to the binding nature of the decisions by the CJEU in this country.

Varying impact of national treatment under current interpretation of EU law in EU Member States

Of the Member States analysed in this study, the eight countries applying material reciprocity have been found to be impacted by the application of national treatment. The impact for each of them differs depending on their respective market practices regarding the collection and distribution of the SER to third-country rightholders.

With no changes to the applicable tariffs, the immediate consequence for the countries applying material reciprocity will be a reduction in the share of SER distributed to national and EU/EEA rightholders, as a larger share of SER will now be paid to third-country rightholders. Another possible economic effect is a possible increase in the applicable tariffs paid by users to compensate partially or in full for the higher SER distribution to third-country rightholders and maintain the level of payments to national and EU/EEA rightholders. The two effects are not mutually exclusive, as observed in the Netherlands. CMOs in other Member States affected forecast high tariff increase attempts, which will likely face resistance by users.

This study has estimated the economic impact of the application of national treatment in the Member States applying material reciprocity, focusing on the US as a main important international music market for the EU, alongside the UK since Brexit. The estimations are built on the share of US repertoire played in the affected countries (approximately 30 % of the total music repertoire) and currently paid to US rightholders (between 5 % and 10 % of the total distribution). Based on the data gathered for the eight Member States impacted, this study predicts a yearly financial impact of minimum

EUR 35.2 to up to 66.3 million in terms of additional revenue outflows from the EU to the US alone. These estimations are consistent with the analysis of economic impacts made by the CMOs in the affected countries. Our estimations are however lower than the ones by other stakeholders representing the recording industry, which forecast an annual financial loss for the EU of between EUR 97.5 million and 112.9 considering the same Member States. However, the comparability of these estimations is limited due to different methodological choices regarding the reference value used for the estimations, the timeframe considered, and the parameters used for calculating the share of US repertoire.

Within rightholders, performers are expected to be more impacted by the application of national treatment than producers, considering the higher absolute share of SER revenues in their respective overall revenue portfolio. Within producers, independent and smaller labels are expected to be impacted more considerably than the major labels, which have an internationally diversified music repertoire. The evidence collected does not show major impacts of the application of national treatment on CMOs' operating costs and administrative burden. In fact, there are no visible differences in the management fees across Member States regardless of the type of SER regime applied. In any case, such costs would be only temporary.

Possible spill-over effects of the RAAP judgement are feared by some stakeholders

Some stakeholders consulted as part of this study fear that the effects of the current EU law as interpreted in the RAAP judgement could be extended to any copyright area where a remuneration or compensation is collected and distribution to third-country rightholders is based on reciprocity. Specifically, stakeholders are concerned about private copying. Additionally, they believe that the RAAP judgement has created legal uncertainty as most of the Member States that previously applied material reciprocity on the basis of international law have still not amended neither their national rules, nor their market practices. Lastly, stakeholders expressed their concerns regarding the retroactive effects of the judgement in view of possible claims for back payments and/or state liability for the incorrect application of the RLR Directive. Specifically, it is not clear how far back in time payments for rightholders could be claimed.

Potential policy options examined as part of this study

It arises from the RAAP judgement that national treatment must be applied in the EU, unless the EU legislature decides to limit the right to SER for third-country nationals through material reciprocity. This study has assessed two possible policy options to address the identified consequences of the EU law as interpreted in the RAAP judgement: the application of national treatment (no intervention by the EU) and the introduction of a legal basis for the application of material reciprocity at EU level.

SOMMAIRE

Contexte et historique juridique du droit à une rémunération équitable

Les textes internationaux et européen sur le droit d'auteur confèrent aux producteurs de phonogrammes et aux artistes interprètes ou exécutants un droit à une rémunération équitable et unique (SER) pour l'utilisation de leurs phonogrammes publiés à des fins commerciales pour la diffusion à la radio ou TV ou toute communication au public. En vertu des accords internationaux en vigueur en la matière (c'est-à-dire la Convention de Rome et le WPPT¹⁷), le principe général pour la reconnaissance de ce droit à l'égard des titulaires de ce droit à la rémunération des pays tiers est le traitement national. Cela implique que les pays doivent accorder aux ressortissants des autres pays, parties au même accord, un traitement non moins favorable que celui qu'ils accordent à leurs propres ressortissants en ce qui concerne les droits considérés. Toutefois, les deux traités permettent aux États contractants de déroger à l'application du traitement national par le biais de réserves autorisées et d'appliquer le principe de la réciprocité matérielle à la place.

Jusqu'à récemment, les États membres considéraient l'application du principe de la réciprocité matérielle comme une prérogative nationale. En conséquence, ils ont suivi des approches différentes concernant la reconnaissance et le paiement du SER envers les titulaires de droits de pays tiers. Certains États membres n'ont pas étendu ce droit aux artistes interprètes et producteurs de phonogrammes des pays tiers dont les pays ne reconnaissent pas ou pas entièrement ce droit aux producteurs de phonogrammes et aux artistes interprètes ou exécutants de l'UE. Ceci est possible en vertu d'une réserve émise dans le cadre de la Convention de Rome et/ou du WPPT. D'autres États membres ont plutôt accordé ce droit à tous les ayants droits concernés, quelle que soit leur nationalité.

Dans un arrêt récent de septembre 2020, la Cour de justice de l'Union européenne (CJUE) a jugé que la notion d'artistes interprètes ou exécutants concernés" est inscrite à l'article 8, paragraphe 2, de la directive RLR¹⁸. Cette notion doit faire l'objet d'une interprétation autonome et uniforme dans toute l'UE. La Cour a également jugé que toute limitation de l'exercice du SER doit être prévue par le droit de l'UE au moyen d'une disposition claire et précise. Par conséquent, certaines dispositions nationales et/ou pratiques de marché dans les États membres de l'UE ont été remises en question.

Aider la Commission à comprendre les implications de l'arrêt RAAP de la CJUE

Cette étude vise à aider la Commission européenne à comprendre l'état de la situation et les questions émergentes liées à la rémunération des artistes interprètes ou exécutants et des producteurs de phonogrammes qui découlent de l'arrêt RAAP. En tant que telle, elle vise à compléter la collecte d'information plus large que la Commission effectue, tout en envisageant une initiative sur cette question. Plus précisément, cette étude vise à :

- Fournir une vue d'ensemble des règles nationales et des pratiques du marché concernant la collecte et la distribution du SER aux producteurs de

¹⁷ Traité de l'OMPI sur les interprétations et exécutions et les phonogrammes

¹⁸ Directive 2006/115/ CE du 12 décembre 2006 relative au droit de location et de prêt et à certains droits voisins du droit d'auteur dans le domaine de la propriété intellectuelle

phonogrammes et aux artistes interprètes ou exécutants des pays tiers avant et après l'arrêt de la Cour ;

- Quantifier les montants du SER collectés dans l'UE et distribués aux producteurs de phonogrammes et aux artistes interprètes ou exécutants venants des pays tiers ;
- Identifier les impacts potentiels de l'application du traitement national sur les artistes-interprètes, les producteurs et les utilisateurs dans l'UE, en fonction de l'état actuel du droit communautaire tel qu'interprété par l'arrêt RAAP ;
- Présenter et évaluer l'impact des options réglementaires possibles pour traiter les effets réels et/ou potentiels de l'application du traitement national par l'UE.

Approche méthodologique et limites de la recherche

Cette étude couvre l'ensemble de l'UE grâce aux informations et aux données partagés lors de la recherche documentaire et des entretiens avec les associations représentant des producteurs phonographiques, les artistes interprètes et des organismes de gestion collectives dans l'UE et une entité de gestion indépendante paneuropéenne (IME). Les recherches au niveau national se sont concentrées sur un échantillon de 18 États membres de l'UE : Belgique, République tchèque, Allemagne, Estonie, Irlande, Grèce, Espagne, France, Croatie, Italie, Lituanie, Hongrie, Pays-Bas, Autriche, Portugal, Slovénie, Finlande et Suède. Les résultats présentés dans cette étude sont basés sur trois sources principales :

- Des recherches de documents et publications au niveau de l'UE et dans les États membres sélectionnés pour recueillir des informations sur les règles nationales et les données économiques accessibles au public ;
- Soixante-neuf entretiens approfondis avec des organismes paneuropéens représentant les parties prenantes de la chaîne de valeur de la musique, avec des organismes de gestion collectives (CMO) gérant les droits des artistes et/ou des producteurs de phonogrammes dans les États membres sélectionnés, des experts en droit d'auteur et les autorités nationales compétentes, ainsi qu'avec un ensemble d'associations de producteurs de phonogrammes et d'associations d'utilisateurs dans six des 18 États membres sélectionnés. Ces derniers ont été sélectionnés sur la base d'une série de critères déterminant où l'impact de l'arrêt RAAP était censé être le plus important ;
- Un workshop en ligne réunissant au total 47 participants, dont des représentants de 13 États membres et d'organismes des parties prenants au niveau de l'UE, des praticiens et des universitaires du secteur de la musique, organisé le 19 mai 2022.

Les données sur les implications économiques réelles et/ou potentielles de la question sur les ayants droit, les utilisateurs et les CMO dans l'UE sont limitées. Il y a plusieurs raisons à cela. Premièrement, les données disponibles suggèrent que les revenus perçus par les CMO peuvent être distribués un ou deux ans après l'année de collecte, voire plus tard encore. Deuxièmement, les chiffres du SER pour 2020 et 2021 pour lesquels des données ont été recueillies peuvent être modifiés par l'impact de la pandémie de COVID-19 sur ces revenus et, à ce titre, ne peuvent pas être directement comparés aux volumes antérieurs à l'arrêt RAAP. Enfin, les données sur le SER fournies par les CMO de certains des États membres sélectionnés sont souvent partielles et offrent des degrés variables dans les détails et dans le temps, ce qui rend difficile toute comparaison et toute conclusion valable pour l'ensemble de l'UE. Néanmoins, un ensemble minimal de

données a été collecté pour la majorité des États membres analysés, notamment : les recettes annuelles des SER collectées et distribuées sur la période 2017-2021, y compris par type d'utilisation des phonogrammes (radio et TV, communication public), la part annuelle moyenne des recettes des SER collectées pour l'utilisation du répertoire d'origine des pays tiers, et la part annuelle moyenne des recettes des SER reçues par les CMO de pays tiers pour l'utilisation du répertoire de l'UE à l'étranger. Par conséquent, les effets ne devraient commencer à se faire sentir qu'à partir de 2022 ou plus tard. Troisièmement, à ce jour, seul un État membre a modifié sa législation en cause et un État membre a changé ses pratiques de marché conformément à la décision de la CJUE. Les principaux résultats de notre recherche sont résumés ci-après.

Les utilisations spécifiques éligibles au SER diffèrent légèrement d'un État membre à l'autre.

Les utilisations spécifiques déclenchant le paiement du SER qui sont comprises dans la définition "communication au public" et la "diffusion à la radio et TV" diffèrent légèrement d'un État membre à l'autre. Ces différences ont un impact sur le volume d'utilisateurs qui sont soumis au paiement de redevances pour l'utilisation de musique dans chaque État membre, ce qui peut influencer les chiffres globaux entre les pays.

- Diffusion à la radio et TV : Tous les États membres, à l'exception de la Belgique, perçoivent le SER pour la diffusion à la radio et la télévision. Plusieurs États membres vont au-delà des utilisations traditionnelles de radiodiffusion définies dans le droit international et dans la directive RLR et accordent également cette rémunération pour la diffusion sur le web, la diffusion simultanée et/ou la retransmission par câble.
- Communication au public : Les lieux d'accueil (par exemple, les hôtels, restaurants, cafés, boîtes de nuit) et les magasins sont des lieux publics éligibles dans tous les pays. En outre, certains États membres perçoivent également le SER pour l'utilisation de phonogrammes dans des moyens de transport professionnels (par exemple, taxis, bateaux, bus ou avions), dans des espaces de travail ou des bureaux, et dans des lieux spéciaux ouverts au public tels que les crèches, les hôpitaux, les maisons de retraite ou les églises.

La moitié des États membres analysés appliquent le principe de la réciprocité matérielle pour la reconnaissance du SER aux ayants droit de pays tiers, ou le faisaient jusqu'à l'arrêt RAAP.

L'étude part de l'hypothèse que les États membres appliquant le principe de la réciprocité matérielle seront les plus touchés par l'interprétation du droit communautaire entérinée par l'arrêt RAAP. 13 des États membres analysés envisagent le principe de la réciprocité matérielle dans leur législation nationale à l'égard des ayants droit de pays tiers, soit directement, soit par le biais d'une référence indirecte aux réserves autorisées par le droit international. Toutefois, seule la moitié de ces États membres appliquent cette exception dans la pratique en ce qui concerne le SER. Dans les autres États membres, le principe de la réciprocité matérielle n'est pas appliquée pour diverses raisons, telles que : (i) le principe de la réciprocité matérielle n'est envisagée qu'en l'absence de traités internationaux applicables (ii) le principe de la réciprocité matérielle n'est envisagée que pour les droits d'auteur (iii) le principe de la réciprocité matérielle a été modifiée par une loi ultérieure, ou (iv) la loi est interprétée à la lumière de l'arrêt RAAP.

Les États membres appliquent différents critères d'éligibilité pour déterminer les ayants droit qui peuvent bénéficier du SER.

Les "points de rattachement" sont les critères qui, avec le principe du traitement national et le principe de la réciprocité matérielle, déterminent les ayants droit de pays tiers qui peuvent bénéficier du SER dans chaque pays. La Convention de Rome prévoit différents points de rattachement pour les producteurs de phonogrammes et les artistes interprètes ou exécutants et donne aux parties contractantes (les États) la possibilité de choisir ceux qu'elles souhaitent appliquer grâce à un système de réserves autorisées. 11 des 18 États membres examinés dans le cadre de cette étude ont procédé à des notifications afin d'exclure l'application d'un ou plusieurs des points de rattachement envisagés dans la Convention de Rome. Il en résulte une grande diversité de critères d'éligibilité au SER dans les cadres juridiques des États membres.

Seuls deux États membres ont modifié leur législation à la suite de l'arrêt RAAP

Le résultat de notre recherche ne montre que deux États membres qui ont modifié leur législation en réponse à l'arrêt RAAP. Aux Pays-Bas, la loi sur le droit d'auteur a été modifiée en janvier 2021 pour garantir que le traitement national en ce qui concerne le SER est accordé aux ayants droit des États contractants du WPPT, indépendamment des réserves émises en vertu de l'article 15(3) de ce traité. Toutefois, la loi néerlandaise sur les droits voisins prévoit toujours le principe de la réciprocité matérielle à l'égard des États contractants de la Convention de Rome. En France, le législateur a modifié une loi sectorielle afin de minimiser l'impact financier de l'effet rétroactif de l'arrêt RAAP. Certaines autorités nationales interrogées dans les États membres estiment que des modifications de leurs lois respectives ne sont pas nécessaires, car les dispositions nationales peuvent être interprétées à la lumière de l'arrêt RAAP. L'impact est donc à prévoir plutôt dans les pratiques du marché.

Différents paramètres sont utilisés pour calculer les tarifs SER en fonction du type d'utilisateur et du secteur, les autorités nationales jouent généralement un rôle de supervision.

Dans le cas de la diffusion radio et TV, les tarifs sont calculés soit en tant que part de leur chiffre d'affaires, soit sur la base de la musique effectivement diffusée, tandis que les lieux publics paient généralement un montant forfaitaire basé sur leur surface ou leur capacité en sièges (restaurants par exemple). Dans certains États membres, la pertinence de la musique pour les activités/rôle dans l'activité de l'utilisateur est également prise en compte dans le tarif. Dans certains États membres, les autorités nationales sont impliquées dans ce processus.

Il existe au moins quatre modèles organisationnels pour la collecte et la distribution du SER

Cette étude a identifié quatre modèles pour la collecte et la distribution du SER dans les États membres examinés : (i) modèle de sociétés communes, dans lequel une CMO perçoit et distribue le SER pour et aux producteurs et aux artistes interprètes ou exécutants ; (ii) modèle de sociétés distinctes, dans lequel des CMO distinctes représentent chacune droits des producteurs phonographiques et des artistes interprètes. Chacune d'entre elles perçoit le SER pour un ensemble d'utilisations pertinentes et transfère la part correspondante à l'autre CMO ; (iii) modèle du guichet unique, dans lequel des CMO distinctes offrent un lieu centralisé pour faciliter la collecte des SER (et/ou d'autres droits) auprès des utilisateurs, et les sommes collectées sont ensuite distribuées par chaque CMO à leurs titulaires de droits respectifs ; et (iv) modèle

mixte combinant les caractéristiques du guichet unique et celles du modèle des sociétés distinctes.

Trois schémas ont été observés pour la distribution du SER aux titulaires de droits des pays tiers

Il existe trois approches principales parmi les États membres concernant la distribution des recettes du SER perçues aux ayants droit de pays tiers :

- Dix (10) États membres versent inconditionnellement les sommes collectées pour l'utilisation du répertoire étranger dans leur intégralité aux ayants droit correspondants, indépendamment de leur nationalité et de toute réserve émise par leur pays à la Convention de Rome et/ou au WPPT ;
- Deux (2) États membres ont fixé des critères d'éligibilité différents pour la collecte et la distribution des SER aux producteurs de phonogrammes et/ou aux artistes interprètes ou exécutants de pays tiers. Par conséquent, certaines recettes de SER collectées dans ces pays pour l'utilisation du répertoire international ne sont pas distribuées aux ayants droit des pays tiers, mais sont plutôt allouées à d'autres projets dans le secteur;
- Six (6) États membres ne collectent ni distribuent les SER pour l'utilisation du répertoire international qui est considéré comme non éligible sur leur territoire sur la base du principe de la réciprocité matérielle.
-

État des lieux concernant la collecte et la distribution du SER

Pendant la période 2017-2021, le SER collecté par les CMO dans les États membres sélectionnés a légèrement augmenté de 5,5 % par an en moyenne entre 2017-2019, puis une forte baisse en 2020 en raison de la crise sanitaire. Les effets des ralentissements économiques provoqué par la pandémie de Covid-19 persistent en 2021, mais dans une moindre mesure. Au cours de la même période, le montant du SER distribué par les CMO a également légèrement augmenté de 5,2 % par an en moyenne dans la plupart des pays considérés. La communication au public représente la source la plus importante du SER dans la plupart des États membres sélectionnés (plus de 58 % de la collecte totale du SER), mais ces dernières années, l'importance des utilisations de radiodiffusion dans le SER a augmenté. Les États membres collectent également le SER auprès de pays tiers pour l'utilisation du répertoire national à l'étranger, et cela constitue une partie du SER reçu puis distribué par les CMO. Ces recettes internationales ne représentent qu'une part marginale du SER total reçu par les CMO dans les pays sélectionnés, souvent inférieure à 10 %. Les États-Unis et le Royaume-Uni sont les marchés de la musique les plus importants pour les États membres de l'UE. Ces pays représentent au total entre 50 % et 80 % des SER collectés par les CMO des pays tiers dans la plupart des États membres analysés. En ce qui concerne la distribution, malgré les limites des données, les CMO versent plus de la moitié de la collecte totale de SER aux ayants droits nationaux, tandis que la distribution aux ayants droit de l'UE/EEE et des pays tiers représente en moyenne 19 % et 26 %, respectivement. Parmi les recettes versées par les CMO de l'UE aux ayants droit de pays tiers, dont 30 % à 50 % vont aux États-Unis et au Royaume-Uni.

Dans deux États membres, les pratiques de marché ont été modifiées à la suite de l'arrêt RAAP

D'après les éléments recueillis dans le cadre de cette étude, dans au moins deux pays, les pratiques de marché ont été jusqu'à présent adaptées de manière significative suite

à l'arrêt de la CJUE. À la suite de la modification de sa législation en janvier 2021, le CMO néerlandaise concernée a négocié avec les utilisateurs publics une surtaxe RAAP sur ses tarifs applicables qui impliquait une augmentation cumulée de 26,6 % pour 2021 et 2022 en raison du répertoire musical supplémentaire qui n'était pas protégé dans le pays. Dans le cas de l'Autriche, bien que la loi autrichienne sur le droit d'auteur n'ait pas été modifiée, le CMO nationale a cessé d'appliquer le principe de la réciprocité matérielle pour le paiement du SER aux ayants droits de pays tiers en raison du caractère contraignant des décisions de la CJUE dans ce pays.

L'impact variable du traitement national selon l'interprétation actuelle du droit communautaire dans les États membres de l'UE

Parmi les États membres analysés dans cette étude, les huit pays appliquant le principe de la réciprocité matérielle se sont avérés être impactés par l'application du traitement national. L'impact pour chacun d'entre eux diffère en fonction de leurs pratiques de marché respectives concernant la collection et la distribution du SER aux titulaires de droits de pays tiers.

Sans modification des tarifs applicables, la conséquence immédiate pour les pays appliquant le principe de la réciprocité matérielle sera une réduction de la part des SER distribués aux ayants droits nationaux et de l'UE/EEE, car une part plus importante du SER sera désormais versée aux ayants droit de pays tiers. Un autre effet économique possible est une éventuelle augmentation des tarifs applicables payés par les utilisateurs pour compenser partiellement ou totalement la distribution plus importante de SER aux ayants droit de pays tiers et maintenir le niveau des paiements aux titulaires de droits nationaux et de l'UE/EEE. Ces deux effets ne s'excluent pas mutuellement, comme cela a été observé aux Pays-Bas. Les CMO des autres États membres concernés prévoient des tentatives d'augmentation tarifaire élevées, qui se heurteront probablement à la résistance des utilisateurs.

Cette étude a estimé l'impact économique de l'application du traitement national dans les États membres appliquant le principe de la réciprocité matérielle, en se concentrant sur les États-Unis en tant que marché principal international important de la musique pour l'UE, aux côtés du Royaume-Uni depuis le Brexit. Les estimations sont construites sur la part du répertoire américain joué dans les pays analysés (environ 30 % du répertoire musical total) et actuellement payé aux ayants droit américains (entre 5 % et 10 % de la distribution totale). En se basant sur les données recueillies pour ces huit États membres, cette étude prévoit un impact financier annuel d'au moins 35,2 à 66,3 millions d'euros en termes de sorties de revenus supplémentaires de l'UE seul vers les États-Unis. Ces estimations sont cohérentes avec l'analyse des impacts économiques réalisée par les CMO des pays touchés. Nos estimations sont toutefois inférieures à celles d'autres parties prenantes représentant l'industrie de l'enregistrement, qui prévoient une perte financière annuelle pour l'UE comprise entre 97,5 et 112,9 millions d'euros en considérant les mêmes États membres. Toutefois, la comparabilité de ces estimations est limitée en raison de choix méthodologiques différents concernant la valeur de référence utilisée pour les estimations, la période considérée et les paramètres utilisés pour calculer la part du répertoire américain.

Au sein des ayants droit, les artistes-interprètes devraient être davantage touchés par l'application du traitement national que les producteurs, compte tenu des revenus absolus plus élevés du SER dans leur portefeuille de revenus global respectif. Au sein des producteurs, les labels indépendants et les petits labels devraient être plus touchés que les grands labels, qui ont un répertoire musical diversifié au niveau international. Les éléments recueillis ne montrent pas d'impact majeur de l'application du traitement national sur les coûts de fonctionnement et la charge administrative des CMO. En fait,

il n'y a pas de différences visibles dans les frais de gestion entre les États membres, quel que soit le type de régime SER appliqué. En tout état de cause, ces coûts ne seraient que temporaires.

Certaines parties prenantes craignent d'éventuels effets d'excédent de l'arrêt RAAP

Certaines parties prenantes consultées dans le cadre de cette étude craignent que les effets de la législation européenne actuelle, telle qu'interprétée dans l'arrêt RAAP, puissent être étendus à tout domaine du droit d'auteur dans lequel une rémunération ou une compensation est perçue et la distribution aux ayants droit de pays tiers est basée sur le principe de réciprocité. Les parties prenantes sont plus particulièrement préoccupées par la copie privée. En outre, elles estiment que l'arrêt RAAP a créé une incertitude juridique, car la plupart des États membres qui appliquaient précédemment le principe de la réciprocité matérielle sur la base du droit international n'ont toujours pas modifié ni leurs règles nationales, ni leurs pratiques commerciales. Enfin, les parties prenantes ont exprimé leurs préoccupations concernant les effets rétroactifs de l'arrêt en vue d'éventuelles demandes de paiements rétroactifs et/ou de responsabilité de l'État pour l'application incorrecte de la directive RLR. Plus précisément, il n'est pas clair jusqu'à quand les paiements aux pourraient être réclamés.

Options politiques potentielles examinées dans le cadre de cette étude

Il ressort de l'arrêt RAAP que le principe du traitement national doit être appliqué dans l'UE, à moins que le législateur européen ne décide de limiter ce droit au SER pour les ressortissants de pays tiers par le biais du principe de la réciprocité matérielle. Cette étude a évalué deux options politiques possibles pour faire face aux conséquences identifiées de la législation européenne telle qu'interprétée dans l'arrêt RAAP : l'application du principe de traitement national (aucune intervention de l'UE) et l'introduction d'une base juridique pour l'application de la réciprocité matérielle au niveau européen.

ZUSAMMENFASSUNG

Kontext und rechtlicher Hintergrund des Rechts auf eine Vergütung (SER)

Die internationalen und europäischen Urheberrechtsvorschriften gewähren Tonträgerherstellern und ausübenden Künstlern das Recht auf eine Vergütung (SER) für die Nutzung ihrer zu kommerziellen Zwecken veröffentlichten Tonträger für die Rundfunkübertragung oder für sonstige öffentliche Wiedergaben. Im Rahmen der einschlägigen internationalen Abkommen (d. h. des Übereinkommens von Rom und des WIPO-Vertrages über Aufführungen und Tonträger (WPPT)) gilt als allgemeiner Grundsatz für die Anerkennung dieses Rechts gegenüber Rechteinhabern aus Drittländern die Inländerbehandlung. Dies bedeutet, dass Staatsangehörigen anderer Unterzeichnerstaaten eine Behandlung gewährt werden muss, die nicht weniger günstig ist als die, welche eigene Staatsangehörige in Bezug auf die betreffenden Rechte genießen. Beide Verträge erlauben es den Vertragsstaaten jedoch, von der Anwendung der Inländerbehandlung durch zulässige Vorbehalte abzuweichen und stattdessen das Prinzip der materiellen Gegenseitigkeit anzuwenden.

Bisher betrachteten die Mitgliedstaaten die Anwendung der materiellen Gegenseitigkeit als ein nationales Vorrecht. Infolgedessen verfolgten sie unterschiedliche Ansätze in Bezug auf die Anerkennung und Zahlung der SER an Rechteinhaber in Drittländern. Einige Mitgliedstaaten dehnten dieses Recht bislang nicht auf Rechteinhaber aus Drittländern aus; dies betrifft vor allem die Länder, die das SER Recht den Tonträgerherstellern und ausübenden Künstlern in der EU aufgrund eines Vorbehalts im Rahmen des Übereinkommens von Rom und/oder des WPPT nicht oder nicht vollständig zuerkannt haben. Andere Mitgliedstaaten gewähren dieses Recht hingegen allen Leistungsschutzberechtigten, unabhängig von ihrer Staatsangehörigkeit.

In einem kürzlich ergangenen Urteil vom September 2020 (sogenannte RAAP -Urteil) entschied der Gerichtshof der Europäischen Union (EuGH), dass der in Artikel 8 Absatz 2 der Richtlinie zum Vermietrecht und Verleihrecht sowie zu bestimmten dem Urheberrecht verwandten Schutzrechten im Bereich des geistigen Eigentums (RLR Richtlinie 2006/115/EG), über ausübende Künstler verankerte Begriff "relevante ausübende Künstler" in der gesamten EU autonom und einheitlich auszulegen ist. Der Gerichtshof entschied auch, dass jede Einschränkung der Wahrnehmung von SER durch eine klare und präzise Bestimmung im EU-Recht vorgesehen sein muss. Folglich wurden einige nationale Bestimmungen und/oder Marktpraktiken in den EU-Mitgliedstaaten angefochten.

Unterstützung der Kommission beim Verständnis der Auswirkungen des RAAP-Urteils

Die vorliegende Studie soll die Europäische Kommission dabei unterstützen, den Stand der Dinge und die sich aus dem RAAP-Urteil ergebenden Fragen im Zusammenhang mit der Vergütung von ausübenden Künstlern und Tonträgerherstellern nachzuvollziehen. Die Studie ergänzt die umfassendere Sammlung von Fakten, welche die Kommission derzeit durchführt, während sie eine Initiative zu diesem Thema in Erwägung zieht. Im Einzelnen soll diese Studie Folgendes leisten:

- einen Überblick geben über die nationalen Vorschriften und Marktpraktiken in Bezug auf die Erhebung und Verteilung des SER an Tonträgerhersteller und ausübende Künstler in Drittländern vor und nach dem Urteil des Gerichtshofs;

- eine Quantifizierung der in der EU erhobenen und an Tonträgerhersteller und ausübende Künstler in Drittländern ausgeschütteten Beträge der SER;
- Identifizierung möglicher Auswirkungen der Anwendung der Inländerbehandlung auf ausübende Künstler, Produzenten und Nutzer in der EU nach dem aktuellen Stand des EU-Rechts in der Auslegung des RAAP-Urteils;
- Beschreibung und Bewertung der Auswirkungen möglicher rechtlicher Optionen zur Bewältigung der tatsächlichen und/oder potenziellen Auswirkungen der Anwendung der Inländerbehandlung durch die EU.

Methodischer Ansatz und Forschungseinschränkungen

Die Studie deckt die gesamte EU ab und stützt sich auf Informationen und Daten aus der Sekundärforschung und den Interviews mit EU-Dachverbänden und einer paneuropäischen unabhängigen Verwaltungsstelle (IME). Die nationale Forschungsarbeit konzentrierte sich auf eine Stichprobe von 18 EU-Mitgliedstaaten: Belgien, die Tschechische Republik, Deutschland, Estland, Irland, Griechenland, Spanien, Frankreich, Kroatien, Italien, Litauen, Ungarn, die Niederlande, Österreich, Portugal, Slowenien, Finnland und Schweden. Die in der Studie dargelegten Ergebnisse beruhen auf drei Hauptquellen:

- Sekundärforschung auf EU-Ebene in der einschlägigen Literatur und in den ausgewählten Mitgliedstaaten zur Zusammenstellung von Informationen über die nationalen Vorschriften und öffentlich zugängliche Wirtschaftsdaten;
- 69 ausführliche Interviews mit Dachverbänden, die relevante Stakeholdergruppen in der Musikwertschöpfungskette vertreten; mit Verwertungsgesellschaften, die die Rechte von ausübenden Künstlern und/oder Tonträgerherstellern in den Mitgliedsstaaten verwalten; mit Experten für Urheberrecht und mit den zuständigen nationalen Behörden sowie mit einer Reihe von Verbänden von Tonträgerherstellern und Nutzern in sechs Schwerpunktmitgliedstaaten. Diese Mitgliedstaaten wurden auf der Grundlage einer Reihe von Kriterien zur Ermittlung derjenigen Staaten ausgewählt, in welchen die Auswirkungen des RAAP-Urteils voraussichtlich am größten sein werden;
- Ein Online-Workshop mit insgesamt 47 Teilnehmern, darunter Vertreter aus 13 Mitgliedstaaten und von EU-Dachverbänden, sowie Praktiker und Akademiker aus dem Musiksektor. Der Workshop fand am 19. Mai 2022 statt.

Die vorhandenen Daten über die tatsächlichen und/oder potenziellen wirtschaftlichen Auswirkungen dieser Angelegenheit auf Rechteinhaber, Nutzer und Verwertungsgesellschaften in der EU sind begrenzt. Hierfür gibt es mehrere Gründe. Erstens deuten die verfügbaren Daten darauf hin, dass die von den Verwertungsgesellschaften erhobenen Einnahmen ein oder zwei Jahre nach dem Jahr der Erhebung oder sogar später ausgeschüttet werden können. Zweitens können sich die für 2020 und 2021 erhobenen Einnahmen für den SER aufgrund der Auswirkungen der COVID-19-Pandemie ändern und sind daher nicht direkt mit den Erhebungen vor dem RAAP Urteil vergleichbar. Schließlich sind die von den Verwertungsgesellschaften einiger ausgewählter Mitgliedstaaten bereitgestellten Daten zum SER häufig unvollständig und weisen einen unterschiedlichen Grad an Genauigkeit und zeitlicher Abdeckung auf. So ist es schwierig, Vergleiche anzustellen und für die gesamte EU gültige Schlussfolgerungen zu ziehen. Dennoch wurde für die Mehrheit der analysierten Mitgliedstaaten ein Mindestdatensatz erhoben, der Folgendes umfasst: die jährlichen

SER-Einnahmen, die im Zeitraum 2017-2021 erhoben und verteilt wurden, einschließlich einer Aufschlüsselung nach Nutzungsart; den durchschnittlichen jährlichen Anteil der SER-Einnahmen, die für die Nutzung von Nicht-EU/EWR-Repertoire in der EU erhoben werden, und den durchschnittlichen jährlichen Anteil der SER-Einnahmen, die von Verwertungsgesellschaften aus Drittländern für die Nutzung von EU-Repertoire im Ausland erhalten werden. Daher ist davon auszugehen, dass sich die Auswirkungen erst ab 2022 oder später bemerkbar machen werden. Drittens hat bisher nur ein Mitgliedstaat die einschlägigen Rechtsvorschriften geändert, und ein Mitgliedstaat hat seine Marktpraktiken im Einklang mit der Entscheidung des EuGH geändert. Die wichtigsten Ergebnisse werden im Folgenden zusammengefasst.

Die spezifischen für die SER infrage kommenden Verwendungszwecke unterscheiden sich geringfügig von Mitgliedstaat zu Mitgliedstaat

Die spezifischen Verwendungszwecke, welche die Zahlung der SER auslösen und die unter "öffentliche Wiedergabe" und "Rundfunk und Fernsehen" fallen, unterscheiden sich geringfügig von Mitgliedstaat zu Mitgliedstaat. Diese Unterschiede wirken sich auf das Volumen der Nutzer aus, die in jedem Mitgliedstaat Gebühren für die Nutzung von Musik zahlen müssen, was die Gesamtzahlen in den einzelnen Ländern beeinflussen kann.

- Rundfunksendungen: Alle Mitgliedstaaten mit Ausnahme von Belgien erheben die SER sowohl für Radio- als auch für Fernsehübertragungen. Mehrere Mitgliedstaaten gehen über die im internationalen Recht und in der RLR-Richtlinie definierten traditionellen Rundfunknutzungen hinaus und gewähren diese Vergütung auch für Webcasting, Simulcasting und/oder Kabelweiterverbreitung.
- Öffentliche Wiedergabe: Einrichtungen des Gastgewerbes (z. B. Hotels, Restaurants, Cafés, Nachtclubs) und Geschäfte sind in allen Ländern zulässige öffentliche Einrichtungen. Darüber hinaus erheben einige Mitgliedstaaten die SER auch für die Nutzung von Tonträgern in professionellen Transportmitteln (z. B. Taxis, Schiffen, Bussen oder Flugzeugen), an Arbeitsplätzen oder in Büros sowie an besonderen, der Öffentlichkeit zugänglichen Orten wie Kindertagesstätten, Krankenhäusern, Altenheimen oder Kirchen.

Die Hälfte der untersuchten Mitgliedstaaten wendet bei der Anerkennung der SER gegenüber Rechtsinhabern aus Drittländern die materielle Gegenseitigkeit an, oder tat dies bis zum RAAP-Urteil

Die Studie geht von der Annahme aus, dass jene Mitgliedstaaten, die das Prinzip der materiellen Gegenseitigkeit anwenden, am stärksten von der durch das RAAP-Urteil bestätigten Auslegung des EU-Rechts betroffen sein werden. 13 der untersuchten Mitgliedstaaten sehen in ihren nationalen Rechtsvorschriften materielle Gegenseitigkeit in Bezug auf Rechteinhaber aus Drittländern vor, entweder direkt oder durch einen indirekten Verweis auf internationalrechtlich zulässige Vorbehalte. Allerdings wendet nur die Hälfte dieser Mitgliedstaaten diese Ausnahme in Bezug auf den SER in der Praxis an. In den anderen Mitgliedstaaten wird die vorgesehene materielle Gegenseitigkeit aus verschiedenen Gründen nicht angewandt, z. B: (i) die materielle Gegenseitigkeit ist nur im Falle von Abwesenheit von anwendbarer internationaler Verträge vorgesehen, (ii) die materielle Gegenseitigkeit ist nur für Urheberrechte vorgesehen, (iii) die materielle Gegenseitigkeit wurde durch ein späteres Gesetz geändert, oder (iv) das Gesetz wird in Abetracht des RAAP-Urteils ausgelegt.

Die Mitgliedstaaten wenden unterschiedliche Kriterien an, um die Wahrnehmungsberechtigten der SER fest zu legen

Die "Anknüpfungspunkte" sind die Kriterien, die neben den Grundsätzen der Inländerbehandlung und der materiellen Gegenseitigkeit bestimmen, welche Rechteinhaber aus Drittländern in jedem Land Anspruch auf die SER haben. Das Übereinkommen von Rom sieht verschiedene Anknüpfungspunkte für Tonträgerhersteller und ausübende Künstler vor und gibt den Vertragsparteien die Möglichkeit, über ein System zulässiger Vorbehalte die Punkte auszuwählen, die sie anwenden möchten. 11 der 18 Mitgliedstaaten, die im Rahmen dieser Studie untersucht wurden, haben Anmeldungen zu Vorbehalten vorgenommen, um die Anwendung eines oder mehrerer der im Übereinkommen von Rom vorgesehenen Anknüpfungspunkte auszuschließen. Dies hat dazu geführt, dass die Kriterien für die Geltendmachung der SER in den verschiedenen Rechtsrahmen der Mitgliedstaaten sehr unterschiedlich sind.

Nur zwei Mitgliedstaaten haben ihre Gesetzgebung als Folge des RAAP-Urteils geändert

Unsere Nachforschungen haben nur in zwei Mitgliedstaaten Hinweise darauf ergeben, dass diese ihre Gesetzgebung als Reaktion auf das RAAP-Urteil geändert haben. In den Niederlanden wurde das Urheberrechtsgesetz im Januar 2021 geändert, um sicherzustellen, dass Rechteinhabern aus WPPT-Vertragsstaaten die Inländerbehandlung in Bezug auf die SER gewährt wird, ungeachtet etwaiger Vorbehalte gemäß Artikel 15 Absatz 3 des Vertrags. Das niederländische Gesetz über benachbarte Urheberrechte beinhaltet jedoch nach wie vor das Prinzip materieller Gegenseitigkeit in Bezug auf die Vertragsstaaten des Übereinkommens von Rom. In Frankreich hat der Gesetzgeber ein sektorales Gesetz geändert, um die finanziellen Auswirkungen der Rückwirkung des Urteils zu minimieren. Einige der befragten nationalen Behörden in den Mitgliedstaaten sind der Ansicht, dass eine Änderung ihrer jeweiligen Gesetze nicht unbedingt erforderlich ist, da die nationalen Bestimmungen im Hinblick auf das RAAL Urteil ausgelegt werden können. Es wird daher erwartet, dass die Auswirkungen sich eher auf die Marktpraktiken entfalten.

Je nach Art des Nutzers und des Sektors werden unterschiedliche Parameter für die Berechnung der SER-Tarife verwendet, wobei den nationalen Behörden im Allgemeinen eine Aufsichtsfunktion zukommt

Bei Rundfunk und Fernsehen werden die Tarife entweder als Anteil am Umsatz oder auf der Grundlage der tatsächlich abgespielten Musiktitel berechnet, während öffentliche Veranstaltungsorte in der Regel einen Pauschalbetrag auf der Grundlage ihrer Fläche oder Sitzplatzkapazität zahlen. In einigen Mitgliedstaaten wird auch die Relevanz der Titel für die Tätigkeit des Nutzers bei der Tarifgestaltung berücksichtigt. In einigen Mitgliedstaaten sind die nationalen Behörden an diesem Prozess beteiligt.

Für die Verteilung der SER an die Rechteinhaber in Drittländern wurden drei Systeme beobachtet

Bei der Verteilung der SER-Einnahmen an die Rechteinhaber in Drittländern gibt es in den Mitgliedstaaten drei Hauptansätze:

- Zehn (10) Mitgliedstaaten zahlen die eingenommenen Beträge für die Nutzung ausländischer Repertoires bedingungslos und in voller Höhe an die entsprechenden Rechteinhaber aus, unabhängig von deren Staatsangehörigkeit und von etwaigen Vorbehalten ihrer Länder zum Übereinkommen von Rom und/oder zum WPPT;

- Zwei (2) Mitgliedstaaten haben unterschiedliche Kriterien für die Erhebung und Verteilung der SER an Tonträgerhersteller und/oder ausübende Künstler aus Drittländern festgelegt. Dies hat zur Folge, dass ein Teil der SER-Einnahmen, die in diesen Mitgliedstaaten für die Nutzung des internationalen Repertoires erhoben werden, nicht an die entsprechenden Rechteinhaber in Drittländern ausgeschüttet werden, sondern stattdessen für andere Zwecke oder Themen verwendet werden;
- Sechs (6) Mitgliedstaaten ziehen die SER für die Nutzung des internationalen Repertoires, das in ihrem Hoheitsgebiet als nicht schutzfähig gilt, auf der Grundlage des Prinzips der materiellen Gegenseitigkeit, weder ein noch verteilen sie sie.

Stand der Dinge bei der Erhebung und Verteilung der SER

Im Zeitraum 2017-2021 sind die von den Verwertungsgesellschaften in den betrachteten Mitgliedstaaten erhobenen SER Einnahmen in den Jahren 2017-2019 im Durchschnitt um 5,5 % pro Jahr leicht angestiegen. Im Jahr 2020 gingen diese jedoch infolge der Covid-19-Pandemie stark zurück. Die Daten für 2021 zeigen, dass die Auswirkungen des durch die Pandemie verursachten Wirtschaftsabschwungs weiter anhalten, wenn auch in geringerem Umfang. Im selben Zeitraum stieg auch die von den Verwertungsgesellschaften ausgeschüttete Menge an SER leicht an; in den meisten der untersuchten Mitgliedstaaten um durchschnittlich 5,2 % pro Jahr (2017-2019). Die Einnahmen im Bereich der öffentliche Wiedergabe sind in den meisten der betrachteten Mitgliedstaaten die wichtigste Quelle für den SER (über 58 % der gesamten SER-Erhebung). In den letzten Jahren hat jedoch die Bedeutung der Rundfunk- und Fernsehnutzung zugenommen. Die Mitgliedstaaten erheben die SER auch von Drittländern für die Nutzung des nationalen Repertoires im Ausland, was einen Teil der Gesamt-SER-Einnahmen ausmacht, die von den Verwertungsgesellschaften erhoben und dann verteilt werden. Diese internationalen Einnahmen machen nur einen geringen Teil der gesamten von den Verwertungsgesellschaften in den betrachteten Ländern erhobenen SER aus, oft weniger als 10 %. Die USA und das Vereinigte Königreich sind die wichtigsten Musikmärkte für die EU-Mitgliedstaaten. Auf diese Länder entfallen in den meisten der untersuchten Mitgliedstaaten insgesamt 50 % bis 80 % der von den Verwertungsgesellschaften in Drittländern erzielten SER Einnahmen. Auf der Vertriebsseite zahlen die Verwertungsgesellschaften trotz der begrenzten Datenlage mehr als die Hälfte der gesamten SER-Einnahmen an nationale Rechteinhaber aus, während die Verteilung an EU/EWR- und Drittland-Rechteinhaber im Durchschnitt 19 % bzw. 26 % ausmacht. Von den Einnahmen, die die EU-Verwertungsgesellschaften an Rechteinhaber in Drittländern zahlen, gehen 30 % bis 50 % an die USA und das Vereinigte Königreich.

In zwei Mitgliedstaaten haben sich die Marktpraktiken infolge des RAAP-Urteils erheblich geändert

Aus den im Rahmen dieser Studie gesammelten Erkenntnissen geht hervor, dass zumindest in zwei Ländern die Marktpraktiken infolge des RAAP Urteils des EuGH erheblich angepasst wurden. Nach der Gesetzesänderung im Januar 2021, verhandelte die zuständige niederländische Verwertungsgesellschaft mit den öffentlichen Nutzern einen RAAP-Zuschlag zu den geltenden Tarifen aus, der für die Jahre 2021 und 2022 eine kumulierte Erhöhung um 26,6 % aufgrund des zusätzlichen Musikrepertoires bedeutete. Dieses Repertoire war zuvor in dem Land nicht geschützt. Im Falle Österreichs wurde das dort geltende Urheberrechtsgesetz zwar nicht geändert, jedoch

stellte die nationale Verwertungsgesellschaft die Anwendung des Prinzips der materiellen Gegenseitigkeit für die Zahlung der SER an Rechteinhaber aus Drittländern aufgrund des verbindlichen Charakters der Entscheidungen des EuGH in diesem Land ein.

Unterschiedliche Auswirkungen der Inländerbehandlung nach der derzeitigen Auslegung des EU-Rechts in den EU-Mitgliedstaaten

Unter den in dieser Studie analysierten Mitgliedstaaten sind die acht Länder, die das Prinzip der materiellen Gegenseitigkeit anwenden, von der zu anwendenden Inländerbehandlung betroffen. Die Auswirkungen für jedes dieser Länder sind unterschiedlich, je nach den jeweiligen Marktpraktiken bei der Erhebung und Verteilung der SER an die Bezugsberechtigten in Drittländern.

Falls sich die geltenden Tarife nicht ändern, wird die unmittelbare Folge für die Länder, die das Prinzip der materiellen Gegenseitigkeit anwenden, eine Verringerung des Anteils der SER sein, der an inländische und EU/EWR-Bezugsberechtigte ausgeschüttet wird, da nun ein größerer Anteil der SER an Rechteinhaber in Drittländern gezahlt wird. Eine weitere mögliche wirtschaftliche Auswirkung ist eine mögliche Erhöhung der von den Nutzern zu zahlenden Tarife, um die höhere SER-Ausschüttung an Bezugsberechtigte aus Drittländern teilweise oder vollständig zu kompensieren und das Niveau der Zahlungen an nationale und EU/EWR-Bezugsberechtigte aufrechtzuerhalten. Diese beiden Effekte schließen sich nicht gegenseitig aus, wie in den Niederlanden zu beobachten war. Die Verwertungsgesellschaften in anderen betroffenen Mitgliedstaaten prognostizieren signifikante Tarifierhöhungen, die wahrscheinlich auf den Widerstand der Nutzer stoßen werden.

In der Studie wurden die wirtschaftlichen Auswirkungen der Anwendung der Inländerbehandlung in den Mitgliedstaaten, die das Prinzip der materiellen Gegenseitigkeit anwenden, geschätzt, wobei der Schwerpunkt auf den USA als wichtigstem internationalem Musikmarkt für die EU und seit dem Brexit auch auf dem Vereinigten Königreich liegt. Die Schätzungen stützen sich auf den Anteil des US-Repertoires, der in den betroffenen Ländern genutzt wird (etwa 30 % Anteil im gesamten Musikrepertoire) und derzeit an die US-Bezugsberechtigten gezahlt wird (entspricht etwa 5 % bis 10 % der gesamten SER Einnahmen). Auf Grundlage der für die acht betroffenen Mitgliedstaaten gesammelten Daten wird ein jährlicher finanzieller Schaden von mindestens 35,2 bis zu 66,3 Mio. EUR in Form zusätzlicher Ertragsabflüsse allein aus der EU in die USA vorausgesagt. Diese Schätzungen stimmen mit der Analyse der wirtschaftlichen Auswirkungen durch die Verwertungsgesellschaften in den betroffenen Ländern überein. Unsere Schätzungen sind jedoch niedriger als die anderer Stakeholder der Tonträgerindustrie, die für dieselben Mitgliedstaaten einen jährlichen finanziellen Verlust für die EU zwischen 97,5 und 112,9 Mio EUR prognostizieren. Die Vergleichbarkeit dieser Schätzungen ist jedoch aufgrund unterschiedlicher methodisch gewählter Grundlagen im Bezug auf den für die Schätzungen verwendeten Referenzwert, den betrachteten Zeitrahmen und die für die Berechnung des Anteils des US-Repertoires verwendeten Parameter eingeschränkt.

Bei den Bezugsberechtigten dürften die ausübenden Künstler stärker von der Anwendung der Inländerbehandlung betroffen sein als die Tonträgerhersteller, da der absolute Anteil der SER-Einnahmen an ihrem jeweiligen Gesamtumsatzportfolio höher ist. Bei den Tonträgerherstellern dürften unabhängige und kleinere Labels stärker betroffen sein, als die großen Labels, die über ein international diversifiziertes Musikrepertoire verfügen. Die gesammelten Daten zeigen keine größeren Auswirkungen der Anwendung der Inländerbehandlung auf die Betriebskosten und den Verwaltungsaufwand der Verwertungsgesellschaften. Tatsächlich gibt es keine

sichtbaren Unterschiede bei den Verwaltungsgebühren zwischen den Mitgliedstaaten, unabhängig von der Art der angewandten SER-Regelung. In jedem Fall wären diese Kosten nur vorübergehend.

Einige Stakeholdergruppen befürchten mögliche Spillover-Effekte des RAAP-Urteils

Einige Stakeholdergruppen, die im Rahmen dieser Studie befragt wurden, befürchten, dass die Auswirkungen des geltenden EU-Rechts in der Auslegung des RAAP-Urteils auf alle Bereiche des Urheberrechts ausgedehnt werden könnten, in denen eine Vergütung oder ein Ausgleich erhoben wird und die Verteilung an Rechteinhaber in Drittländern auf Gegenseitigkeit beruht. Die Stakeholder sind insbesondere über Vergütung bei Speichermedien und privater Vervielfältigung besorgt. Außerdem sind sie der Ansicht, dass das RAAP-Urteil zu Rechtsunsicherheit geführt hat, da die meisten Mitgliedstaaten, die zuvor das Prinzip der materiellen Gegenseitigkeit auf Grundlage des internationalen Rechts angewandt haben, noch immer weder ihre nationalen Vorschriften noch ihre Marktpraktiken geändert haben. Schließlich äußerten die Beteiligten Bedenken hinsichtlich der rückwirkenden Auswirkungen des Urteils im Hinblick auf mögliche Nachzahlungsforderungen und/oder die Staatshaftung für die fehlerhafte Anwendung der RLR-Richtlinie. Insbesondere ist nicht klar, bis zu welchem Zeitpunkt Zahlungen für Rechteinhaber rückgefordert werden könnten.

Mögliche politische Optionen, die im Rahmen dieser Studie untersucht wurden

Aus dem RAAP-Urteil geht hervor, dass in der EU die Inländerbehandlung anzuwenden ist, es sei denn, der EU-Gesetzgeber beschließt, das Recht auf SER für Drittstaatsangehörige durch das Prinzip der materiellen Gegenseitigkeit zu beschränken. In der vorliegenden Studie wurden zwei mögliche politische Optionen zur Bewältigung der festgestellten Folgen des EU-Rechts in der Auslegung des RAAP-Urteils bemessen: die Anwendung der Inländerbehandlung (kein Eingreifen der EU) sowie die Einführung einer Rechtsgrundlage für die Anwendung des Prinzips der materiellen Gegenseitigkeit auf EU-Ebene.

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1. Introduction

Music is considered by the European Commission as vital to safeguarding Europe's cultural diversity and strengthening its competitiveness.¹⁹ Indeed, the music sector makes a substantial contribution to the European economy. A study by Oxford Economics, using 2018 data, estimated that the music sector supported two million jobs in the EU and contributed to EUR 81.9 billion in Gross Value Added (GVA) to Gross Domestic Product (GDP).²⁰ Additionally, as a result of globalisation, music from third countries like the USA, South Korea and Latin America have become increasingly popular within the EU. According to a report²¹ which analyses the size and relative importance of the European music market, foreign repertoire, notably from the USA and the UK, accounts for nearly 70 % of the music repertoire that is played on EU radios. On the other hand, the radio listening share of the EU's repertoire in the international markets is generally less significant, accounting for about 10 %.²²

International and European copyright legislation confer different rights to phonogram producers and performers with respect to their recorded performances under the so-called 'neighbouring rights' framework, so as to ensure an effective and uniform protection of their work across borders. Generally speaking, there are two main types of rights under which performers and producers can derive revenues for their (recorded) performances: on the one hand, through **exclusive rights**, that allow rightholders to decide on the use of their own performances, and on the other hand, through **remuneration rights**, which compensate rightholders for the exploitation of their performances in cases where they cannot oppose to their use by others.

Within the scope of remuneration rights, both international and EU law confer a right to a **single equitable remuneration** (hereafter SER) to phonogram producers and performers for the use of their commercial phonograms by broadcasters and public venues. This right is envisaged in Article 12 of the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), in Article 15 of the World Intellectual Property Organization (WIPO) Performances and Phonogram Treaty (WPPT)²³ of 1996, and in Article 8(2) of Directive on Rental and Lending Rights (RLR Directive).²⁴ The management of the single equitable remuneration is generally entrusted by Member States to Collective Management Organisations (CMOs), also known as 'collecting societies'. Other actors (i.e. independent management entities) may be engaged in the management of such right pursuant to Directive 2014/26/EU on collective management of copyright and related

¹⁹ European Commission, "Culture and Creativity". Last accessed on 04/04/2022 and available at:

<https://culture.ec.europa.eu/sectors/music>

²⁰ Oxford Economics (2020). The Economic Impact of Music in Europe, November 2020. Last accessed on 04/04/2022 and available at: https://www.ifpi.org/wp-content/uploads/2020/12/IFPI_music_in_Europe.pdf

²¹ Live DMA (2019). Music moves Europe – A European Music Export Strategy: Final Report (prepared for the European Commission), p. 29. Last accessed on 04/04/2022 and available at: https://www.live-dma.eu/wp-content/uploads/2020/01/European_Music_export_strategy_2019.pdf

²² A European Music Export Strategy: Final Report, op.cit., p.32. Last accessed on 04/04/2022 and available at: https://www.live-dma.eu/wp-content/uploads/2020/01/European_Music_export_strategy_2019.pdf

²³ WIPO Performers and Phonograms Treaty, adopted in Geneva in December 20, 1996. Last accessed on 04/04/2022 and available at: <https://wipolex.wipo.int/en/text/295477>

²⁴ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (RLR Directive). Last accessed on 10/04/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006L0115>

rights and multi-territorial licensing of rights in musical works for online use in the internal market²⁵ (CRM Directive). However, this possibility is barely used in practice.

Until recently, Member States followed different approaches regarding the acknowledgement and payment of the single equitable remuneration right towards third-country rightholders (i.e. performers and phonogram producers who are nationals from countries outside the European Economic Area). Some Member States did not extend the right to a single equitable remuneration to third-country rightholders whose countries of origin did not reciprocate and recognise this right to EU producers and performers pursuant to a reservation made under the Rome Convention and/or under WPPT. Other Member States granted this right to any relevant rightholder, regardless of their nationality. However, in **a recent judgement delivered in September 2020** (referred to hereafter as the 'RAAP case'²⁶), the Court of Justice of the European Union (CJEU) has provided a harmonised interpretation of the meaning of the concept of 'relevant performers' enshrined in Article 8(2) of the RLR Directive. This has casted doubts on some existing provisions and/or market practices at national level as regards the acknowledgement of the SER towards third-country rightholders. Essentially, the CJEU ruled that under EU law as it currently stands, all music performers and record producers irrespective of nationality benefit from the right to be remunerated when their recorded music is used by radios, TVs or public venues. Thus, Member States cannot individually limit the right to a SER to EU/EEA nationals. The CJEU established that any limitation to this right can only be introduced by the European legislature.

To better understand the state-of-play and emerging issues related to the single equitable remuneration of performers and phonogram producers in the EU stemming from the interpretation of EU law endorsed by this judgement, the European Commission has entrusted a study to NTT DATA and ICF aimed at:

- Providing an overview of the national rules and market practices regarding the collection and distribution of the single equitable remuneration to third-country phonogram producers and performers before the Court's judgement;
- Quantifying the amounts of single equitable remuneration collected in the EU Member States and distributed to third-country phonogram producers and performers;
- Identifying and describing potential negative impacts of the current EU law as interpreted by the RAAP judgement on EU performers, producers and users;
- Presenting and assessing possible policy options to address the actual and/ or potential negative effects of the current EU law as interpreted by the RAAP judgement.

This report aims to present the findings from the exploratory interviews and the desk research carried out at EU level, as well as from the fieldwork in selected Member States as regards the national rules and relevant market practices implementing the SER. It also presents preliminary insights regarding the SER collected and distributed in the selected Member States, as well as on the potential economic impact of the RAAP judgement. More concretely, this report encompasses:

²⁵ Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84. Last accessed on 28/06/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0026>

²⁶ Recorded Artists Actors Performers Ltd v Phonographic Performance Ltd (2020), CJEU Case C-265/19 (RAAP Case). Last accessed on 10/04/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0265>

A **summary of the methodological approach**, describing the scope of the study, the research questions, the data collection and analysis activities completed during the inception and the desk research phases, as well as the limitations and challenges encountered (Chapter 2);

- An overview of the **underlying legal framework** behind the SER right, including the relevant legislation at international and EU level. This chapter also highlights the main differences in terms of the scope of the protection offered, and any existing limitations to such protection in the context of reservations and/or discretionary faculties of the contracting countries (Chapter 3);
- An analysis of the **national rules implementing the single equitable remuneration towards third-country rightholders**. The findings presented stem from the national legal research and from the interviews conducted with CMOs, copyright experts and relevant national authorities in the target Member States (Chapter 4);
- A description of the **national market practices** related to the collection and distribution of SER revenues for and to third-country rightholders for the use of their phonograms in the EU. This chapter covers the users subject to the payment of this remuneration, the procedures and actors involved in the setting of tariffs, the organisational schemes for the collection and distribution of this revenue, and the distribution rules applied by CMOs to transfer the SER to third-country rightholders. This chapter focuses on information collated through exploratory interviews with EU umbrella organisations and in-depth interviews with CMOs, rightholders' associations and users in selected Member States (Chapter 5);
- An **overview of the collection and distribution of the SER** based on the data collated from CMOs in selected Member States. This chapter presents aggregated figures on the SER collected and distributed in the EU, including relevant breakdowns by categories of rightholders, main user groups and third countries (Chapter 6);
- An **analysis of the economic impact of the application of national treatment** provided by the RAAP judgement **in the selected EU Member States**, focusing on those expected to be the most concerned based on their legislation and/or market practices (Chapter 7);
- A description of **other potential impacts of the application of national treatment provided by the RAAP judgement** beyond its economic effects, drawing mainly on information shared by stakeholders consulted as part of the exploratory interviews, as well as on the digital workshop (Chapter 8);
- An **assessment and comparison of two policy options at EU level examined as part of this study** to address the consequences of the interpretation of EU law provided by the RAAP judgement: no intervention by the EU (i.e. application of national treatment across Member States), and the introduction of a legal basis for material reciprocity at EU level (Chapter 9);
- **Concluding remarks** summarising the findings of our research (Chapter 10);
- **An Annex** including the list of interviews conducted, the detailed methodological approach, the selection criteria for the second round of interviews, the country researchers involved in the study, the questionnaires used for the fieldwork, and **country factsheets** for the 18 Member States analysed. The latter summarises key information on the national rules and market practices implementing the

SER, as well as the available key facts and figures regarding the volumes of SER collected and distributed.

2. Methodological approach

This chapter describes the scope of the study, stakeholders' ecosystem and value chain. It lists the research questions driving the study and presents the methodological approach followed. Lastly, this chapter reflects on the limitations of the study.

a. Study scope

This study focuses on the music sector, and in particular on **recorded music**. Specifically, it analyses the remuneration right conferred to phonogram producers and performers by Article 8(2) of the Directive 2006/115/EC on rental and lending right and on certain rights related to copyright in the field of intellectual property²⁷ (hereafter, 'RLR Directive') whenever their phonograms published with commercial purposes are broadcasted by wireless means or communicated to the public, namely played in public venues. As such, music played live (e.g. in concerts) or streamed online is excluded from the scope of this right and, therefore, from our analysis.

Considering the legal framework revolving around the single equitable remuneration (SER), the study covers three main **categories of stakeholders** in the music value chain:

- **Rightholders:** the persons or entities entitled to the payment of the single equitable remuneration, namely the beneficiaries of this right. These are performers (i.e. musicians, including singers and instrumentalists) and phonogram producers (also known as 'record labels');
- **Management societies/entities:** the organisations responsible for collecting the single equitable remuneration from users and distributing it to the corresponding rightholders. These include Collective Management Organisations (CMOs) and Independent Management Entities (IMEs); and
- **Users:** the entities subject to the payment of the single equitable remuneration for the use of music either in broadcasting or in any communication to the public. The main type of users considered in this study are: broadcasting organisations, including TV and radio broadcasters, and public venues, notably hospitality venues (e.g. bars, restaurants, clubs, hotels, etc.).

The glossary in this report provides a more detailed definition for each stakeholder category extracted from EU law or from relevant international legislation in copyright and neighbouring rights.

This study looks into the **international dimension of the single equitable remuneration right**, namely, into the revenues collected and distributed for the use of non-EEA music repertoire in the EU Member States, and the impact that this has or can potentially have for EU rightholders and users in particular. As such, the study considers both non-EEA and EU phonogram producers and performers, for/to whom revenues are collected and/or transferred mainly by EU CMOs. A further distinction is made within third-country (or non-EEA) rightholders who are nationals of countries

²⁷ RLR Directive, op.cit.

which are signatories of both the Rome Convention and WPPT, rightholders from third countries which are only party to either of them, and rightholders from third countries which are not party to either of these international agreements. The purpose of this distinction is to reflect the different obligations stemming from international law that EU Member States have with regard to these countries.

Table 1: Categories and examples of third countries for the purposes of this study; source: NTT DATA & ICF

| Categories of third countries | Examples |
|---|---|
| Parties to both the Rome Convention and WPPT | Argentina, Australia, Canada, Colombia, Chile, Guatemala, Georgia, India, Japan, Mexico, Peru, Republic of Korea, Russia, Switzerland, Serbia, Ukraine, United Kingdom, Uruguay, Venezuela, Vietnam |
| Parties to WPPT only | China, Singapore, Indonesia, Jordan, Malaysia, Morocco, Namibia, New Zealand, Senegal, South Africa, The United States |
| Parties only to the Rome Convention | Brazil, Iceland, Lebanon, Liberia, Norway |
| Neither parties to WPPT or Rome Convention | Angola, Cuba, Iran, North Korea, Thailand |

The study considers both major and independent labels. **Major labels or majors** are vertically integrated record companies that provide a complete set of services, including publishing, retail and ancillary services. **Independent labels** are more constrained record companies compared to major labels in terms of resources. They are often also limited to a national or regional scope, and therefore they need to rely on additional intermediaries (such as aggregators) and generally manage a repertoire that is more local and less diversified than the international repertoire managed by majors.

With regard to management societies, the study considers any entity authorised to manage single equitable remuneration revenues in the Member States. In practice, based on the information gathered as part of the fieldwork, CMOs are the only entities legally or de facto authorised to manage the single equitable remuneration in the EU Member States covered by this study (more information in section 4.a.i).

While the study aims at covering the whole of the EU through desk research and exploratory interviews, the fieldwork focuses on a sample of 18 EU Member States. The countries have been selected on the basis of the following criteria:

- **National legal landscapes as regards the uses that trigger the right to the single equitable remuneration.**²⁸ This criterion aims at splitting the countries into groups by systems of equitable remuneration they have in place in what concerns the types of phonogram uses that are subject to the single equitable remuneration (e.g., communication to the public and broadcasting through the radio and television channels, over the air, via cable or satellite). The purpose of this categorisation is to include Member States with different composition in terms of remuneration.

²⁸ This criterion was inspired by AEPO-ARTIS (2018) Performers' Rights in International and European Legislation: Situation and Elements for Improvement. Last accessed on 10/04/2022 and available at: https://www.aepo-artis.org/usr/files/di/fi/8/AEPO-ARTIS-Study-Performers%E2%80%99-Rights-in-International-and-European-Legisla_2020316942.pdf

- **Value added and turnover of enterprises in the music sector** as a proxy to the size of the music market in each EU Member State. The information to ascertain this criterion originates from Eurostat's Culture Statistics, particularly the dataset on Value added and turnover of enterprises in the cultural sectors by NACE Rev. 2 activity (cult_ent_val).²⁹ It is worth noting that the NACE cultural codes do not provide a comprehensive list of cultural and creative sectors from which we can solely select the music (or the audiovisual) sector. Therefore, the code J59 referring to 'Motion picture, video and television programme production, sound recording and music publishing activities' seems the most adequate proxy for the purposes of this study; and
- **EU regional coverage** to ensure a balanced geographical representativeness of the different European regions (Baltic, Central, Western, Southern and Northern Europe).

The final list of countries selected on the basis of the criteria above includes Belgium, the Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Lithuania, Hungary, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden.

b. Stakeholders' ecosystem and revenue streams

To be able to grasp the implications of the RAAP judgement in the analysis that follows, it is essential to understand how the legal framework for the single equitable remuneration is translated into **revenue streams**, as well as the stakeholders from the music value chain involved in each step. In particular, this study focuses on the following stakeholders across the music value chain³⁰: performers (creation), phonogram producers (production and distribution), as well as CMOs, broadcasters and public venues (retail).

²⁹ More information about the metadata of this dataset was last accessed on 05/05/2022 and can be found at:

https://ec.europa.eu/eurostat/cache/metadata/en/cult_ent_esms.htm.

³⁰ IDEA Consult et al., (2017). Mapping the Creative Value Chains - A study on the economy of culture in the digital age (prepared for the European Commission, DG Education and Culture). Last accessed on 05/04/2022 and available at:

<https://op.europa.eu/en/publication-detail/-/publication/4737f41d-45ac-11e7-aea8-01aa75ed71a1>

Europe Economics and University of Amsterdam IVIR (2015). Study on the remuneration of performers and producers in music and audiovisual sector. Last accessed on 05/04/2022 and available at:

http://publications.europa.eu/resource/cellar/c022cd3c-9a52-11e5-b3b7-01aa75ed71a1.0001.01/DOC_1

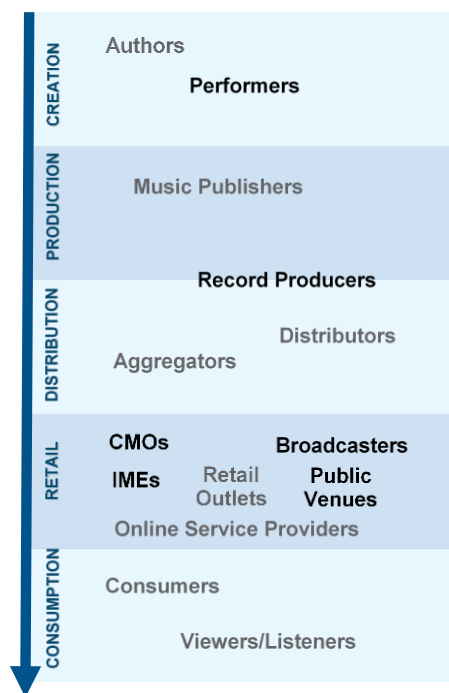


Figure 1: Relevant stakeholders in music value chain for the purposes of this study; source: NTT DATA & ICF based on IViR Study

Under Article 8(2) of the RLR Directive, the **single equitable remuneration is due** whenever a phonogram published for commercial purposes or a reproduction of such phonogram is used **for broadcasting by wireless means or any communication to the public**. These revenues are generally collected by CMOs, which then distribute them to the corresponding rightholders or beneficiaries (i.e. phonogram producers and performers). The figure below provides a simplified illustration of the revenue streams for the SER and the stakeholders that are involved in each step.

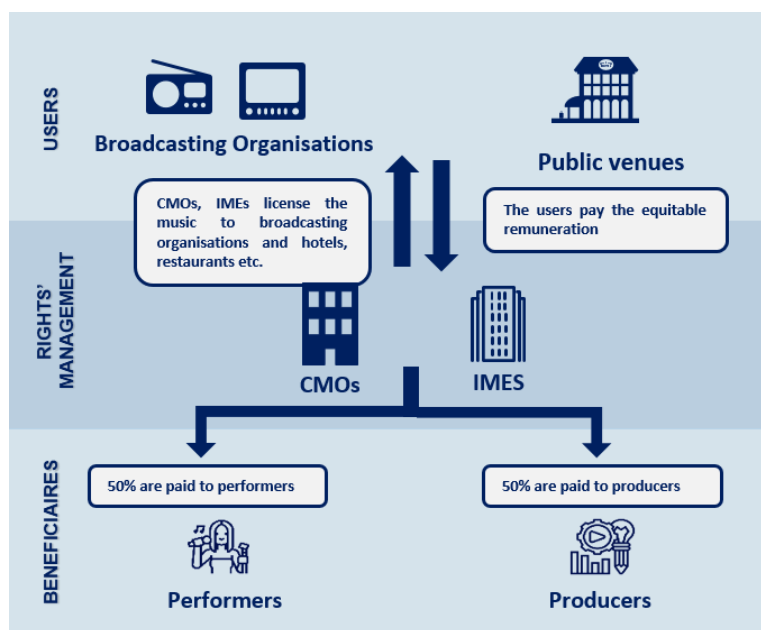


Figure 2: Revenue streams for the single equitable remuneration; source: NTT DATA & ICF

The **users** of recorded music are those who pay fees or from whom fees are being collected for the use of phonograms. **Broadcasting organisations**, whether public or commercial, generally rely on licencing agreements with a local CMO for their TV and

radio programmes which include musical works.³¹ **Public venues** or premises open to the public which use background music (notably hotels, restaurants, bars, etc.) also pay a licence fee to CMOs for the use of phonograms.

The right to single equitable remuneration is **generally administered by CMOs**,³² which are either legally or de facto responsible for collecting this revenue from users and for transferring it to the corresponding rightholders across most Member States, following different schemes described in Chapter 5. More specifically, some national legislations envisage a **mandatory collective management regime** for the management of the SER. It should also be noted that CMOs are sometimes assisted by users' associations for invoicing and collecting the SER from users, as described in Chapter 5. In some Member States, independent management entities (IMEs) may also be involved in the collection and distribution of this remuneration.

The collected remuneration is **distributed by CMOs** between performers and phonogram producers. While the RLR Directive does not specify how this revenue should be split between rightholders, the general trend is to share it on equal terms between performers and producers³³ (more information in section 5.d of this report).

c. Research questions

There are six research questions driving this study:

1. What are the national rules implementing the single equitable remuneration with regard to third-country phonogram producers and performers *before* and *after* the RAAP judgement?
2. What national market practices apply to the collection and distribution of the single equitable remuneration based on and/or in addition to the national rules *before* and *after* the RAAP judgement?
3. What are the amounts of single equitable remuneration that have been collected in the selected EU Member States and distributed to third-country phonogram producers and performers since 2011?
4. Which are the stakeholders affected by the interpretation of EU law endorsed in the RAAP judgement and to what extent?
5. What are the actual and/or potential economic impacts resulting from the current EU law as interpreted in the RAAP judgement? Can negative effects be anticipated for EU performers, producers and users?
6. What potential policy options could be considered at EU level to address the actual and/or potential negative effects of the current EU law as interpreted in the RAAP judgement for EU performers, producers and users?

d. Methodology

The methodological approach for this study entails five main data collection activities: (1) exploratory interviews or an offline questionnaire with umbrella organisations representing relevant stakeholders in the music value chain, as well as with a pan-European IME, (2) desk research at EU level to retrieve relevant literature and in the

³¹ CRM Directive, op.cit.

³² CRM Directive, op.cit.

³³ AEPO-ARTIS (2018), op. cit., p. 46.

selected Member States to gather information on the national rules and publicly available economic data, (3) a targeted research in official legal databases, websites of national competent authorities and CMOs to identify relevant national provisions and publicly available data on the SER in a selection of 18 Member States (4) in-depth interviews with CMOs, associations of rightholders, national authorities and copyright experts and scholars in the selected Member States, and (5) a targeted quantitative data collection exercise with CMOs in the selected Member States regarding the collection and distribution of the SER. We also organised an EU-level online workshop involving relevant stakeholders to present preliminary findings of the study and discuss solutions for addressing the main issues resulting from the RAAP judgement.

During the inception phase, the team had carried out **exploratory interviews** (or offered the possibility to complete the questionnaire offline) with **five umbrella organisations** representing all main categories of stakeholders (AEPO-ARTIS³⁴, the International Federation of the Phonographic Industry, the Independent Music Companies Association, the International Federation of Musicians, and the European Broadcasting Union), and with **a pan-European IME** (Jamendo). The purpose of these interviews was to gather preliminary information about the national legal landscape and market practices regarding the SER towards third-country rightholders and the impact that the interpretation of EU law endorsed in the RAAP judgement has had in that regard in order to steer the desk research and fieldwork activities. Additionally, these interviews served to identify relevant stakeholders to be engaged at national level as part of the fieldwork. Other EU and global associations representing users in both the broadcasting sector (AER³⁵ and (ACT³⁶) and the hospitality sector (HOTREC³⁷ and IAVM³⁸) were contacted, but no response was received. ACT and HOTREC did however participate in the online workshop with stakeholders and experts. Their input was gathered as part of that consultation activity.

In addition to the exploratory interviews, a **web-based desk research** of academic and grey literature covering the EU27 and published between 2012 and 2022 was carried out. The overall goal was to gather initial insights about national rules and market practices implementing the SER towards third-country rightholders, as well as any relevant data attempting to quantify the impact of the application of national treatment across the EU following the interpretation in the RAAP judgement on EU rightholders, users and collecting societies. The search yielded a total of 41 publications, including free-access and proprietary publications – the latter mainly retrieved from specialised research databases, including EBSCO³⁹, ResearchGate and HeinOnline.

A **targeted research** in official legal databases and in websites of the national competent authorities was carried out in the 18 selected Member States to identify and analyse relevant national provisions implementing the SER concerning third-country rightholders, as well as any relevant report issued by national authorities. Additionally, the websites of the relevant CMOs in the target countries were analysed to compile publicly available data on the SER amounts collected and distributed.

³⁴ Association representing European performers' collective management organisations.

³⁵ Association of European Radios.

³⁶ Association of Commercial Television and Video on Demand Services.

³⁷ Confederation of National Associations of Hotels, Restaurants, Cafés and Similar Establishments in the European Union and European Economic Area.

³⁸ International Association of Venue Managers.

³⁹ EBSCO is the leading provider of research databases, academic e-journals and magazines:

<https://www.ebsco.com/products/research-databases>

In total, **fifty one interviews** were conducted in the 18 selected Member States, between the last week of March and May 2022, particularly with CMOs representing both type of rightholders, experts in national authorities responsible for copyright and neighbouring rights, and copyright practitioners or academics. **Thirteen additional interviews** with associations of users and producers were carried out between May and June 2022 in six Member States where the impact of the application of national treatment was anticipated to be the most considerable: Belgium, Ireland, France, the Netherlands, Austria and Sweden (see Annex III for details on the criteria used to select these countries). The figure below provides a visual overview of the stakeholder categories consulted per Member State. It should be noted that depending on the organisational model of each Member State regarding the SER collection and distribution, more than one CMO was interviewed, either jointly or separately. The figure reflects the total number of stakeholders consulted, including those which chose to submit a written response to the questions proposed instead of participating in an interview.

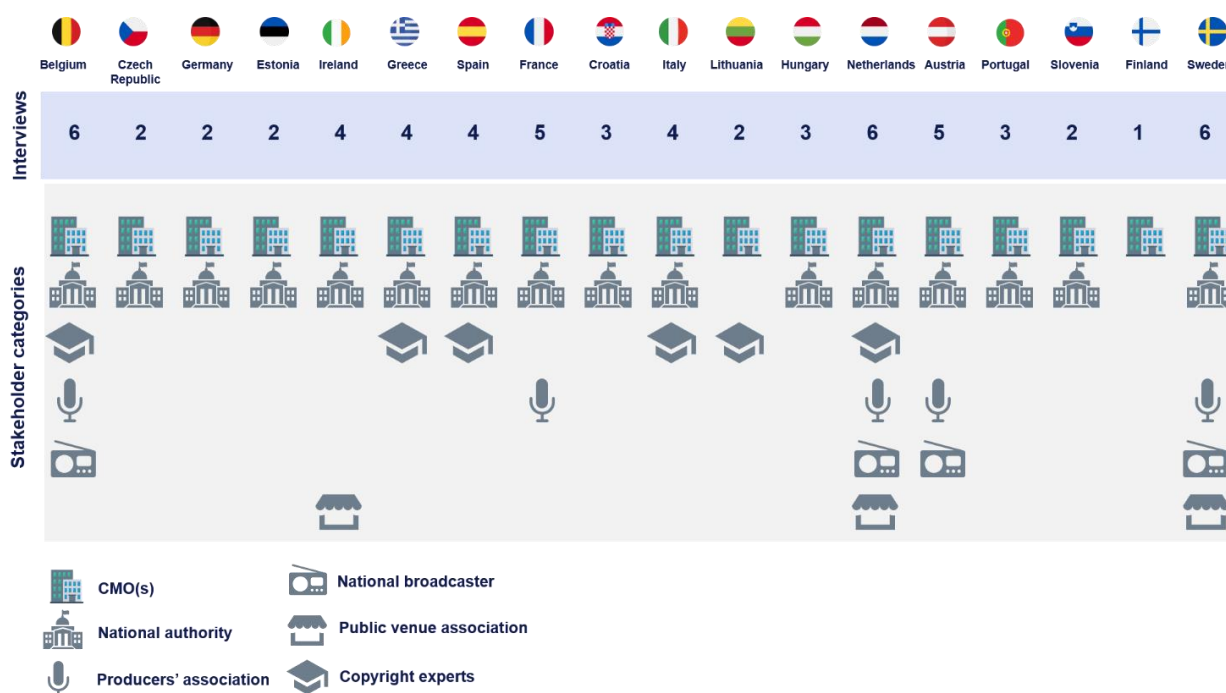


Figure 3: Overview of interviews conducted in the selected countries and the stakeholders covered; source: NTT DATA & ICF

Official data on the collection and distribution of the SER were submitted by CMOs in 17 of the 18 selected Member States, albeit with different levels of granularity and quality (i.e. Belgium, the Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Lithuania, Hungary, the Netherlands, Portugal, Slovenia, Finland and Sweden). For Austria the team had to rely exclusively on the data publicly available in the annual transparency reports published by the national CMO.

Lastly, an **online workshop** was organised on the 19th of May 2022 to present and gather feedback on the preliminary findings of the study. The workshop served as well to identify the main issues brought to the fore by the RAAP judgement, the underlying drivers and consequences, and in particular the possible solutions to address those

consequences or impacts. The workshop brought together a total of **47 participants**, including representatives from 13 EU Member States and from EU umbrella organisations, as well as practitioners and academics in the area of neighbouring rights. More detailed information on the methodological approach for this study is presented in Annex II.

e. Study limitations and challenges

The main challenge faced by the study team is related to the **quantification of the actual and/or potential economic impacts** of the EU law interpretation endorsed by the RAAP judgement on EU performers, producers and users. Given the recent nature of the judgement, several countries have not yet taken any action which may have economically impacted the collection and distribution of the SER. In fact, as a result of the RAAP judgement only two Member States have modified their legislation (i.e. France and the Netherlands) and market practices have significantly changed in two Member States (i.e. the Netherlands and Austria). Even in the Member State where the market practices have changed, the impact will only start to show from 2022 onwards, as revenues collected in a given year are usually only distributed during the following year or even two years after from the year of collection. Additionally, the industry has not yet recovered from the severe impact of the COVID-19 pandemic on the SER revenues stemming from public performance rights in particular. As such, the SER figures for 2020 onwards are likely to be distorted by this factor and not comparable to pre-COVID-19 values. Additional years would need to be considered in the analysis to be able to draw solid conclusions on the impact of the interpretation of EU law endorsed in the RAAP judgement across the EU.

Another important challenge we have been confronted with relates to the **availability and comparability of data on the SER** collected across Member States. This is mainly due to the lack of a common methodology and system by CMOs for recording information regarding their revenue collection and distribution, but also to the specific uses that are eligible for the payment of the SER across the Member States beyond the general ones envisaged in the international agreements and in the RLR Directive. As regards the country coverage, while data was received from CMOs for 17 Member States, in seven of them (i.e. Belgium, Estonia, Greece, Croatia, Lithuania, Hungary and Portugal) the figures are only partial as they do not reflect the whole SER revenue collection or distribution for both categories of rightholders and/or uses, or only cover a limited timeframe. In three other Member States (i.e. Germany, Slovenia and Finland) CMOs only submitted a minimum set of data out of the whole dataset requested due to resource constraints. No data was submitted by the Austrian CMO. The data presented for this country is solely based on the figures publicly available in the CMO's annual transparency reports.

For what concerns the quality of the data received, while the availability of aggregated figures on the SER collected and distributed is overall satisfactory, more granular breakdowns such as collection by type of users and distribution by category of rightholder and by country of origin of rightholders are not available for all countries. Other relevant indicators such as the share of international SER in the collected global revenues, information on management costs and tariffs is very rare, as is the detailed breakdown of the main third countries for which the SER is collected and distributed in each Member State. In terms of time series, data are available from 2017 onwards for almost all countries, but data from previous years are scarcer. Additionally, considering the impact of COVID-19 on the revenues collected from the SER, the figures provided from 2020 onwards may be distorted and therefore difficult to compare with those from previous years.

Where partial data were collected (i.e. for performers or producers only), estimations were carried out to obtain a complete dataset for the given Member State in the period considered by the study. To complete the dataset and be able to present more comprehensive findings, the study used the average SER collection for each year, calculated based on rest of the dataset. The figures for Austria are exclusively based on data publicly available in the annual transparency reports published by the CMO. Such data do not cover all the dimensions explored. The need to use estimations for the analysis in Chapters 6, 7 and 9 explains the discrepancies between some of the figures reported in these chapters and the ones presented in the country factsheets for the Member States that provided partial datasets.

Lastly, the **limited study timeline** and the fact that the fieldwork partially coincided with Easter holidays made it difficult for several stakeholders to participate in the interviews in the desired timeframe. Nonetheless, the research team was able to ensure a good coverage of stakeholders for most of the selected countries.

3. Underlying legal framework behind the single equitable remuneration at international and EU level

Both international and EU law grant phonogram producers and performers the right to receive a single equitable remuneration (SER) for the use of their recordings by broadcasters and public venues. The following sections describe in detail the relevant legislation and provisions at international and European level, as well as the implications of the recent judgement by the Court of Justice of the European Union (CJEU) as regards the subjects entitled to receiving such a revenue.

a. International legislative framework

The first international recognition of related rights came with the **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations** of 1961 (hereafter 'the Rome Convention'). More concretely, the right to a SER was envisaged for secondary uses of phonograms under Article 12 of the Rome Convention. This Article provides that if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performer or to the producer of the phonogram, or to both. Under the provisions of the Rome Convention, there are three cumulative conditions which need to be met for the single equitable remuneration to be paid to the respective rightholders. These are: (i) commercial nature of the phonogram, (ii) direct use, and (iii) specific eligible uses (i.e. broadcasting and communication in public venues).

Box 1. Article 12 of the Rome Convention

“If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.”

The rules enshrined in the Rome Convention were slightly updated by the **World Intellectual Property Organization (WIPO) Performances and Phonogram Treaty** (hereafter 'WPPT') of 1996.⁴⁰ Article 15(1) of the WPPT confers to performers and phonogram producers the right to a single equitable remuneration for both the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public. As such, the WPPT extends the right to a single equitable remuneration conferred by the Rome Convention also to **indirect uses of phonograms** and confirms that both performers and producers are entitled to a remuneration.

Box 2. Article 15(1) of the WPPT

“Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.”

While neither the EU nor Malta are parties to the Rome Convention and, as such, this international agreement is not part of the *acquis* (unlike the WPPT), the provisions of

⁴⁰ WPPT, op.cit.

this Convention still need to be taken into account when determining the scope of protection of the SER. This is so because the eligibility criteria for protection established in the Rome Convention also apply to WPPT, as explained below. Additionally, there is CJEU case law referring to the Rome Convention and Article 8.2 RLD Directive to be taken into account, in particular as regards the interpretation of the 'communication to the public' concept.⁴¹

The sub-sections that follow describe briefly how both international treaties establish the national treatment principle and the exceptions to it, as well as the points of attachment envisaged.

i. National treatment principle and material reciprocity

Article 2 of the Rome Convention (hereafter also referred to as 'the Convention') establishes the principle of **national treatment**. According to this principle as defined in the Convention, a signatory country must accord to the nationals of other signatory countries a treatment no less favourable than its domestic law accords to its own nationals.⁴² In Article 2(2) the Rome Convention expressly states that national treatment shall be subject to the minimum protection specifically guaranteed in the Convention.⁴³ This implies that a contracting party must grant the minimum rights provided for in the Convention to the nationals of other member countries, even if it does not grant such a level of protection to its own nationals.⁴⁴

The principle of national treatment also applies to the right to a SER provided for in Article 12. Despite being the general rule, it should be noted that national treatment is not an absolute principle. In fact, Article 16(1)(a) of the Convention provides for different derogations to this principle as regards the SER specifically. This provision allows Contracting States to make reservations in order not to apply this right, to acknowledge it only in respect of certain uses, to restrict the protection only to phonograms recorded by a producer which is a national of a Contracting State, or to limit the protection to the extent to which other Contracting States grant the same level of protection to nationals from other signatory countries as the one they offer to their own nationals (also known as 'material reciprocity'). It should be noted that the use of material reciprocity as an exception to national treatment in the Rome Convention is subject to a prior notification by the relevant Contracting State before the Secretary-General of the United Nations, as envisaged in Article 16(1)(a)(iv).

⁴¹ See for instance C-753/18, C-117/15 and C-162/10.

⁴² World Intellectual Property Organization (2003). *Guide to the copyright and related rights treaties administered by WIPO: And glossary of copyright and related rights and terms*, p. 297. Last accessed on 04/03/2022 and available at: <https://tind.wipo.int/record/28722>

⁴³ Michel, W. (2000). The Relationship of, and comparison between, the Rome Convention, the WIPO Performances and Phonograms Treaty (WPPT) and the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement); the evolution and possible improvement of the protection of the neighbouring rights recognized by the Rome Convention, in *Copyright bulletin*, vol. XXXIV. No. 2, p.8. Last accessed on 29/03/2022 and available at: <https://unesdoc.unesco.org/ark:/48223/pf0000122521>

⁴⁴ WIPO (2003), *Guide to the copyright and related rights treaties administered by WIPO*, op. cit.

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Table 2. Contracting States of the Rome Convention with reservations under Article 16; source: NTT DATA & ICF⁴⁵

| Type of reservation | Examples of Contracting States with such reservation |
|--|--|
| Limitation of application of national treatment to producers who are nationals of another Contracting State | <ul style="list-style-type: none"> • Austria, Belarus, Belgium, Bulgaria, Croatia, Iceland, Israel, Latvia, Lithuania, the Netherlands, Nigeria, Norway, Republic of Korea, Russia, Spain, St. Lucia, Switzerland |
| Limitation of application of national treatment to phonograms fixed by a producer from a Contracting State | <ul style="list-style-type: none"> • Bulgaria, Belgium, Austria, Belarus, Canada, Croatia, Denmark, Finland, France, Estonia, Germany, Iceland, Italy, Japan, Liechtenstein, Nigeria, the Netherlands, Republic of Korea, Poland, Romania, Russia, Spain, Switzerland, the UK |
| Non-recognition/exclusion of the single equitable remuneration right envisaged in Article 12 of the Convention | <ul style="list-style-type: none"> • Australia, Congo, Fiji, Niger, North Macedonia, Republic of Vietnam |
| Recognition of the single equitable remuneration only with respect to certain uses | <ul style="list-style-type: none"> • Italy, Denmark, Lesotho, Poland, Ireland, Republic of Korea, the UK |

On the other hand, the WPPT adopts in its Articles 3 and 4 a more restricted approach than the Rome Convention as regards the national treatment principle by obliging Contracting Parties to accord only to the **nationals of third countries that are signatory of the WPPT** a treatment no less favourable than the one they accord to their own nationals with regard to the rights specifically granted under the WPPT. The concept of 'nationals of other Contracting Parties' under Article 3 of the WPPT should be understood as performers and producers who would meet the eligibility criteria for protection provided under the Rome Convention and whose countries are Contracting Parties of the WPPT.⁴⁶

However, as opposed to the Rome Convention, the exception to the national treatment obligation set out in Article 4(2) of the WPPT is of an automatic nature. This provision allows Contracting States to apply **material reciprocity** to the extent that another Contracting Party makes use of the reservations permitted by Article 15(3) of that Treaty. In other words, Contracting Parties may limit the application of national treatment through material reciprocity simply on grounds that another Contracting Party has made reservations under Article 15(3). And, indeed, a considerable number of countries have filed reservations under that provision. More concretely, a country may declare that it does not recognise a right to remuneration in any form, or that it recognises a single equitable remuneration right only partially or in relation to certain uses, or it may limit its exercise in other ways. The table below lists the countries which are party to the WPPT and have filed reservations either in respect of the beneficiaries or the eligible uses for the SER.

⁴⁵ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961 (Rome Convention). Last accessed on 12/05/2022 and available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XIV-3&chapter=14&clang=en#9

⁴⁶ WPPT, op. cit., Article 3(2).

Table 3: Contracting States that made use of reservations under Article 15(3) of the WPPT⁴⁷; source: NTT DATA & ICF

| Type of reservation | Countries making use of the reservation |
|--|--|
| Non-recognition of the right to a SER in any form | <ul style="list-style-type: none"> • China⁴⁸ • India • New Zealand • North Macedonia |
| Partial recognition of the right to a SER or in a form other than the one provided under the Treaty | <ul style="list-style-type: none"> • The United States of America recognises the right to remuneration only in relation to digital broadcasting and digital communication to the public • Australia does not apply the SER: <ul style="list-style-type: none"> ○ for the use of phonograms for radio broadcasting and radio communication to the public ○ the communication to the public of phonograms by way of making the sounds of the phonograms audible to the public by means of the operation of equipment to receive a broadcast or other transmission of the phonograms. • Canada does not apply a fee right for phonogram retransmission • Japan does not apply the SER to direct or indirect use of the phonograms made available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and a time individually chosen by them for broadcasting, cablecasting (wire diffusion) or "automatic public transmission of unfixed information". • The Republic of Korea applies the SER only for broadcasting and transmission by wire (excluding internet transmission) • Singapore applies an exclusive right of phonogram producers for digital transmission |
| Recognition of the right to SER only in relation to certain subjects | <ul style="list-style-type: none"> • Hong Kong and Macao recognises this right in relation only to producers • The Russian Federation excludes national and legal entities of the non-Contracting Parties of the WPPT. |

ii. Points of attachment envisaged

This section describes the points of attachment or qualification criteria set out in the Rome Convention for the protection of phonograms in other Contracting States. The same points of attachment are used as reference eligibility criteria under the WPPT. As recognised by the CJEU,⁴⁹ points of attachment are relevant for determining the scope of the national treatment principle with regard to the SER, and ultimately to determine the third-country rightholders who are eligible for this remuneration. This is the reason why they are examined in detail in this section.

First of all, it should be noted that different points of attachment are envisaged for performers and for phonogram producers, and that such qualification criteria are not limited to the SER, but apply as well to other rights protected under the Rome Convention. Article 4(b) of the Rome Convention protects performers provided that **the**

⁴⁷ WPPT, op. cit.

⁴⁸ China has modified its relevant legislation in 2021. However, an amendment to the reservation has not been yet notified to WIPO.

⁴⁹ RAAP Case, op. cit., paragraph 66.

performance is incorporated in a phonogram which is protected under Article 5 of the Convention (namely, if the phonogram was either fixed or first published in a Contracting State). The nationality of the performer is therefore of no relevance to grant such a protection. Article 5 of the Rome Convention protects phonogram producers if any of the following points of attachment are met: (i) the producer of the phonogram is a **national of another Contracting State** (criterion of nationality); (ii) the **first fixation of the sound was made in another Contracting State** (criterion of fixation); (iii) the phonogram was **first published in another Contracting State** (criterion of publication). Additionally, phonograms first published in a non-Contracting State, but **also published within 30 days in a Contracting State** are also eligible for protection (simultaneous publication). The last criterion offers the widest protection for the recording industry, as it allows producers to benefit from protected recordings made in non-Convention countries by nationals of those countries.⁵⁰

Just as the principle of national treatment, these points of attachment are not absolute, and Contracting States can choose which ones they wish to apply by making use of permitted reservations under Articles 5(3), 16 and 17 of the Rome Convention. With regard to the protection of phonogram producers, Contracting States may declare that they will not apply the criterion of publication or, alternatively, the criterion of fixation pursuant to Article 5(3), but they must apply in any case the criterion of nationality of the producer. Furthermore, pursuant to Article 17 Contracting States may declare that they will apply the criterion of fixation alone and/or, for the purposes of Article 16(1)(a)(iii) and (iv), that they will only apply the criterion of fixation instead of that of nationality of the producer. The latter reservations are however only open to Contracting States which granted the protection to phonogram producers solely on the basis of the fixation criterion prior to signing the Rome Convention in 1961.⁵¹ The notification of intention not to apply one of these criteria must be deposited before the Secretary-General of the United Nations, in accordance with Article 5(3) of the Rome Convention.

The tables below list the EU Member States and third countries that have declared the non-application of certain points of attachment envisaged in the Rome Convention as regards the recognition of the rights protected under the Convention, including the SER. It should be noted that some of these reservations were made by means of a notification under the Rome Convention, whilst others were done through a notification under the WPPT, or under both international agreements. The crosses (X) indicate the points of attachment for which EU Member States and other Contracting States have filed reservations under either or both international agreements, and which are therefore not applied in their respective territories.

Table 4: Reservations by EU Member States to points of attachment envisaged in the Rome Convention; source: NTT DATA & ICF⁵²

| Member States | Criterion of Nationality of Producer | Criterion of Publication | Criterion of Fixation |
|----------------|--------------------------------------|--------------------------|-----------------------|
| Belgium | | X | |
| Croatia | | | X |
| Denmark | | X | |
| Estonia | | X | |
| France | | X | |

⁵⁰ WIPO (1999), Guide to the Rome Convention and to the Phonograms Convention, p. 29. Last accessed on 19/07/2022 and available at: https://www.wipo.int/edocs/pubdocs/en/copyright/617/wipo_pub_617.pdf.

⁵¹ Michel, W. (2000), op. cit., p. 13.

⁵² United Nations Treaty Collection, Depository Treaty XIV-3 (Rome Convention) Accessions and Ratifications made by some Member States. Last accessed on 22/06/2022 and available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XIV-3&chapter=14&clang=en#EndDec

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| | | | |
|-------------------|----------|----------|----------|
| Finland | | X | |
| Poland | | X | |
| Romania | | | X |
| Slovenia | | X | |
| Spain | | X | |
| Germany | | | X |
| Ireland | | | X |
| Italy | X | X | |
| Luxembourg | | X | |

Table 5: Reservations by EU Member States to points of attachment envisaged in the WPPT; source: NTT DATA & ICF⁵³

| Member States | Criterion of Nationality of Producer | Criterion of Publication | Criterion of Fixation |
|----------------|--------------------------------------|--------------------------|-----------------------|
| Belgium | | X ⁵⁴ | |
| Denmark | | X | |
| France | | X | |
| Finland | X | X | |
| Germany | | | X |
| Sweden | | X ⁵⁵ | |

Table 6: Reservations by third countries to points of attachment envisaged in the Rome Convention; source: NTT DATA & ICF

| Third-countries | Criterion of Nationality of Producer | Criterion of Publication | Criterion of Fixation |
|--------------------------|--------------------------------------|--------------------------|-----------------------|
| Australia | | X | |
| Belarus | | | X |
| Canada | | X | |
| Congo | | X | |
| Fiji | | | X |
| Iceland | | | X |
| Israel | | | X |
| Japan | | X | |
| Liechtenstein | | | X |
| Moldova | | | X |
| Monaco | | X | |
| Niger | | X | |
| Nigeria | | X | |
| North Macedonia | | X | |
| Republic of Korea | | X | |
| Russia | | | X |
| St Lucia | | X | |
| Switzerland | | | X |
| UK | | | X |

Table 7: Reservations by third countries to points of attachment envisaged in the WPPT⁵⁶; source: NTT DATA & ICF

| Third-countries | Criterion of Nationality of Producer | Criterion of Publication | Criterion of Fixation |
|------------------|--------------------------------------|--------------------------|-----------------------|
| Australia | | X | |

⁵³ WPPT Notification N0 78, op. cit. Accessions or Ratifications made by the European Union and some of its Member States. Last accessed on 22/06/2022 and available at: https://www.wipo.int/treaties/en/notifications/wppt/treaty_wppt_78.html

⁵⁴ WPPT Notification No 62, Declaration by the Kingdom of Belgium. Last accessed on 19/07/2022 and available at: https://www.wipo.int/treaties/en/notifications/wppt/treaty_wppt_62.html

⁵⁵ Sweden does not apply the criterion of publication (with the exception of the reproduction right for phonogram producers).

⁵⁶ WPPT, Notification No 78, op. cit.

| | | | |
|--------|--|---|---|
| Canada | | X | |
| India | | | X |
| Russia | | | X |

Lastly, it should be noted that the Rome Convention only establishes the minimum terms under which the Contracting Parties which are part of the WPPT and the Rome Convention must recognise the rights granted in their national legislation to the nationals of other countries which are part of these international agreements.⁵⁷

b. EU legislative framework

The concept of the single equitable remuneration in EU law⁵⁸ mirrors the one envisaged in the international treaties mentioned above and it is regulated in the Directive 2006/115/EC on Rental and Lending Rights (RLR Directive).⁵⁹ This Directive provides for a **single equitable remuneration right** under Article 8(2) which is paid by the user whenever a phonogram published for commercial purposes, or a reproduction of such phonogram, is broadcast or otherwise **communicated to the public** (i.e. use of music in public venues, such as bars, clubs or restaurants). Additionally, the provision states that Member States shall further ensure that this remuneration is shared between the **relevant performers** and **producers** and, in the absence of an agreement amongst them, Member States may lay down the conditions for sharing this remuneration between them.

Box 3. Article 8(2) of Directive 2006/115/EC

“Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between **the relevant performers and phonogram producers**. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.”

As opposed to the aforementioned international treaties, the RLR Directive is a legislative instrument that obliges all EU Member States as regards the acknowledgement of the SER and it does not envisage any reservations or discretion regarding the scope or the beneficiaries of this right. Nonetheless, CJEU case law has established that EU legislation must, as much as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement concluded by the EU.⁶⁰

It should be noted that all Member States had transposed the RLR Directive into their legislative frameworks by the 16th of June 2007, with the exception of Croatia, which

⁵⁷ WPPT, op. cit.

⁵⁸ The SER was incorporated into EU law already in the Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, prior to the adoption of the WPPT in 1996.

⁵⁹ RLR Directive, op. cit.

⁶⁰ Stichting ter Exploitatie van Naburige Rechten (SENA) v. Nederlandse Omroep Stichting (NOS), CJUE Case C-245/00, 6 February 2003, Paragraph 35. Last accessed on 28/06/2022 and available at: <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=48034&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=12292406>

did so in July 2013, when joining the European Union.⁶¹ Member States took different approaches when implementing Article 8(2) of this Directive laying down the conditions for the SER. All Member States provided for a remuneration right for both performers and producers and payable by users, but differences are observed as regards both the material and in particular the subjective scope of this right. Regarding the material scope, differences are observed across Member States regarding eligible uses and the users liable for payment, the intervention of CMOs in the management of this revenue, the amount of the remuneration, and the rules about the revenue split between performers and producers. Regarding its subjective scope, differences are observed regarding the qualifying criteria for rightholders to benefit from this right, in line with the permitted reservations to the points of attachment and to the principle of national treatment under mentioned international agreements. More information about this is presented in Chapters 4 and 5.

c. Relevant jurisprudence from the Court of Justice of the European Union: the RAAP Case

Against this legislative landscape, in September 2020, the CJEU delivered a judgement in **the RAAP case**⁶² concerning the interpretation of Article 8(2) of the RLR Directive. The judgement attracted a lot of attention from different stakeholders because of its implications for the recognition of the SER towards third-country nationals in the EU Member States.

The main proceedings behind this case started with the legal action taken by the Irish collective management organisation for performers (hereafter RAAP) against the Irish collective management organisation for producers (hereafter PPI) before the Irish Court. The dispute arose because PPI refused to pay the corresponding share of the SER to RAAP. PPI claimed that under Irish legislation⁶³ performers who are neither nationals nor residents of an EEA country, and whose performances do not originate from a sound recording fixed in the EEA either, are not entitled to the SER when such performances are played in Ireland. In contrast with this, under the Irish copyright law phonogram producers are eligible to receive the share of the SER on the basis of the first or simultaneous publication criterion envisaged in the Rome Convention.

Doubting that such a disparity in treatment between the two groups of beneficiaries was in line with Article 8(2) of the RLR Directive, the Irish High Court hearing the case referred to the CJEU for a preliminary ruling. The Irish High Court specifically enquired about the interpretation leeway that Member States have when transposing into their legislation the words 'relevant performers' of the RLR Directive in the light of the international conventions on the matter. More specifically, the CJEU was requested to clarify whether Member States can exclude artists who are nationals of non-EEA countries from the right to receiving this remuneration. In this context, the CJEU considered four aspects, namely:

- The interpretation of Article 8(2) of the Directive 2006/115 in light of the Rome Convention and/or the WPPT;

⁶¹ National transposition measures communicated by the Member States concerning Directive 2006/115/EC. Last accessed on 19/07/2022 and available at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32006L0115&qid=1658224174214>

⁶² RAAP Case, op. cit.

⁶³ Irish Copyright and Related Rights (2000), Sections 208, 287 and 288. Last accessed on 28/06/2022 and available at <https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html>.

- The discretion of EU Member States to establish the criteria for determining performers who qualify as 'relevant performers' eligible for the single equitable remuneration under the meaning of Article 8(2) of RLR Directive;
- The competence of EU Member States in responding to the reservations made by third countries under Article 15(3) of WPPT; and
- The share of the remuneration between performers and producers, and in particular the possibility to restrict this remuneration to producers and deny it to performers.

In its judgement, the CJEU reached the following main conclusions:

- Article 8(2) interpreted in the light of the EU's international obligations applies to the use in the territory of the Union of phonograms published for commercial purposes, irrespective of nationality.
- The right to a SER constitutes an intellectual property right within the meaning of Article 17(2) of the Charter of Fundamental Rights of the European Union and, as such, it is **the exclusive competence of the EU**;
- Following Article 52(1) of the EU Charter of Fundamental Rights, **any limitation** on the exercise of this right **must be provided for by EU law through a clear and precise provision**. The mere existence of a reservation under Article 15(3) of the WPPT is not sufficient, as it does not enable third-country nationals to ascertain in what precise way their right would be limited in the EU. As such, reservations notified by third countries to the WPPT do not by themselves lead in the EU to limitations of the right to receive the SER in respect of nationals of those third countries;
- As EU law currently stands, neither Article 8(2) of the RLR Directive **nor any other provision of EU law contains a limitation** as regards the recognition of the SER to nationals outside of the EEA;
- It is for the EU legislature alone to determine whether the grant of that right should be limited in respect of third-country nationals;
- Lastly, both performers and phonogram producers are entitled to a single equitable remuneration under Article 8(2) of the RLR, which is to be shared between them. As such **this right cannot be limited by Member States in a way that only the producer of the phonogram concerned receive the corresponding remuneration**.

4. National rules implementing the single equitable remuneration with regard to third-country phonogram producers and performers

This chapter identifies and analyses the different rules at national level implementing the single equitable remuneration (SER) right envisaged in Article 8(2) of Directive 2006/115/EC on Rental and Lending Rights (RLR Directive) with respect to third-country rightholders. The modifications to national provisions occurred as a result of the implementation of the case law stemming from the RAAP judgement are also discussed. This report presents the analysis of national rules in the 18 selected Member States.

a. National rules in place before the RAAP judgement: eligible uses, points of attachment and approaches to material reciprocity

This section analyses differences found in the Member States' provisions as regards (1) the approach for collecting and distributing the SER; (2) the uses eligible for this remuneration right, (3) the considered points of attachment as regards the recognition of this right to third-country performers and producers, and (4) the application of material reciprocity as an exception to the national treatment principle envisaged in the relevant national treaties.

i. Rules regarding the management of the SER

Article 8(2) of the RLR Directive does not prescribe how Member States should administer the SER. In practice, most Member States envisage a mandatory collective management regime for the SER in their legislation. This means that such remuneration right can only be managed collectively. This situation concerns all the Member States examined as part of our research, with the exception of Ireland, where rightholders can choose between a voluntary collective management and managing this right by themselves.

In 12 out of the 17 countries with a compulsory collective management regime, CMOs have an exclusive mandate to collect and distribute SER revenues.⁶⁴ In the remaining five Member States the national rules allow for a more flexible system for the management of the SER, by opening it to entities or licensing bodies other than CMOs.⁶⁵ Phonogram producers and performers in these countries are free to entrust the management of this revenue to CMOs or to independent management entities (IMEs), as long as the latter can prove a sufficient representation and/or they fulfil some minimum requirements. In practice, though, with the exception of Italy, we have not found evidence of entities other than CMOs managing the SER. In Italy the market related to the management of neighbouring rights was liberalised⁶⁶ in 2013 and each

⁶⁴ European Commission (2021). Study on the selected issues relating to the application of the CRM Directive, pp. 26-27. Last accessed on 31/03/2022 and available at: <https://op.europa.eu/en/publication-detail/-/publication/386c0f22-4c16-11ec-91ac-01aa75ed71a1/language-en/format-PDF/source-244492571>

⁶⁵ More information about each Member State's collective management system can be found in the country factsheets.

⁶⁶ Italian Decree Law 1/2012 (2012), Article 39(2). Last accessed on 28/06/2022 and available at <https://wipolex.wipo.int/en/legislation/details/13139>

year the Government publishes a list⁶⁷ of the CMOs and IMEs that comply with the legal requirements⁶⁸ for the collective management of neighbouring rights.

The table below presents the approaches observed in the analysed EU Member States regarding the management of the SER:

Table 8: Approach to the collective management of the SER in the analysed Member States; source: NTT DATA & ICF

| Approach to SER Management | Member States concerned |
|--|--|
| Management only possible by CMOs | Belgium, the Czech Republic, Germany, Greece, Spain, Croatia, Lithuania, Hungary, the Netherlands, Austria, Slovenia and Finland |
| Management by other entities possible by law but not used in practice | Estonia, Ireland, France, Portugal and Sweden |
| Management by other entities possible by law and used in practice | Italy |

ii. Eligible uses

The specific uses triggering the payment of the SER that are encompassed within the broad rights envisaged in Article 8(2) RLR Directive (i.e. 'communication to the public' and 'broadcasting') slightly differ across Member States. Such differences have an impact on the users that are subject to the payment of fees for the use of music in each Member State, which can shape the potential impact of the interpretation of EU law endorsed in the RAAP judgement across countries.

As regards broadcasting, terrestrial radio and TV broadcasting are generally accepted as eligible uses for the SER. In addition, some Member States go beyond the traditional means of broadcasting envisaged in the WPPT and in Article 8(2) of the RLR Directive and also consider digital broadcasting to be subject to the SER.⁶⁹ Based on the information gathered through interviews with CMOs, almost half of the Member States analysed (i.e. Germany, Spain, France, Hungary, Austria, Portugal, Finland and Sweden) also consider webcasting and simulcasting as uses subject to the SER (see section 5.a for more details). In addition, a report published in 2018 by the EU umbrella organisation representing performers' CMOs⁷⁰ found that all Member States except for Belgium and Ireland consider that the SER is due for either webcasting and/or simulcasting uses, but in some national legislations these uses are already encompassed within broadcasting or fall under the broad term of 'communication to the public'.

⁶⁷ Autorità per le Garanzie nelle Comunicazione (2021). List of collective management organisations and independent management entities meeting the requirements of Article 8 of Legislative Decree No. 35 of 15 March 2017, drawn up pursuant to Article 5, paragraph, 1 of Annex A to Resolution No. 396/17/CONS. Last accessed on 28/06/2022 and available at:

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5IVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5IVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5IVOIXoE_assetEntryId=23803737&_101_INSTANCE_FnOw5IVOIXoE_type=document

⁶⁸ Legal requirements to be met by CMOs and IMEs are set in Article 8 of Italian Decreto Legislativo 2017, n.35, implementing the Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. Last accessed on 23/06/2022 and available at:

<https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017-03-15;35>

⁶⁹ Interview of the study team with AEPO-ARTIS held on 10/03/2022.

⁷⁰ AEPO-ARTIS (2018), op. cit., p. 23.

In the case of the right to communication to the public, all Member States collect the SER for the use of phonograms in public venues. It should be noted that the CJEU has provided a definition of what is to be understood under 'communication to the public' and examples of uses which are to be considered as falling under this category. In line with the CJEU's case law, shops and hospitality venues are generally accepted as users subject to the payment of the SER in all Member States.⁷¹ That includes hotels, restaurants, bars, sport venues, or stadiums. A more exhaustive analysis of the users subject to the payment of the SER for public performance uses⁷² across the targeted Member States is provided in section 5.a of this report.

The analysis conducted indicates that differences on the specific uses subject to the SER do not generally stem from national implementing legislation, but rather from the interpretation of the law by national courts or by the CMOs themselves. Our research has nonetheless found evidence of at least one country which does specify by law the sectors or uses which are subject to the payment of the SER. This is the case of Belgium, where a Royal Decree of 17 December 2017⁷³ develops the different aspects related to the implementation of the SER and determines the uses and sectors subject to this remuneration.

Additionally, no relevant distinction has been identified in the national rules between the eligible uses in the case of third-country phonograms and those applicable to EU/EEA phonograms. However, in some countries, the application of material reciprocity implies that, in practice, CMOs only collect revenues for certain uses of the foreign repertoire. For instance, in the Netherlands, prior to the recent amendment to its Copyright Act, the CMO neither collected nor distributed revenues for the use of US repertoire in public venues or in terrestrial radio broadcasting in the Dutch territory, since the US does not pay the SER for such uses to EU rightholders, as it also does not pay it to its own nationals.⁷⁴ As such, under material reciprocity, the Netherlands was only paying US rightholders for digital broadcasting uses. This is also the case of Belgium, France, Finland and Sweden.

iii. Points of attachment set out in national rules

As explained in Chapter 3, the 'points of attachment' are the criteria determining the rightholders who benefit from the protection envisaged in international agreements. In the context of this study, the relevant points of attachment to qualify for the SER (alongside for other rights) are laid down in the Rome Convention. This section presents the points of attachment relevant for the recognition of the SER to third-country rightholders that are applied by the Member States examined. The analysis below considers the reservations made by some of them to some points of attachment laid down in Articles 4 and 5 of the Rome Convention for performers and phonogram producers, respectively, as well as any additional qualifying criteria envisaged in national legislations.

⁷¹ *Societa Consortile Fonografici vs Marco del Corso*, CJEU Case C-135-10. The CJEU to determine whether a use qualifies as a communication to the public according to three criteria: (i) deliberate intervention of a user to give access to a protected work to its customers (ii) exposure to an indeterminate number of potential listeners or fairly large number of persons and (iii) profit-making nature of the communication.

⁷² Term commonly used by the industry to refer to the use of recorded music by public venues or places accessible to the public.

⁷³ Arrêté Royal, relatif à la rémunération équitable au profit des artistes-interprètes ou exécutants et des producteurs pour l'exécution publique de phonogrammes ou la radiodiffusion de phonogrammes, 17 décembre 2017. Last accessed on 11/05/2022 and available at https://etaamb.openjustice.be/fr/arrete-royal-du-17-decembre-2017_n2017031945.html

⁷⁴ Interviews by the Study team with Dutch CMO on 12/04/2022 and with the Dutch Ministry of Justice and Security on 13/04/2022.

Article 8(2) RLR Directive states that the SER right shall be granted to "relevant phonogram performers and producers" when a phonogram is broadcasted or communicated to the public within the territory of the EU. No other conditions are established in the Directive as regards the subjective scope of this right. In practice, though, the **patchwork of reservations to the points of attachment** made by some Member States under the Rome Convention and/or the WPPT have resulted in a high diversity of eligibility criteria across national laws, both in terms of number and formulation.

Typically, Member States use a combination of at least two or more eligibility criteria, which are applied alternatively. The table below summarises the different points of attachment envisaged in the national rules in the analysed Member States. The first four columns in the table list the points of attachment of the Rome Convention. The additional points of attachment foreseen in some Member States are presented in the two last columns.

Table 9: Summary of points of attachment for third-country phonograms and rightholders applied in the analysed Member States;
source: NTT DATA & ICF

| Member States | POINTS OF ATTACHMENT ENVISAGED IN THE ROME CONVENTION | | | | ADDITIONAL POINTS OF ATTACHMENT IN NATIONAL LAWS | |
|-----------------------------|---|-------------|--------------------------|-----------------------------|--|-------------------------------------|
| | First fixation | Publication | Simultaneous publication | Nationality of the producer | Nationality of the performer | Residence of the performer/producer |
| Belgium⁷⁵ | X | | | X | | |
| Czech Republic | | X | | X | | X |
| Germany | | X | X | X | | |
| Estonia | X | X | | X | X | X |
| Ireland⁷⁶ | | X | X | X | X | X |
| Greece⁷⁷ | X | X | X | X | | |
| Spain⁷⁸ | X | X | X | X | X | X |
| France | X | | | X | | |
| Croatia⁷⁹ | | X | X | X | | |
| Italy⁸⁰ | X | | | X | X ⁷⁷ | X |

⁷⁵ In Belgium, the Code of Economic Law does not envisage specific provisions with regard to the third-country rightholders considered to be eligible for the single equitable remuneration.

⁷⁶ Different points of attachment are envisaged for performers and producers in Irish law. For producers: (1) first or simultaneous publication of the phonogram in a convention country and (2) citizenship or domicile in a Convention country. For performers: citizenship or residence in the EEA.

⁷⁷ Greek Copyright and Related Rights Act does not envisage specific provisions with regard to the third-country rightholders eligible for the single equitable remuneration. These criteria are inferred by reference to the obligations of Greece under relevant international agreements.

⁷⁸ Spain made a reservation to the Article 5 Rome Convention in order not to apply the criterion of publication. However, Article 201(1)(b) of the Spanish Copyright Act envisages the publication and simultaneous publication as relevant criteria for the protection of phonograms from third-country producers.

⁷⁹ The Croatian Copyright and Related Rights Act does not envisage specific provisions with regard to the third-country rightholders considered to be eligible for the single equitable remuneration. These criteria are inferred by reference to the obligations of Croatia under relevant international agreements.

⁸⁰ Italy made a reservation to the Rome Convention indicating that only the criterion of fixation will be applied as regards the protection to right to equitable remuneration established in Article 12 Rome Convention. In spite of the aforementioned

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| Member States | POINTS OF ATTACHMENT ENVISAGED IN THE ROME CONVENTION | | | | ADDITIONAL POINTS OF ATTACHMENT IN NATIONAL LAWS | |
|------------------------|---|--------------------|---------------------------------|------------------------------------|--|--|
| | <i>First fixation</i> | <i>Publication</i> | <i>Simultaneous publication</i> | <i>Nationality of the producer</i> | <i>Nationality of the performer</i> | <i>Residence of the performer/producer</i> |
| Lithuania | X | X | X | X | X | X |
| Hungary ⁸¹ | X | X | X | X | | |
| The Netherlands | X | X | X | X | X | X |
| Austria | | X | | X | | |
| Portugal | X | X | X | X | X | |
| Slovenia ⁸² | X | | | X | X | X |
| Finland | X | | | X | | |
| Sweden | X | | | X | | |

The analysis of the different points of attachment summarised in the table above shows some differences regarding the scope of protection of third-country rightholders across Member States. In a few countries (i.e. Belgium, Croatia, Hungary and Slovenia), there are no specific provisions in **national rules establishing specific points of attachment** for third-country performers and producers. The general provisions establishing the scope of the SER in relation to third-country nationals simply refer to the protection granted under relevant international treaties and conventions signed by these countries (i.e. the Rome Convention and WPPT) considering any reservations made by them.

A few Member States go beyond the points of attachment established by the Rome Convention and provide for an extended protection of third-country rightholders by envisaging additional eligibility criteria. A particular case in point within this group is Spain, which in addition to providing an extensive list of points of attachment, includes a general clause establishing the national treatment principle with regard to third-country performers and phonogram producers in Articles 200(3) and 201(2) of the Spanish Copyright Law, respectively.⁸³ These provisions are considered as “residual clauses” and are aimed at guaranteeing the protection of third-country rightholders who are not eligible under any of the aforementioned points of attachment. This approach ensures the protection of rightholders from virtually anywhere in the world.

reservation, the Italian Copyright law (Article 185(2) LDA) envisages as conditions for the protection of third-country rightholders the domicile of the producer or performer in Italy and the first publication of the phonogram in Italy. However, the latter criterion must be met in combination with the residence criterion for the producer and/or performer to be protected.

⁸¹ The Hungarian copyright legislation does not envisage specific provisions with regard to the third-country rightholders considered to be eligible for the single equitable remuneration. These criteria are inferred by reference to the obligations of Hungary under relevant international agreements.

⁸² The Slovenian Copyright and Related Rights Act does not envisage specific provisions with regard to the third-country rightholders considered to be eligible for the single equitable remuneration.

⁸³ Real Decreto Legislativo 1/1996, de 12 de abril, Texto Refundido Ley de Propiedad Intelectual. Last accessed on 29/04/2022 and available at <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

Lastly, while the national rules in some countries provide for several points of attachment, in practice, it appears that some CMOs prioritise **a specific criterion to determine the protection of third-country rightholders**. For instance, based on information shared by the Dutch CMO, in the Netherlands the SER is collected and distributed based solely on the criterion of the nationality of the producer for both performers and producers. This is in accordance with Article 32(5) of the Dutch Neighbouring Right Act, which provides that a phonogram producer who is not a national of or a legal person incorporated under the law of a state which is party to the Rome Convention is not entitled to the SER. In Portugal, the collecting CMO primarily uses the criterion of the simultaneous publication of the phonogram in the EEA for the purposes of the protection of third-country rightholders.⁸⁴ This is also the case in Greece and Germany. On a different note, in France the only point of attachment specifically envisaged in the law is the one of the first fixation of the phonogram in the EEA⁸⁵, but French CMOs alternatively use the criterion of the nationality of the producer when a phonogram has been fixed outside of the EEA, subject to material reciprocity. The latter point of attachment derives from France's obligations in the relevant international agreements.

Additionally, it should be noted that the criterion of the nationality of the producer from the Rome Convention is defined and applied differently across Member States. For instance, in Ireland⁸⁶, Portugal⁸⁷ and Belgium⁸⁸ the nationality criterion, as defined in the law, refers to producers stemming from EEA countries, whilst in other countries' legislation it encompasses Rome Convention and/or WPPT signatory countries (e.g. Sweden and the Netherlands), and in others, it also encompasses any third country party to the same international agreements (e.g. Spain).⁸⁹ In any case, notwithstanding what the legislation provides verbatim, the nationality criterion is sometimes interpreted extensively to also cover convention countries.

iv. Application of material reciprocity regarding the single equitable remuneration

Both the Rome Convention and the WPPT contain rules on the application of the national treatment principle and the permitted limitations to it (see section 3.a). First, it should be recalled that material reciprocity operates differently in these international agreements. In the case of the Rome Convention, a contracting state must deposit a notification under Article 16(1)(a)(iv) in order to limit the protection of third-country producers who are nationals from contracting states not granting the same level of protection as regards the SER to the producers of the state depositing the notification. By contrast, in the case of the WPPT material reciprocity automatically applies with respect to contracting states that have made reservations to Article 15(3), pursuant to Article 4(2). This section examines the Member States which have specifically envisaged material reciprocity in their legislative frameworks towards third-country nationals as

⁸⁴ WIPO (1981) Guide to the Rome Convention and to the Phonograms Convention, WIPO Publication No.617(E), p.29. Last accessed on 19/07/2022 and available at https://www.wipo.int/edocs/pubdocs/en/copyright/617/wipo_pub_617.pdf

⁸⁵ Article L214-1 of French Code of Intellectual Property. Last accessed on 17/06/2022 and available at https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069414/LEGISCTA000006161645/#LEGISCTA000006161645.

⁸⁶ Irish CRRA, Article 287. Last accessed 17/06/2022 and available at <https://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/html>

⁸⁷ Portuguese Copyright and Neighbouring Rights Code, Article 190(2)(a). Last accessed 17/06/2022 and available at <https://wipolex.wipo.int/en/text/583948>.

⁸⁸ Belgian Code of Economic Law, Article XI.213. Last accessed 17/06/2022 and available at <http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel>.

⁸⁹ Spanish Copyright Act, Articles 200(3) and 201(2). Last accessed 17/06/2022 and available at <https://www.boe.es/eli/es/rdlg/1996/04/12/1/con>

regards the payment of the single equitable remuneration in response to the reservations made by some countries under Article 15(3) WPPT, vis-a-vis those that have not, or which have provided for national treatment instead. As outlined in section 3, one of the main outcomes of the RAAP judgement is the limitation on Member States to unilaterally apply the principle of material reciprocity with regard to the entitlement to the SER by third-country rightholders. Therefore, our analysis departs from the assumption that the actual and/or potential impact of the current state of EU law as interpreted by the RAAP judgement will be greater on those Member States that operate or did so under the premises of material reciprocity until then. In order to identify such countries, the research team combined and cross-checked data retrieved from multiple sources, in particular for those countries where information collated during the interviews was contradictory. The sources of information used include the national legal analysis conducted by country researchers and the interviews with CMOs, national authorities and copyright experts in the 18 target Member States.

The following table summarises whether and how (if applicable) the examined Member States envisage and/or apply material reciprocity regarding the recognition of the single equitable remuneration towards third-country rightholders.

Table 10: Application of material reciprocity in analysed Member States; source: NTT DATA & ICF

| Member States | Material reciprocity envisaged in national law | Relevant provisions in national rules | Application of material reciprocity in practice regarding the SER |
|-----------------------|--|--|--|
| Belgium | Envisaged | Article XI.289 of the Code of Economic Law | Applied |
| Czech Republic | Envisaged only in the absence of applicable international treaties | Article 107 of the Czech Copyright Act | Not applied |
| Germany | Not envisaged | N/A | Not applied |
| Estonia | Not envisaged | N/A | Not applied |
| Ireland | Envisaged only for producers through a Foreign Countries Order issued by the Government. | Articles 188-190 of Irish CRRRA (producers) and Articles 287-289 CRRRA (performers) Also Foreign Countries Order 1996 ⁹⁰ | Applied only with regard to producers , as the only Order in force only applies to them. No Order has been issued for performers. |
| Greece | Envisaged only in the absence of applicable international treaties | Article 67(4) of the Greek Copyright Law 2121/1993 | Not applied |
| Spain | Not envisaged | N/A | Not applied |
| France | Indirectly envisaged through a general clause referring to the international obligations of France | Article L214-2 of the French Intellectual Property Code | Applied |
| Croatia | Envisaged | Article 7 (4) of Croatian CRRRA | Not applied |

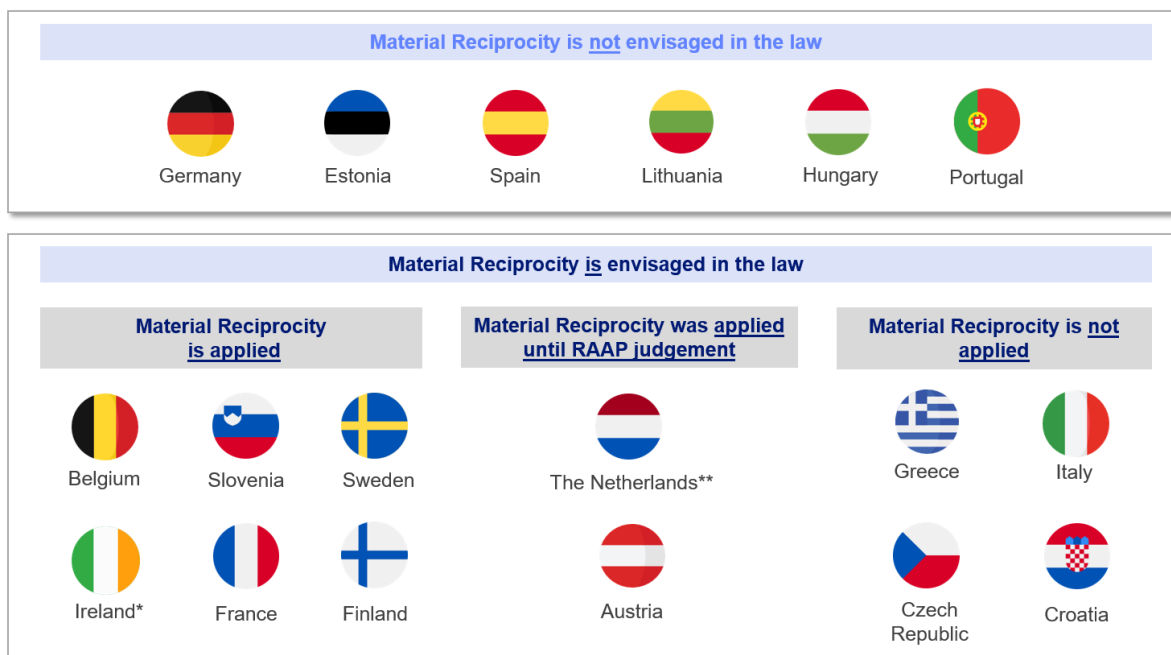
⁹⁰ Ireland Statutory Instruments, S.I. No. 36/1996 - Copyright (Foreign Countries) Order, 1996. Last accessed on 06/09/2022 and available at <https://www.irishstatutebook.ie/eli/1996/si/36/made/en/print>

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| Member States | Material reciprocity envisaged in national law | Relevant provisions in national rules | Application of material reciprocity in practice regarding the SER |
|------------------------|--|--|---|
| Italy | Envisaged | Article 186 and 187 of Italian Copyright Law | Not applied |
| Lithuania | Not envisaged | N/A | Not applied |
| Hungary | Not envisaged | N/A | Not applied |
| The Netherlands | Envisaged only as regards Rome Convention ⁹¹ repertoire | Article 32(4) of Dutch Neighbouring Rights Act | No longer applied since January 2021 |
| Austria | Envisaged unless the phonogram is first published or produced by an Austrian national and without prejudice to international treaties | Article 99(5) of the Austrian Copyright Act | No longer applied since the change of interpretation of the law as a result of the RAAP judgement |
| Portugal | Envisaged only for authors' rights | Article 64 of the Portuguese Copyright Act | Not applied |
| Slovenia | Envisaged | Article 176 of Slovenian CRRRA | Applied |
| Finland | Envisaged with a general scope, applied to the SER upon a Government Order for the application of the Copyright Act in relation to other countries | Article 65 of Finnish Copyright law | Applied |
| Sweden | Envisaged | Articles 13(2) and 26(2) of Swedish International Copyright Regulation | Applied |

The information presented in the table above shows that there are differences and nuances in the approach to material reciprocity set out in the analysed national rules. For the sake of simplification, the Member States examined can be classified into four main groups, as shown in the figure below:

⁹¹ The Netherlands filed a notification under Article 16(a)(iv) of Rome Convention to apply material reciprocity as regards the single equitable remuneration envisaged under Article 12 of the Rome Convention.



* Only envisaged with regard to producers through a Foreign Countries Order (SI 36/1996) issued by the Government.
** Only envisaged with regard to Rome Convention since amendment to national legislation in January 2021.

Figure 4: National rules and approaches to material reciprocity in the selected Member States; source: NTT DATA & ICF

As it can be observed in the image above, the national legislation in **6 out of the 18 analysed Member States does not provide for any reference to material reciprocity with regard to the SER** (Germany, Estonia, Spain, Lithuania, Hungary and Portugal). These countries apply instead the principle of national treatment.

Amongst the Member States that do envisage material reciprocity in their legislative frameworks (12 out of 18), there are differences in relation to the scope of this exception and how it is applied in practice to collect and/or distribute SER revenues for/to third-country rightholders:

Three Member States analysed have specific rules on material reciprocity regarding the SER (Belgium, Slovenia and Sweden). Other Member States have a general or indirect provision on material reciprocity in their legislation. This is the case of Ireland, France and Finland. The French Intellectual Property Code does not include a clause on material reciprocity as such, but makes instead an indirect reference to this possibility envisaged in the Rome Convention and in the WPPT. In Finland, the clause introducing material reciprocity has a general scope and a Government order is needed to apply it to specific rights (issued in Decree no 575/1995⁹² in case of the SER). Lastly, in Irish law the situation regarding the application of material reciprocity differs for producers and performers. Specifically, material reciprocity for producers is envisaged in sections 188 to 190 of the Irish Copyright and Related Right Act (CRRA), conditional upon the Government issuing a Foreign Countries Order determining the qualifying countries for protection. Pursuant to the transitional provisions of this Act, the country Order (SI 36/1996)⁹³ adopted under the previous Copyright Act of 1963 is still applicable for producers. Instead, in the case of performers, material reciprocity is not applied since

⁹² Decree 575/1995 on the Application of the Copyright Act in Certain Cases to Protected Items Originating in States Belonging to the European Economic Area. Last accessed on 30/26/2022 and available (in Finnish) at: <https://www.finlex.fi/fi/laki/alkup/1995/19950575>

⁹³ Ireland Statutory Instruments, S.I. No. 36/1996 - Copyright (Foreign Countries) Order, 1996. Last accessed on 06/09/2022 and available at <https://www.irishstatutebook.ie/eli/1996/si/36/made/en/print>

no Order has been adopted so far pursuant to the possibility envisaged in Articles 287 to 289 CRRA.

In other countries, despite existing provisions on material reciprocity, this principle is not applied in practice as regards the SER, and national treatment is followed instead. In some cases, this is due to the fact that material reciprocity is only provided for in the absence of applicable international treaties (e.g. the Czech Republic and Greece). In economic terms, countries that are neither parties to Rome nor to the WPPT provide a marginal contribution to the European music market and to the local music markets in particular. As a result, there is limited application of material reciprocity in these cases and CMOs do not take it into account when collecting or distributing SER revenues. In the case of Croatia, CMOs representing performers and producers have reported that although material reciprocity is envisaged in the Croatian CRRA, they do not apply it in practice. Croatian CMOs collect SER revenues for all third-country rightholders and also distribute these revenues to them provided that some practical requisites are met (e.g. existence of representation agreement with foreign CMOs, affiliation of third-country rightholders).⁹⁴ In Italy, the provisions on material reciprocity envisaged in Articles 186, 187 and 188 of the Italian Copyright Law have been indefinitely suspended by Legislative Decree of 23 August 1946, n. 82.⁹⁵

Lastly, there are two Member States where the approach to material reciprocity has changed as a result of the RAAP judgement. This is the case in the Netherlands and in Austria, as it is explained in sections 4.b and 5.g below.

b. Modifications occurred in some Member States after the RAAP judgement

In the RAAP case, the CJEU contended that in line with its international obligations, EU law precludes Member States from excluding the right to SER to nationals of third countries which, by way of a reservation, have limited or excluded this right in their national legislation.

Our research has identified changes triggered by the judgement in national laws in two Member States: France and the Netherlands. In the case of the Netherlands, the Copyright Act was amended following the RAAP judgement to ensure that the SER applies in full to any beneficiary eligible for protection under the WPPT, irrespective of whether the State of that beneficiary has filed a reservation to Article 15(3) WPPT.⁹⁶ In other words, the amendment was aimed at ensuring that national treatment is granted to rightholders from the Contracting States to the WPPT.⁹⁷ However, the Dutch Neighbouring Rights Act in its Article 32(4) still provides for material reciprocity with regard to the Rome Convention repertoire.⁹⁸ In practice, though, material reciprocity

⁹⁴ Written responses to the Study interview's questionnaire submitted by the Croatian CMO representing producers (HUZIP) and the Croatian National Authority (SIPO).

⁹⁵ Legislative Decree 23 August, 1946, n. 82, on the suspension of certain provisions concerning the scope of application of Law No. 633 of 22 April 1941 on the protection of copyright and other rights related to its exercise. Last accessed on 23/06/2022 and available at <https://wipolex.wipo.int/en/text/306471>

⁹⁶ Council of the European Union Working Paper, WK 12957/2021 REV 4 of 10 December 2021 on the Follow-up to the ruling of the Court of Justice of the European Union in case C-265/19 (Recorded Artists vs Phonographic Performance - "RAAP case") - Member States responses to questionnaire.

⁹⁷ Article IIIa of the Amendment Act 1912 Dutch Copyright Act (implanting the directive on copyright and related rights in the information society). Last accessed on 05/04/2022 and available at: <https://wetten.overheid.nl/BWBR0016987/2021-01-01>

⁹⁸ Article 32(4) of the Dutch Copyright Act. Last accessed on 05/04/2021 and available at: <https://wetten.overheid.nl/BWBR0005921/2021-06-07#Hoofdstuk5>

has ceased to apply as most of the foreign repertoire played in the Netherlands is already protected under the WPPT.

In the case of France, the amendment was made to a law transposing various economic and financial obligations stemming from the EU⁹⁹ so as to avoid the immediate financial risk of the RAAP judgement as a result of its retroactive character. In particular, the amendment provides a legal ground for the undistributed revenues collected by French CMOs for the use of foreign repertoire which had been allocated until then to general interest actions in the area of culture in France.¹⁰⁰

⁹⁹ Article 35 of the Law no. 2020-1508 of 3 December 2020. Last accessed on 05/04/2022 and available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607095/>

¹⁰⁰ Avis n° 143 (2020-2021) de M. Julien BARGETON, fait au nom de la commission de la culture, de l'éducation et de la communication, déposé le 19 novembre 2020. Last accessed on 05/04/2022 and available at : <http://www.senat.fr/rap/a20-143-44/a20-143-440.html#toc0>

5. National market practices regarding the collection and distribution of SER revenues to third-country phonogram producers and performers

This chapter discusses the national market practices related to the collection and distribution of the single equitable remuneration (SER) revenues to third-country phonogram producers and performers. It sets off by describing the types of users from whom the SER is collected in the EU Member States and the procedures and parameters for establishing the applicable tariffs. It then discusses the organisational models of CMOs for the management of the SER in the selected EU Member States, and the distribution rules regarding the SER revenues collected for third-country rightholders. A separate section is dedicated to the role of bilateral agreements between Member States' CMOs and third-country CMOs as a tool supporting the management and transfer of international SER revenues. The final sections of this chapter discuss other players involved in the collection and/or distribution of the SER in addition to CMOs, and changes to market practices as a result of the RAAP judgement.

a. Users from whom the SER is collected

Under Article 8(2) of the Directive 2006/115/EC on rental and lending right and on certain rights related to copyright in the field of intellectual property (RLR Directive), the **single equitable remuneration is to be paid by the user**, if a phonogram published for commercial purposes or a reproduction of such phonogram is used **for broadcasting by wireless means or any communication to the public**. Considering the two main eligible uses described in section 4.a.ii, the two common categories of users subject to SER payment are broadcasting organisations and public venues.

However, beyond the traditional uses, there are differences across Member States as regards some specific uses that trigger the right to remuneration for broadcasting and/or communication to the public.¹⁰¹ As shown in the table below, some Member States take a more holistic approach to what constitutes a 'public venue' or a venue 'open to the public' whereas others are more restrictive as regards the type of users subject to the payment for the use of music within their premises. For instance, CMOs in some Member States collect the SER for the use of phonograms in professional transportation means such as taxis, ferries or buses (e.g. in Spain and Portugal), in work spaces or offices (e.g. in Spain, the Netherlands or Portugal), and in specific premises open to the public such as day-care, hospitals or churches (e.g., in Belgium, Italy, Portugal).¹⁰² On the other hand, some countries have made use of the exceptions and limitations provided for in Article 5 of Directive 2001/29/EC¹⁰³ (InfoSoc Directive) as regards the reproduction right and the right of communication to the public of works or relevant subject-matter. Some examples of those Member States are Italy¹⁰⁴ and

¹⁰¹ AEPO-ARTIS, 2018, Study on 'Performers' Rights in International and European Legislation: Situation and Elements for Improvement' last accessed on 10/12/2021 and available at: https://www.aepo-artis.org/usr/files/di/fi/8/AEPO-ARTIS-Study-Performers%E2%80%99-Rights-in-International-and-European-Legisla_2020316942.pdf

¹⁰² Interview of the study team with AEPO-ARTIS on 10/03/2022

¹⁰³ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. Last accessed on 23/06/2022 and available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0029&from=EN>

¹⁰⁴ Article 73(3) of Italian Copyright Law (Law 633/51 so called LDA) - LEGGE 22 aprile 1941, n. 633

"Protezione del diritto d'autore e di altri diritti connessi al suo esercizio" Last accessed on 04/04/2022 and available at: <https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1941-07->

Finland,¹⁰⁵ where the law explicitly excludes the application of the SER when the phonogram is used for teaching purposes or in the context of institutional/official communications by the State.

As regards broadcasters, the majority of countries collect the SER from both radio and TV broadcasters, with the exception of Belgium at least, where CMOs only collect the SER from radio broadcasters. Lastly, as pointed out in section 4.a.ii, at least eight of the Member States analysed also grant this right to other online uses, such as webcasting or simulcasting, or both.

All in all, there are differences in the types of users who are requested to pay the SER across the EU, with some Member States taking a wider approach and others following a narrower interpretation of the general eligible uses. Examples of the types of users obliged to pay the SER in different EU Member States are presented in the table below.¹⁰⁶

Table 11: Users/uses subject to the SER in the selected Member States; source: NTT DATA & ICF

| Member State | Users/uses of phonograms from whom the SER is collected |
|------------------------------|--|
| Belgium | <ul style="list-style-type: none"> • points of sale of material goods and trade galleries; • operating point used for the promotion, sale or rental of goods and services; • multipurpose hall, youth home, cultural centre and temporary activities inside and outside; • radio broadcasting organisations only (TV broadcasters excluded); • hairdressers and aestheticians; • cinemas; • hotels, restaurants, cafes/pubs; • companies, associations and public services |
| Czech Republic | <ul style="list-style-type: none"> • broadcasters, transmitters of broadcast; • public venues playing recorded music (e.g. restaurants, hotels, cafes) |
| Germany¹⁰⁷ | <ul style="list-style-type: none"> • TV and radio broadcasters; • cable retransmission; • all public venues (e.g. restaurants, bars, hotels, retail shops, large-scale distribution shops, clubs) |
| Estonia | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues, such as nightclubs, restaurants, hotels, gyms, cinemas, museums, malls and other similar venues that communicate phonograms to the public |
| Ireland | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues (e.g. gyms; bars, restaurants and hotels; dance studios and nightclubs; buses, coaches, aircrafts and ships; casinos and bowling centres; cinemas; election campaigns; exhibitions, work areas, offices and factories; hairdressers and beauty salons; museums; public car parks; shopping centres; sports stadiums and swimming pools; waiting rooms) |
| Greece | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues playing recorded music (e.g. malls, supermarkets, means of transport, entertainment areas, casinos, gaming halls, water parks, nightclubs, cafés, bars, restaurants, wedding spaces, camping spaces, sports grounds, conference centres, gyms, hotels including hotel rooms, medical facilities, theatres, cinemas, museums and galleries); |

[16&atto.codiceRedazionale=041U0633&tipoDettaglio=multivigenza&qId=&tabID=0.6603712905576575&title=Atto%20multivigente&bloccoAggiornamentoBreadCrumb=true](https://ec.europa.eu/competition/antitrust/actions_penalties/16atto.codiceRedazionale=041U0633&tipoDettaglio=multivigenza&qId=&tabID=0.6603712905576575&title=Atto%20multivigente&bloccoAggiornamentoBreadCrumb=true)

¹⁰⁵ Interview of the study team with the Finnish CMO Gramex on 10/05/2022

¹⁰⁶ Information presented below mainly stems from the responses to the 2021 Questionnaire to EU Member States circulated by the Council Working Party "Follow-up to the ruling of the Court of Justice of the European Union in case C-265/19 (Recorded Artists vs Phonographic Performance - "RAAP case"). WK 12152/2021". The table also reflects complementary insights from the interviews in the target Member States.

¹⁰⁷ In Germany, all broadcasters and public venues have to pay for the broadcasting and communication to the public of phonograms published for commercial purposes.

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| | |
|--------------------|--|
| | <ul style="list-style-type: none"> • Dance schools and dance studios; • Demonstrations and events with recorded music (DJs); • Work spaces playing recorded music |
| Spain | <ul style="list-style-type: none"> • TV and radio broadcasters; • simulcasting; • non-interactive webcasting; • public venues (lodging establishments, hotels and non-hotel accommodation; hospitals; gyms and dance schools; bars, restaurants, night clubs, discotheques and the like; social events; commercial or service establishments; shopping centres; department stores and other large-scale businesses; shows; railway, road, maritime and air transport companies and transport stations; leisure parks; campsites; casinos; car parks; bowling alleys; workplaces; model shows; exhibition stands; trade fair attractions; trade fairs, industrial exhibitions and stands; sporting events; swimming pools; telephone switchboards; advertising vehicles). |
| France | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues (e.g., nightclubs, hotels, bars, restaurants, retail and large-scale distribution shops); • simulcasting; • webcasting. |
| Croatia | <ul style="list-style-type: none"> • radio and TV broadcasters; • cable operators; • hotels, restaurants and bars, shops and other business venues; • professional transport services; • cinemas, museums; • sport venues, amusement parks, • dance and fitness studios; • casinos |
| Italy | <ul style="list-style-type: none"> • TV and radio broadcasters (including satellite broadcasting); • public performance users; • public dancing parties; • churches, parishes, senior centres |
| Lithuania | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues (restaurants, bars and cafes, hotels, nightclubs, gyms, waiting rooms, events, conferences etc.); • webcasting |
| Hungary | <ul style="list-style-type: none"> • all types of broadcasters (including TV and radio broadcasters, satellite and encrypted broadcasting); • webcasting; • simulcasting; • direct injection; • retransmission (except for simultaneous and unaltered retransmission); • public venues |
| Netherlands | <ul style="list-style-type: none"> • media, comprising TV and radio broadcast and cable • distribution; • dance events, where phonograms used by DJ's; • background music suppliers; • public venues (e.g. stores, hotels, restaurants, offices) |
| Austria | <ul style="list-style-type: none"> • radio and TV broadcasters; • retransmission (cable, satellite); • podcasting, media libraries and background music on websites • storage media remuneration; • public venues, such as stores, restaurants, night clubs, hotels etc.; • simulcasting; • webcasting; • rental (e.g. Austrian library royalty) |

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| | |
|------------------------------|---|
| Portugal | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues, including: hotels, restaurants and cafes; festivals and events where recorded music is played; nightclubs, and other places open to the public offering a diverse set of services (e.g. public transportation; shops and supermarkets, hairdressers and beauty centers; offices, parking lots; reception desks; cinemas, theatres and congress halls; telephone switchboards with music on hold; museums; retirement homes; fitness and health clubs; stadiums, etc.). |
| Slovenia | <ul style="list-style-type: none"> • TV and radio broadcasters, cable and IPTV operators; • public venues; • small users (e.g. traders, caterers, hairdressers, hoteliers, dancing organisations, fitness centres, spas and swimming baths) |
| Finland¹⁰⁸ | <ul style="list-style-type: none"> • TV and radio broadcasters; • public venues; • simulcasting; • webcasting; • cable retransmission |
| Sweden | <ul style="list-style-type: none"> • commercial radio and TV and public service TV and radio broadcasters; • public venues such as restaurants and shops; • simulcasting; • webcasting |

As regards the relative importance of the uses in terms of the revenues they generate, a few highlights can be extracted from the selected countries. Based on the interviews conducted with CMOs and on the data on their SER collection and distribution received, **uses related to communication to the public acts** (i.e. use of recorded music in public venues or places open to the public) **account for the largest revenue share for the SER** (i.e. approximately 58 % on average of the SER collected across the Member States examined). In some Member States, though, broadcasting has a much larger representation in the SER. This is the case in Germany, Croatia, Lithuania, Hungary and Austria, where broadcasting accounts for an average 60 to 70 % of the SER collection in the timeframe considered in this study (2017-2021). As a result of the impact of the pandemic on many public venues, which were forced to close for many months in several Member States, the amounts of the SER collected from public performances and from broadcasting have balanced out in some Member States where public performances typically accounted for the larger part of the SER.¹⁰⁹ More information about this is found in Chapter 6 and in the country factsheets included in the Annex.

b. Tariff-setting procedures and monitoring systems

Tariffs applicable to the uses eligible for the SER are generally negotiated directly between representatives of rightholders and eligible users and organisations representing them in each sector. From the rightholders' side, performers and producers are represented by CMOs in charge of the management of the SER. CMOs representing the different rightholders may intervene jointly or separately accordingly with their organisational model. In some countries, negotiations are led by one CMO only, such as the authors' society in case of Croatia or the producers' CMO in Ireland.

¹⁰⁸ In Finland, remuneration is not collected for musical works fixed in the US and no remuneration is distributed for such phonograms.

¹⁰⁹ Interview of the study team with the Swedish CMO (SAMI) held on 19/04/2022.

On the side of the users, in some countries there are differences in the stakeholders involved in the negotiations depending on the type of user. In Germany, Italy, Sweden and Finland, for instance, tariffs are negotiated by CMOs with the main public broadcasters directly, whereas for commercial broadcasters and public venues (in particular hospitality venues), tariffs are negotiated with the relevant associations or trade unions representing them. In Hungary, only users beyond a certain level of the market share are entitled to take part in the negotiation process.

The level of participation and role of national authorities varies in each Member State. **In most countries, national authorities** (i.e. commissions or departments established by the competent ministries, special sections of the national Courts) **do not actively participate in the negotiations and only act in case of disagreement between the parties** after a certain period of time through arbitration procedures. In other countries, the negotiation process is more regulated and supervised by national authorities. In Spain, while the responsibility of setting the tariffs lies with the Spanish CMOs, the procedure is highly regulated through a dedicated government regulation that outlines the criteria and methodology to determine such tariffs. CMOs must communicate their tariffs to the Ministry of Culture which has a supervisory role to ensure that fees are fair and non-discriminatory and comply with all the criteria set out in the law. In France, a dedicated governmental commission has been created to steer and facilitate the agreements between the parties on the applicable tariffs.

The case of Belgium is particularly noteworthy for the high involvement of national authorities in the setting of the tariffs. Tariffs applicable to the SER for all uses and sectors are established by a Royal Decree¹¹⁰ and, as such, are subject to a rigid amendment procedure. Only the Ministry of Culture can initiate the amendment process and decide on the final tariffs, after having consulted the relevant stakeholders. The competent Commission of the Government convenes a separate working group with the users' representatives in each sector, consumer protection bodies and the CMOs to negotiate the tariffs. The resulting tariffs are decided by the Ministry and legislative established in a Royal Decree. The last Royal Decree¹¹¹ establishing the applicable tariffs for all sectors was approved in 2017.

There is no established frequency for the review of tariffs in the majority of the Member States examined, aside from yearly indexations based on the evolution of consumer prices. There are however exceptions to this rule. For instance, in Estonia tariffs are set up for a period of five years. Tariffs are negotiated by CMOs with users for an average duration of three years in Germany, and they are reviewed every year with big broadcasters in Austria. Based on information shared by a hospitality association representing users in the Netherlands, tariffs agreements with the Dutch CMO typically last for three years. Lastly, in Sweden tariffs are usually negotiated with commercial radios every five years, and every three years with national radios.

Once the general tariffs have been established, these may be customised in diverse ways, depending on the type of use or the type of user or sectors subject to the payment. **The tariff system is to a large extent independent from the repertoire actually played by broadcasters and public venues**, but rather calculated by CMOs

¹¹⁰ Arrêté Royal du 17 décembre 2017 relatif à la rémunération équitable au profit des artistes-interprètes ou exécutants et des producteurs pour l'exécution publique de phonogrammes ou la radiodiffusion de phonogrammes. Last accessed on 11/05/2022 and available at https://etaamb.openjustice.be/fr/arrete-royal-du-17-decembre-2017_n2017031945.html

¹¹¹ Arrêté Royal du 17 décembre 2017 relatif à la rémunération équitable au profit des artistes-interprètes ou exécutants et des producteurs pour l'exécution publique de phonogrammes ou la radiodiffusion de phonogrammes. Last accessed on 11/05/2022 and available at https://etaamb.openjustice.be/fr/arrete-royal-du-17-decembre-2017_n2017031945.html

based on a diverse set of parameters which change from one country to the other. There is also no differentiation of tariffs depending on the origin of the repertoire played (e.g. a different tariff applying depending on whether the phonogram belongs to national, EU/EEA or third country repertoire).

In the case of broadcasters, tariffs may be calculated as a share of their turnover. The percentage may be applied to their general operating revenues (e.g. France), or to the revenues derived from a particular activity. In Ireland, for instance, the fee paid by broadcasters is calculated on the basis of their advertisement revenues. In Finland, tariffs for broadcasters are set according to a flexible scheme that considers the **volume of music actually played**. This means that the total amount paid by broadcasters results from the multiplication of a fee by the actual consumption of protected phonograms. In Austria broadcasters pay a lump sum that considers several parameters, mainly the company turnover, but also the share of music used in the channels and the consumer preferences.

As regards the **communication of phonograms to the public**, the parameters used to calculate the tariffs are more diverse and may depend on the sector and the type of business. In most countries, public venue fees are based on the **size of the venue** (i.e. square metres), or on the **venue capacity** (i.e. number of seats). Other parameters considered include average attendance and duration of the event. In some countries, such as France, the tariffs applicable to shops and non-restaurant businesses are a lump sum.

In some countries, the **relevance of music for a business in terms of revenue generation** is a parameter considered when setting the tariffs. Public venues where the use of music is an essential part of their activity (e.g. discotheques or bars and restaurants with a musical atmosphere) have different tariffs. For instance, in France, these establishments pay a share of their revenues instead of a lump sum as the rest of public venues do. In Spain, the tariffs system takes into account the relative importance of music for the user's business. Accordingly, three levels of tariffs are envisaged depending on the relevance of music for the activities or core business of the establishment.

In order to estimate music consumption and calculate tariffs, CMOs rely on various sources of information. In most cases, playlists provided by broadcasters and background music providers are the main source of information used by them to estimate which phonograms are played and to what extent. Some CMOs stated that public premises, notably nightclubs and bars, also report data on their communication to the public uses to them if their computer systems are able to track this information down.

Estimates of music consumption derived from broadcasters' information often also apply to the amounts collected from communication to public uses (shops, malls, restaurants, etc.). Some CMOs also use data from polls, surveys, or external sources (such as music charts, physical sales data, TV reports, reports from music streaming platforms) to obtain information on the type of music played by each type of user. The aim of collecting data from various and diverse sources of information is to cover the consumption of all types of music genres. In addition, some CMOs (e.g. Belgium and Sweden) have indicated that they are developing and improving their own systems to monitor music usage in order to calculate the amounts to be distributed to rightholders.

Lastly, a few stakeholders consulted as part of this study referred to the lack of transparency in some countries on the repertoire which is covered by the tariffs.

c. Organisational schemes for the collection and distribution of the single equitable remuneration

Our research shows that the right to a single equitable remuneration is subject to exclusive management by CMOs (whether by law or de facto) in all but one of the Member States examined in this study (see 4.1.1 for more information).

In what concerns the SER collection and distribution by CMOs, **at least four schemes** exist at national level in terms of organisation models and payment flows:

1. Joint societies model: One CMO represents the rights of both performers and phonogram producers and collects and distributes the SER for and to both types of rightholders. Joint societies operate in the Czech Republic (Intergram), Lithuania (AGATA), the Netherlands (SENA), Slovenia (IPF) and Finland (Gramex).

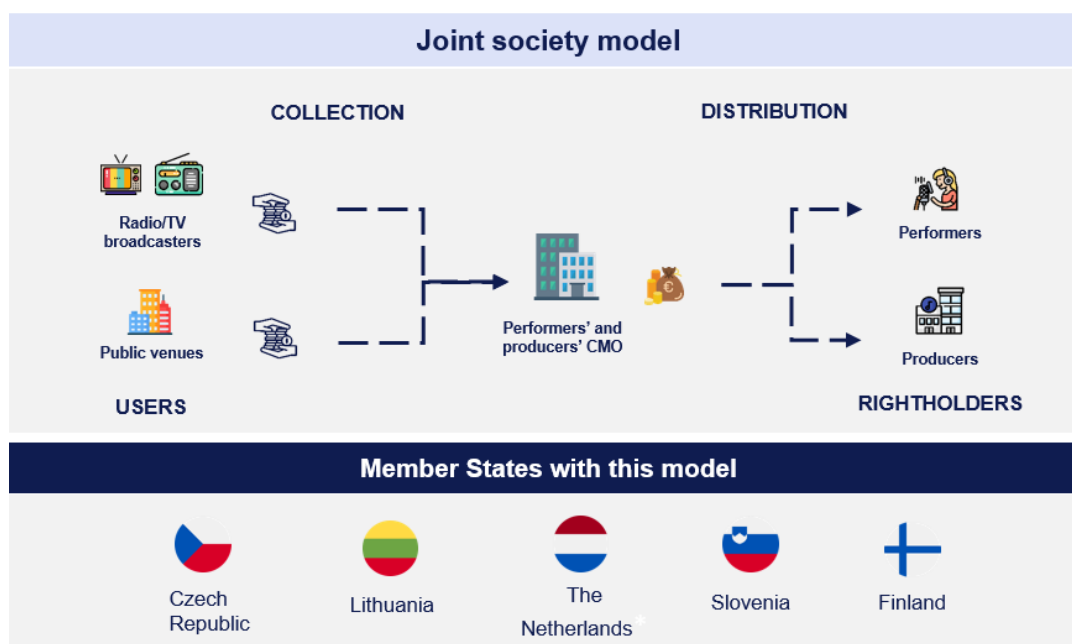


Figure 5: Illustration of the joint society model and the selected Member States applying it; source: NTT DATA & ICF

2. Separate societies model: Distinct CMOs represent the rights of producers and performers. Organisations are coordinated in such a way that one CMO collects the SER for a set of relevant rights (or uses), and the other one collects it for another set of uses. Each CMO then transfers the corresponding share of the revenue stemming from those uses to the CMO representing the other type of rightholder.

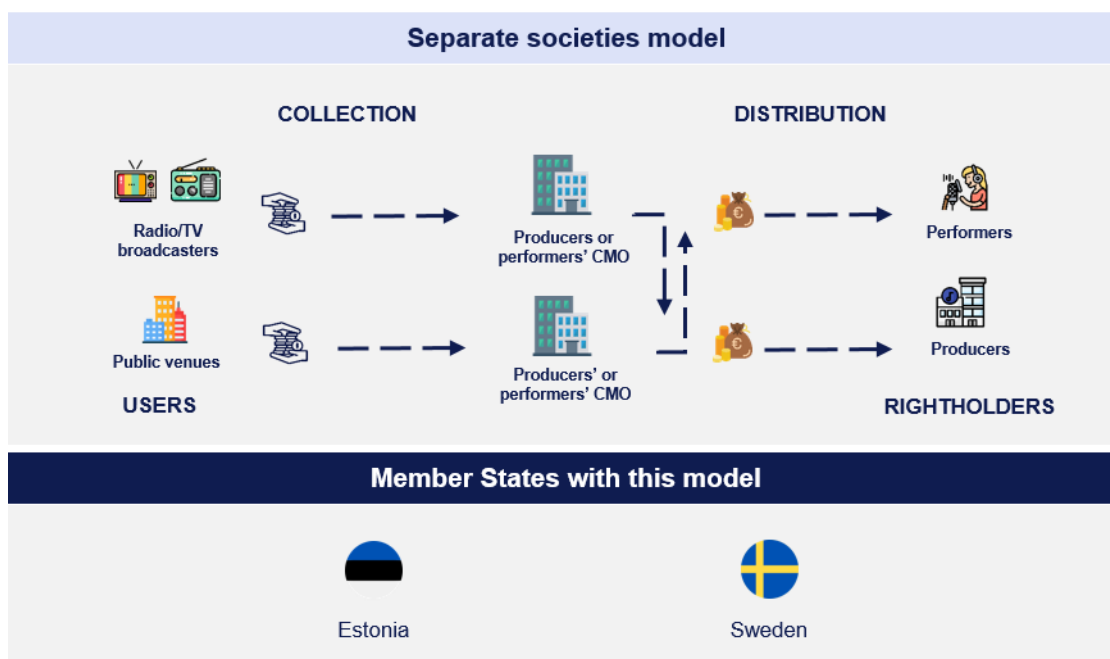


Figure 6: Illustration of the separate societies model and the selected Member States applying it; source: NTT DATA & ICF

Such a scheme has been reported in Sweden, where SAMI (performers' CMO) collects the SER for both rightholders from public performances, whilst IFPI (producers' CMO) collects it from broadcasters. A similar scheme is found in Estonia, where the Association of Phonogram Producers (EFÜ) collects revenues from radio broadcasters and hospitality venues, and the Estonian Performers' Association (EEL) collects revenues from TV broadcasters and other public venues such as shops, shopping malls or sports facilities.

3. One-stop-shop model: In some cases, CMOs organise themselves in so-called 'one-stop-shop bodies' to ease the collection of the SER and/or of other revenues for all rightholders, including authors. This model implies a coalition or a union of separate CMOs, which offers users a centralised place in which authorisations for the use of phonograms can be easily and quickly obtained.¹¹² According to an analysis undertaken by WIPO,¹¹³ there is a growing tendency worldwide to set up one-stop-shops on account of the increasing popularity of "multimedia" productions, which are composed of, or created from, several types of work, including computer software. The complex nature of such multimedia productions calls for a wider variety of authorisations, which are easier managed via a one-stop-shop body.

¹¹² WIPO (2002). Collective Management of Copyright and Related Rights, p. 34. Last accessed on 23/03/2022 and available at: https://www.wipo.int/edocs/mdocs/sme/en/wipo_smes_ge_08/wipo_smes_ge_08_topic02.doc

¹¹³ WIPO (2002), op. cit., p. 160.

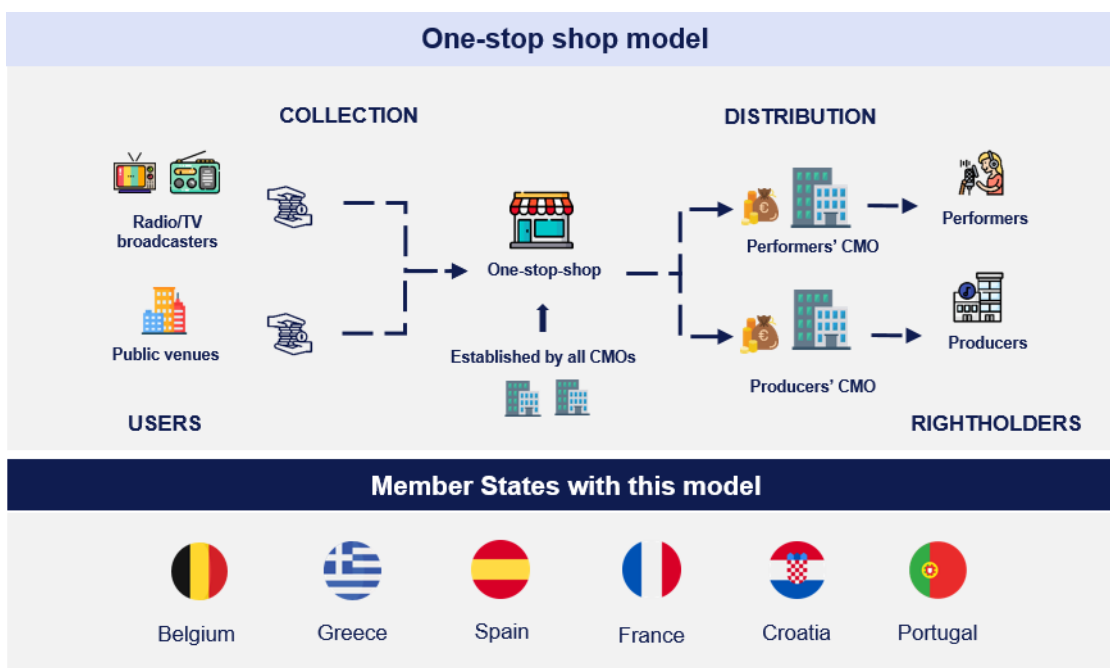


Figure 7: Illustration of the one-stop shop model and the selected Member States applying it; source: NTT DATA & ICF

Depending on how the centralised body is established, two different schemes can be distinguished within this model:

- **Scheme 1.** A separate body is specifically created to collect the SER on behalf of the CMOs. An example of this scheme was identified in France, where SPRE collects the SER revenues and distributes them to the corresponding CMOs: ADAMI and SPEDIDAM (representing performers) and SSCP (representing major labels) and SPPF (representing independent labels). In Spain, the CMOs representing performers and producers (respectively, AIE and AGEDI) created a joint collection office in 2013 to avoid double right claims, simplify the management of remuneration rights and ease the compliance of users.
- **Scheme 2.** An existing society (typically the authors' society) is used to centralise the SER collection alongside other revenues. An example of this scheme has been identified in Belgium. Following a Royal Decree adopted in May 2019,¹¹⁴ the Belgian authors' CMO (Sabam) collects the SER on behalf of the producers' and performers' CMOs (SIMIM and PlayRight, respectively) under the brand name of 'Unisono'. The aim of this single platform is to simplify administration, increase transparency and provide a more efficient service through a single invoice to users.

4. **Mixed model:** This model combines features of the one-stop-shop with features of the separate societies model. In Germany, the authors' CMO (GEMA) collects the SER from public venues on behalf of the GVL, the joint CMO representing performers and producers, while GVL collects on its own the SER from broadcasters. In Ireland, the authors' society (IMRO) collects the SER from users for public performance rights on the basis of a dual music license with of the producers' society (PPI), and PPI

¹¹⁴ Arrêté royal fixant les modalités de la simplification administrative pour la perception des droits d'auteur et des droits voisins relatifs à l'exécution publique de phonogrammes (Belgium), 17 mai 2019. Last accessed on 29/06/2022 and available at: https://etaamb.openjustice.be/fr/arrete-royal-du-17-mai-2019_n2019012641.html

collects the SER directly from users for broadcasting uses. Subsequently, PPI transfers the performers' share of the collected revenues to RAAP, the performers' society. In Italy, the Italian Authors and Publishers Society (SIAE) collects the SER from small and medium users on behalf of the producers' CMO (SCF) and the performers' CMO (NUOVOIMAE). In the case of big users (e.g. national broadcasters or chain stores) the SER is collected directly by SCF (for producers) and by NUOVOIMAE (for performers). In Hungary, the CMOs representing producers and performers (MAHASZ and EJI, respectively) collect the SER for all forms of broadcasting, webcasting, simulcasting, direct injection and retransmission. The SER from uses related to public performances are collected by the authors' collecting society (Artisjus) on behalf of MAHASZ and EJI.

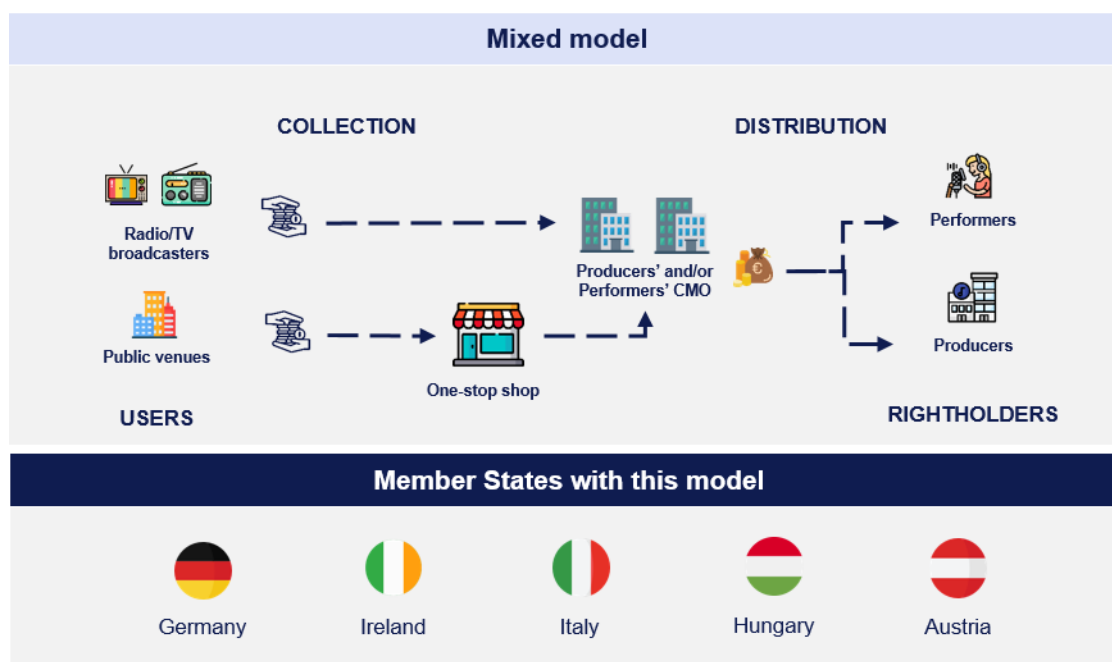


Figure 8: Illustration of the mixed model and the selected Member States applying it; source: NTT DATA & ICF

The table below summarises the organisational models adopted in the selected EU Member States:

Table 12: Organisational model in terms of payment flows adopted in the target EU Member States; source: NTT DATA & ICF

| Member State | Organisational model | Organisation(s) collecting the SER |
|-----------------------|----------------------|--|
| Belgium | One-stop-shop | Unisono (trademark of Sabam, the authors' CMO) collects the SER on behalf of producers' and performers' CMOs |
| Czech Republic | Joint society | Intergram |
| Germany | Mixed model | GEMA (authors' CMO) collects on behalf of GVL from public venues and GVL collects from broadcasters |
| Estonia | Separate societies | EFÜ (producers' CMO collects for certain uses) and EEL (performers' CMO collects for other uses) |

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|--------------------|--------------------|---|
| Ireland | Mixed model | IMRO (authors' society) and PPI form a one-stop-shop for public performance rights, and PPI collects directly for broadcasting uses |
| Greece | One-stop-shop | GEA (on behalf of GRAMMO, APOLLON and ERATO, the producers' and performers' CMOs) |
| Spain | One-stop-shop | Oficina Conjunta de Recaudación de Artistas y Productores (OCR), jointly established by AIE (performers' CMO) and AGEDI (producers' CMO) collects the SER |
| France | One-stop-shop | SPRE, jointly established by all the producers' and performers' CMOs, collects the SER |
| Croatia | One-stop-shop | ZAMP (author's society) collects the SER on behalf of the producers' and performers' CMOs (ZAPRAF and HUZIP) |
| Italy | Mixed model | SIAE (authors' society) collects the SER from small and medium users and SCF and NUOVOIMAIE collect it for larger users |
| Lithuania | Joint societies | AGATA |
| Hungary | Mixed model | MAHASZ and EJI collect for all forms of broadcasting, webcasting, simulcasting, direct injection, re-transmission); Artisjus Society for the Protection of Authors' Rights collects for communication to the public |
| Netherlands | Joint societies | SENA |
| Austria | Mixed model | AKM (authors' CMO) collects the SER from public venues on behalf of LSG and LSG collects it directly from broadcasters |
| Portugal | One-stop-shop | PassMúsica (a trademark of the producers' CMO Audiogest) collects the SER from users for all rightholders and distributes the share of performers to GDA (performers' CMO) |
| Slovenia | Joint society | IPF |
| Finland | Joint society | Gramex |
| Sweden | Separate societies | IFPI (producers' CMO) collects for broadcasting uses and SAMI (performers' CMO) collects for public performances |

d. Distribution rules regarding the revenues to third-country rightholders

The section below describes the different rules across the Member States analysed for distributing the revenues collected under the SER. First, the rules on the split of revenues from the SER between categories rightholders are presented in general. Second, Member States are categorised depending on their approach to the distribution of revenues specifically to third-country rightholders, considering those applying material reciprocity or national treatment. Third, the channels used by CMOs for transferring revenues (including the SER) to third-country rightholders are described, along with the periodicity of the payments.

i. Revenue split amongst rightholders

When it comes to the split of the SER revenues between producers and performers, **the rule generally set in national provisions in the EU Member States analysed is equal sharing**. That means that the collected revenue is equally divided (50/50) among the parties after having deducted the applicable operating costs.¹¹⁵ In at least one Member State the revenue split slightly differs from this pattern. This is the case of Spain, where SER revenues are shared 51 /49 % in favour of producers.¹¹⁶ In the case of Ireland, producers receive a larger portion of the SER compared to performers. This is however due to the more extended protection offered to producers compared to performers based on the different points of attachment envisaged in the law, as described below. Within the performers' category, the corresponding share may be subject to a further split, as several Member States have their own rules determining the share between featured performers and session musicians.¹¹⁷ In Spain, for instance, 60 % of the revenues collected under the SER go to featured performers, and 40 % are transferred to session musicians.¹¹⁸ In the Netherlands, the share between featured and non-featured artists is determined based on a system of points, where main artists get five points and non-featured artists get two points for the calculation of the revenue.¹¹⁹ In Finland, a system of roles is used for the distribution of the SER amongst the performers involved in a recording. This system assigns different shares of the SER to the performers depending on the type of their contribution to the phonogram (e.g. featured artist, soloist, group member, background musician).¹²⁰

ii. Distribution approaches in Member States

Different approaches are observed across EU Member States as regards the distribution of SER revenues collected to third-country rightholders, and there are linked to the national approaches to material reciprocity described in section 4.a.iv:

- **Full application of national treatment:** In some Member States, CMOs pay out the collected SER for the use of foreign repertoire in full amount to the corresponding rightholders (after having deducted the operating expenses), irrespective of their country of origin. Such countries typically follow or even go beyond the eligibility criteria for the SER envisaged in relevant international treaties. Such an approach is followed, for example, in Estonia, Spain, Hungary and Portugal.
- **Conditional application of material reciprocity:** Some countries apply material reciprocity conditionally. In these cases, revenues collected for the use of non-EEA repertoire are transferred to the corresponding rightholders on the basis of material reciprocity if certain conditions are fulfilled; otherwise they are allocated to other actions or paid to other rightholders.
 - **Scheme 1: Payment upon fulfilment of specific conditions.** An example of this scheme was identified in France, where CMOs collect the SER for all phonograms used in France, but they only pay out the revenue to third-country rightholders for the phonograms recorded or fixed in the EU/EEA, or whose producer is a national of a contracting state to the Rome Convention and/or to WPPT that has not made any reservation to these treaties as regards the

¹¹⁵ AEPO-ARTIS (2018), op. cit., pp.26-29.

¹¹⁶ Interview of the study team with the Spanish CMO representing performers (AIE) held on 07/04/2022

¹¹⁷ Interview of the study team with the association representing independent music companies in Europe (IMPALA) held on 15/03/2022

¹¹⁸ Interview of the study team with Spanish CMO representing performers (AIE) held on 07/04/2022

¹¹⁹ Interview of the study team with the Swedish CMO representing performers (SENA) held on 12/04/2022

¹²⁰ Interview of the study team with the Finnish CMO (Gramex) held on 10/05/2022

SER.¹²¹ For the other foreign phonograms, the SER collected is considered to be non-distributable. In such cases, the collected amounts are not distributed to third-country rightholders, but are allocated to support general interest actions in the area of culture.¹²²

- **Scheme 2: Payment upon fulfilment of different criteria depending on type of rightholder.** Such a scheme was identified in Ireland, where restrictive qualification criteria are applied for performers compared to producers as regards the payment of the SER. The Irish CMO collects the SER for all third-country phonograms used in Ireland. Third-country producers are paid provided that their phonogram is first or simultaneously published in a Convention country or if they then have the citizenship or domicile in a Convention country, subject to material reciprocity, whereas performers are only protected if they have their residence or the nationality of an EEA country. As a result of this, the corresponding share to third-country performers that is considered as non-qualifying is split among the producers of the phonogram entitled to the SER, including amongst those established outside the EEA.
- **Full application of material reciprocity:** In some EU Member States, the SER is collected only for recordings fixed in or made by producers who are nationals of countries which are parties to the Rome Convention or to the WPPT. However, the application of material reciprocity derived from Article 4(2) WPPT in respect of states that have made reservations under 15(3) of WPPT implies that, in practice, such CMOs only collect revenues for certain uses of the repertoire from those countries. Examples of such schemes are observed in Belgium, the Netherlands (until January 2021), Finland and Sweden. Under this scheme, users only pay a tariff reflecting the phonograms eligible for the SER in the Member States (i.e. excluding the international non-protected repertoire).

The table below presents the approaches observed in the analysed EU Member States regarding the distribution of SER revenues collected to third-country rightholders.

Table 13: Approaches regarding the distribution of SER revenues collected to third-country rightholders; source: NTT DATA & ICF

| Approach | Member States |
|--|---|
| Full application of national treatment | Czech Republic, Germany, Estonia, Greece, Spain, Croatia, Italy, Lithuania, Hungary and Portugal |
| Conditional application of material reciprocity | Ireland and France |
| Full application of material reciprocity | Belgium, the Netherlands (until 2021), Austria (until RAAP judgement), Slovenia, Finland and Sweden |

iii. Channels for transferring revenues

As regards the channels for transferring revenues (including the SER, but not only) to third-country rightholders, four main schemes have been identified during the interviews with CMOs in the selected EU Member States:

1. if the third-country rightholder entitled to the SER is **represented by a CMO established** in an EU Member State or in a third country **with which the**

¹²¹ According to French law, only the criterion of fixation is applicable to determine the distributable revenues to third-country rightholders. However, French CMOs have declared to apply the criterion of nationality of the producer from a Convention country as a secondary criterion for the purposes of distributing the SER to third-country nationals, subject to material reciprocity.

¹²² L214-1 and L. 324-17 of the French Intellectual Property Code. Last accessed on 05/04/2022 and available at https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006069414/LEGISCTA000006161645/#LEGISCTA000006161645

- collecting CMO has an agreement** in place, rightholders receive the SER via their representative CMO;
2. if the third-country rightholder is **affiliated to the EU CMO collecting the revenue**, they receive the payment directly from that CMO;
 3. if the third-country rightholder is **not represented by a CMO that has an agreement with the EU-based CMO collecting the revenue**, and it is neither affiliated to the latter, the EU CMO keeps and advertises it for a certain period of time, during which the rightholder has the right to claim it. The period of time for which the collected SER is kept by CMOs is different across Member States¹²³ (e.g. three years in the Netherlands, six years in Ireland, or ten years in Belgium). If the relevant rightholders cannot be identified and/or located within the set timeframe, these amounts are considered as non-distributable and the general assembly of CMO's members should decide on their use;¹²⁴
 4. in the case of major labels, payments are made out via so-called **"intercompany contracts"**, where the EU CMO transfers the collected revenues to the major's branch established in its territory, and the latter ensures its further distribution inside the company.

Lastly, **Member States collect the SER from users and distribute it to rightholders following different periodicities**. Users are generally invoiced on the SER once or twice per year, whereas the frequency of payments to rightholders ranges from once a year as a minimum to five times a year. In Portugal, the SER is collected by quarter or every half a year, depending on the choice of the user. When it comes to distribution, GDA (performers' CMO) distributes the SER four to five times a year to artists, whereas Audiogest (producers' CMOs) distributes it twice a year to phonogram producers. The Belgian CMO representing producers pays out the SER to its members twice a year.¹²⁵ In Italy, the producers' CMO distributes the SER both to its members and to foreign CMOs in four annual payments, whereas the performers' CMO schedules the exchange of the SER with foreign CMOs at least once per year.¹²⁶ In Lithuania, the revenues from the SER are distributed four times per year to local rightholders and two times per year to international rightholders.¹²⁷ In Greece, the one-stop-shop GEA collects and distributes the collected SER to the CMOs twice a year, which then distribute the SER to their rightholders once a year.¹²⁸

e. Reciprocal representation agreements with third-country CMOs

In order to facilitate the representation of rights of their members across countries, EU-based CMOs typically sign reciprocal representation agreements with CMOs in third countries, whereby one CMO mandates another one to manage the rights it represents.¹²⁹ The mandate established in these agreements can be unilateral or

¹²³ According to Article 13(4) of Directive 2014/26/EU (CRM Directive), where collected revenues due to rightholders cannot be distributed, they must be saved for a minimum of three years from the end of the financial year in which the collection of the rights revenue occurred. Those amounts are deemed to be non-distributable provided that CMOs have taken all the necessary measures to identify and locate the rightholders.

¹²⁴ Council of the European Union (2021) Commission Staff Working Document SWD(2021) 338 final, Report on the application of Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, p.12. Last accessed on 29/06/2022 and available at <https://data.consilium.europa.eu/doc/document/ST-14482-2021-INIT/en/pdf>

¹²⁵ Interview of the study team with the Belgian producers' CMO (SIMIM) held on 02/05/2022

¹²⁶ Interview of the study team with the Italian CMOs (NUOVOIMAIE and SCF) held on 26/04/2022

¹²⁷ Interview of the study team with the Lithuanian CMO (AGATA) held on 26/04/2022

¹²⁸ Interview of the study team with the Greek CMOs (GRAMMO and ERATO) held on 29/04/2022

¹²⁹ CRM Directive, op. cit., Article 3(j).

bilateral and can be issued to represent several rights or specific types of rights.¹³⁰ Based on information shared by several CMOs interviewed, most representation agreements include provisions for the distribution of SER to partner CMOs, which then distribute those revenues to phonogram producers and/or performers whose rights they represent. According to AEPO-ARTIS, representation agreements are more widespread among CMOs representing performers than among those representing producers.¹³¹ Within producers, these agreements seem to be rather used for independent labels, whilst in the case of major labels CMOs distribute the international SER revenues through multilateral licensing agreements between local branches.¹³²

The number of bilateral agreements signed by CMOs with third-country CMOs varies across Member States. See table below for examples of bilateral agreements signed between EU Member States' CMOs and CMOs in third countries.¹³³

Table 14: Examples of representation agreements between Member States' and third countries' CMOs; source: NTT DATA & ICF

| Member State | CMO | Represented rightholders | Third countries with which bilateral agreements are signed |
|---------------------------|-----------|--------------------------|--|
| Belgium | SIMIM | Producers | Canada, UK, USA |
| | PlayRight | Performers | Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Iceland, Japan, South Korea, Mexico, Panamá, Paraguay, Peru, Serbia, UK, USA, Venezuela, South Africa |
| The Czech Republic | INTERGRAM | Performers and producers | Canada, UK, USA |
| Germany | GVL | Performers and producers | Argentina, Brazil, Canada, Greenland, Jamaica, Japan, South Africa, UK, Ukraine, USA |
| Estonia | EEL | Performers | Canada, Georgia, Japan, Kazakhstan, Malaysia, Serbia, Switzerland, Russia, Ukraine, UK, USA |
| Ireland | PPI | Producers | Canada, UK, USA |
| | RAAP | Performers | Bosnia and Herzegovina, Brazil, Canada, Iceland, India, Japan, Malaysia, Kazakhstan, Serbia, South Africa, South Korea, UK, USA, Russia |
| Greece | GRAMMO | Producers | Brazil, Japan, USA |
| | ERATO | Performers | Cyprus, Georgia, Japan, Russia, Turkey, UK, USA |
| Spain | AGEDI | Producers | Brazil, Canada, Chile, the Dominican Republic, Guatemala, Paraguay, USA |
| | AIE | Performers | Argentina, Barbados Islands, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Japan, Korea, Mexico, Panama, Russia, South Africa, Uruguay, UK, USA, Venezuela |
| | SPRE | One-stop-shop | Brazil, Canada, Colombia, Japan, Russia, Serbia, South Africa, South Korea, Switzerland, UK, USA |

¹³⁰ WIPO (2018). Good Practice Toolkit for CMOs (The Toolkit), p. 3. Last accessed on 23/03/2022 and available at: https://www.wipo.int/edocs/mdocs/copyright/en/wipo_ccm_ge_18/wipo_ccm_ge_18_toolkit.pdf

¹³¹ Interview of the study team with AEPO-ARTIS held on 10/03/2022

¹³² Interviews of the study team with the Belgian CMO representing producers (SIMIM) held on 02/05/2022 and Spanish CMO representing producers (AGEDI) held on 11/04/2022

¹³³ Based on information provided by the CMOs interviewed, as well as on public information available on the CMOs' websites.

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| | | | |
|------------------------------|-------------|--------------------------|---|
| France ¹³⁴ | SPPF | Independent producers | UK |
| | ADAMI | Performers | Brazil (2), Canada (3), Colombia, Japan, Russia, Serbia, South Africa, South Korea, Switzerland, the UK, the USA. Agreements with Argentina, Chile, Kazakhstan and Ukraine are currently being finalised. |
| | SPEDIDAM | Performers | Brazil, Canada (3), Russia, UK |
| Croatia | ZAPRAF | Producers | North Macedonia, Ukraine, UK |
| Italy | SCF | Producers | Argentina, Brazil, Canada, Jamaica, Serbia, USA, UK, Ukraine |
| | NUOVO IMAIE | Performers | Albania, Brazil, Canada, Georgia, India, Japan, Kazakhstan, Mexico, Russia, Serbia, South Korea Switzerland, South Africa, USA |
| Latvia | LaIPA | Performers and producers | Canada, Kazakhstan, UK, USA. |
| Lithuania | AGATA | Performers and producers | Canada, Serbia, Georgia, Kazakhstan, Ukraine; concluding an agreement with Japan |
| Hungary | EJI | Performers | Brazil, Canada, Georgia, Japan, Malaysia, Russia, UK, USA |
| The Netherlands | Sena | Performers and producers | Argentina, Brazil, Canada, Georgia, Indonesia, Japan, Serbia, South Africa, South Korea, Ukraine, UK, USA |
| Austria | LSG | Performers and producers | Japan, Latin America (FLAIE), Malaysia, Serbia, Switzerland, UK, Ukraine |
| Portugal | GDA | Performers | Brazil, Canada, Japan, South Africa, Russia, USA, Uruguay |
| | AUDIOGEST | Producers | UK |
| Romania | CREDIDAM | Performers | Brazil, Canada, Colombia, Japan, Kazakhstan, USA |
| | UPFR | Producers | Brazil, Canada, Colombia, Japan, Kazakhstan, USA |
| Slovenia | IPF | Performers and producers | Albania, Brazil, Canada, Georgia, Japan, Kazakhstan, Kosovo, Russia, South Korea |
| Slovakia | SLOVGRAM | Performers and producers | Canada, UK, USA. |
| Finland | Gramex | Performers and producers | Argentina, Brazil, Canada, Japan, Malaysia, Russia, UK, USA. |
| Sweden | Sami | Performers | Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Georgia, Guatemala, Japan, Malaysia, Mexico, Panama, Paraguay, Peru, South Africa, UK, Uruguay, USA, Venezuela |
| | IFPI | Producers | Canada, Japan, South Korea, USA, Vietnam |

¹³⁴ French CMOs have separate bilateral agreements with other CMOs. ADAMI has 41 agreements, while SPEDIDAM has 23. These include both EU and third-country CMOs. Additional agreements are currently negotiated with third countries such as Ukraine, Kazakhstan Argentina or Chile.

As it can be seen from the table above, the vast majority of EU CMOs for which information is available have bilateral agreements signed with CMOs in the USA, and most of them also have bilateral agreements with Canada, Japan, the UK and Brazil, which are some of the main markets for EU music, alongside Australia and China.¹³⁵ In particular, when analysing the third country repertoire played in the EU, the US accounts for the biggest share of. Based on information shared by the CMOs consulted as part of this study, US music accounts for between 30 to 40 % of the music played in Belgium, Germany, the Netherlands, Portugal, Finland and Sweden. In Austria, the US repertoire accounts for up to 45 % of the music played,¹³⁶ whereas the US and UK repertoire jointly account for approximately 60 % of music repertoire played in Italy.¹³⁷

Some CMOs have more agreements in place than others, which is explained by the size and exposure of their music industries. For example, French CMOs have extensive bilateral cooperation with Canadian CMOs, as French repertoire is popular in Quebec, and French-Canadian repertoire is also popular in France. Spain has bilateral agreements signed with most Latin American countries. The lack of agreements with some third countries is sometimes also explained by the lack of CMOs representing neighbouring rights in such countries. That is the case, for instance, of small countries like Andorra, Monaco or North Macedonia,¹³⁸ but also of Australia, according to information provided by the Dutch and Finnish CMOs interviewed.

It is important to note that CMOs are obliged to distribute collected remunerations to all relevant third-country performers and producers, irrespective of whether such rightholders are represented by a CMO with which an EU-based CMO has a bilateral agreement or not.¹³⁹ Third country rightholders sometimes also choose to affiliate to EU-based CMOs to ease their right claims.

From a practical point of view, in some Member States (e.g. Spain, Portugal), CMOs transfer the SER revenues to third-country rightholders regardless of whether these rightholders are affiliated to them or not. Instead, some CMOs (e.g. Czech Republic, Austria) have stated that any rightholder, including those nationals of third-countries, must be affiliated to the national CMO to receive any revenues collected by them. Failure to do so implies that such CMOs are not allowed to even collect fees for the use of such repertoire. As described in section 5.e, affiliation can be direct or indirect, through third-country CMOs via reciprocal representation agreements, or through agents.

f. Other players involved in the collection and/or distribution of the SER

None of the EU umbrella organisations representing CMOs and the recording industry consulted as part of this study were aware of any independent management entity (IME) collecting the single equitable remuneration in the EU at the moment.¹⁴⁰ According to the pan-European IME interviewed as part of this study, Jamendo, there are a few entities, including them, which are trying to collect and distribute the single equitable

¹³⁵ Interview of the study team with EU umbrella organisation representing independent labels (IMPALA) held on 14/03/2022.

¹³⁶ Interview of the study team with the Austrian CMO (LSG) held on 22/04/2022.

¹³⁷ Interview of the study team with the Italian CMOs (SCF and NUOVIMAIE) held on 26/04/2022.

¹³⁸ Croatian CMOs with bilateral representation agreements with North Macedonia report that in practice such an agreement is not implemented due to ongoing proceedings regarding the licensing competence of the North Macedonian CMO.

¹³⁹ Interview of the study team with AEPO-ARTIS held on 10/03/2022

¹⁴⁰ Interview of the study team with AEPO-ARTIS held on 10/03/2022; Interview of the study team with IFPI held on 16/03/2022.

remuneration to their affiliates, in spite of various entry market restrictions (e.g. authorisation or place of establishment requirements).

Our research has also found evidence of partners supporting CMOs in the collection of the single equitable remuneration. In the Netherlands, for instance, the Dutch CMO has agreements with a hospitality association¹⁴¹ to facilitate the collection of the SER for their members. The association prepares and send the invoices to their members, which pay the amounts to the association, and the latter then transfers the corresponding amounts to SENA after having deduced a management fee.

Lastly, it should be noted that while most CMOs fall distinctly under the definition of a CMO or an IME under EU law, some organisations fall into an in-between category. For example, the Italian collecting society ITRIGHT¹⁴² is considered a CMO under the Italian legislation, while under the EU legislation it may correspond more to the definition of an IME.¹⁴³

g. Changes to market practices following RAAP judgement

Based on the insights gathered during the study's fieldwork, only CMOs in two Member States have significantly adapted their market practices following the RAAP judgement: the Netherlands and Austria. Until 2021, the Dutch CMO (SENA) was only fully collecting and distributing the SER for phonograms produced by countries parties to the Rome Convention. As regards the countries parties to the WPPT only, SENA was only collecting and distributing the SER on the basis of material reciprocity. That meant, in practice, that in the case of countries like the USA, which made reservations under Article 15(3) WPPT as regards the uses eligible for the SER, the Netherlands would only pay the SER for certain uses also protected by those countries (digital broadcasting). However, following the RAAP judgement and the subsequent amendment to the Dutch legislation, the Dutch CMO started collecting and distributing the SER for the whole Rome/WPPT repertoire without limitations. To do so and (partially) offset the expected negative economic impact on rightholders, the Dutch CMO negotiated a 'RAAP surcharge' to its applicable tariffs implying a 26.6 % increase. This surcharge was agreed as a temporary measure with small broadcasters and public venues. Negotiations with larger broadcasters, dance event organisers and background music suppliers are still pending.

¹⁴⁴

In Austria, the RAAP judgement had an impact on the existing market practices as regards the collection and distribution of the SER through a revised interpretation of the relevant provisions. Specifically, while Section 99(5) of the Austrian Copyright Act still envisages the application of material reciprocity to phonograms that have not either been published in Austria or produced by Austrian nationals, "without prejudice to international treaties", the Austrian CMO (LSG) no longer applies this exception. That means that in such cases the CMO no longer takes into account the nationality of the producer of a Convention country for the collection and distribution of SER revenues.¹⁴⁵

Lastly, in France, until the CJEU ruling the collected SER amounts that could not be distributed in application of the international conventions ratified by the

¹⁴¹ Royal Dutch Hospitality Association (Koninklijke Horeca Nederland).

¹⁴² ITRIGHT is a collective management organisation founded in 2010 to manage, in Italy and abroad, neighbouring rights' revenues due for any kind of public use of recorded music. More information can be found at <https://www.itsright.it/en/about-us/>

¹⁴³ EU IME's definition is envisaged in: CRM Directive, op. Cit., Article 3(b).

¹⁴⁴ Interview of the study team with Dutch CMO (SENA) held on 12/04/2022.

¹⁴⁵ Interview of the study team with Austrian CMO (LSG) held on 22/04/2022.

country(revenues known as "legally non-distributable") were allocated to actions to support the creation, dissemination of live performances, development of artistic and cultural education, and training for artists. Since the RAAP judgement, the undistributed revenues are no longer allocated to such actions. Instead, they are being provisioned and reserved awaiting a final decision on the matter at EU level.¹⁴⁶

¹⁴⁶ Interview of the study team with the French national authority at the Ministry of Culture held on 24/04/2022.

6. State of play regarding the collection and distribution of the single equitable remuneration

One of the underlying questions next to market practices and legal framework of the single equitable remuneration (SER) was to understand the relative economic significance of SER revenues across the music recording value chain. This chapter starts by presenting the global sector revenue portfolio to have a general outlook on the global perspective. It continues by analysing more in detail amounts of SER collected and distributed by CMOs in selected Member States.¹⁴⁷ Finally, an even more detailed look is taken to understand the significance of the SER for specific groups of rightholders.

The analysis presented below covers the years 2017-2021¹⁴⁸, for which data are available for most Member States. Specific gaps/caveats are indicated in the text where relevant. This part also describes the breakdown of the total values by the most important variables. The breakdown of the SER collected is presented by category of users and origin of the rightholders (national, EU/EEA and third countries). The breakdown of SER distributed is presented by rightholders and country of origin of the rightholders (national, EU/EEA and third countries) for SER distributed. The chapter then focuses on analysing the share of SER collected and distributed to third countries by CMOs in EU Member States in general, and to third countries not parties to WPPT or with reservations to that treaty more specifically.

The information presented below is based on the data collected from CMOs and other stakeholders consulted as part of the study, triangulated with qualitative information from interviews and from relevant literature. The study team sent data requests to CMOs in the 18 selected Member States. While data was received from CMOs for 17 Member States, in seven of them (i.e. Belgium, Estonia, Greece, Croatia, Lithuania, Hungary and Portugal) the figures are only partial as they do not reflect the whole SER revenue collection or distribution for both categories of rightholders and/or uses, or only cover a limited timeframe. In three other Member States (i.e. Germany, Slovenia and Finland) CMOs only submitted a minimum set of data out of the whole dataset requested due to resource constraints.¹⁴⁹ No data was submitted by the Austrian CMO. The data presented for this country is solely based on the figures publicly available in the CMO's annual transparency reports. It should also be noted that the granularity of the data provided by CMOs for the analysis varies across all Member States from which data was received.

a. SER revenues within the recorded music revenues' portfolio

Before presenting in more detail the SER collected and distributed by CMOs in EU Member States, it is useful to present the importance of SER revenues for the recorded music industry. The data presented in this section refers to the studies conducted by both categories of rightholders (performers and producers).

¹⁴⁷ Selected Member States at the start of the study were: Belgium, the Czech Republic, Hungary, Germany, Ireland, Greece, Spain, France, Croatia, Italy, Lithuania, Estonia, the Netherlands, Austria, Portugal, Slovenia, Finland and Sweden.

¹⁴⁸ Data for Section 6.a. is limited to 2018 to 2021 due to data availability/ access to data.

¹⁴⁹ Data received from Germany and Finland provided were very limited to be included in the analysis. They were used for the factsheet only.

i. Global and EU level

IFPI¹⁵⁰ tracks the total revenue portfolio of the recorded music industry which consist of **'performance rights revenues'** and revenues from streaming services, physical formats, digital downloads, and synchronisation. IFPI's definition of the 'performance rights revenues' category includes SER, private copy levies and internet licensing.¹⁵¹

According to the IFPI's global reports covering the period from 2018 to 2021, the total revenues of recorded music industry increased, as did the performance rights revenues in absolute values worldwide. However, the share of performance rights revenues in the total revenues of the recorded music industry decreased from 14.3 % to 9.26 % during the same period.¹⁵² This might be explained by an increase of other revenue streams (mostly revenues from streaming).¹⁵³

Table 15: Evolution of total music sector revenues and performance rights revenues 2018-2021; source: NTT DATA & ICF, based on data by IFPI

| | 2018 | 2019 | 2020 | 2021 |
|---|------------------|-------------------|------------------|-----------------|
| Total revenues of recorded music sector (global) | EUR 16.5 billion | EUR 18.04 billion | EUR 18.9 billion | EUR 24 billion |
| Revenues from performance rights (global) | EUR 2.27 billion | EUR 2.32 billion | EUR 2.02 billion | EUR 2.3 billion |
| Share of performance rights (global) | 14 % | 12.9 % | 10.6 % | 9.26 % |

The decrease of the relevance of performance rights' revenues in the 2020-2021 period is also related to the consequences of the COVID-19 pandemic for economies worldwide and for the music sector in particular. The COVID-19 pandemic has decreased notably the revenues from communication to the public (as many public venues closed and did not pay fees) and, to a lesser extent, the revenues from broadcasting (due to reduction in commercials and their use of recorded music). Taking into consideration the economic scenarios for the next two to three years (inflation, energy crisis) it is likely to impact on the public venues (communication to the public as part of SER) and the use of music in their business models. Linear broadcasting consumption is declining and hence places pressures on the conventional broadcasting formats. Other on-demand services online are less relevant (specifically for radio) for music consumption and hence to contribute to increase SER revenues. Both trends can lead to potential reduction in SER tariffs in the near future. The increasing relevance of the streaming revenues (separate from SER) in the recorded music industry demonstrates that music consumption changes.

¹⁵⁰ A representative organisation of the recording music industry worldwide, <https://www.ifpi.org>. Information taken from publicly available report series IFPI Global Music Report – State of the industry – published each year.

¹⁵¹ This definition is used by IFPI and does not fully correspond what other players in the music industry understand as performance rights. (see glossary for more details). While IFPI's data on performance rights includes other revenue sources in addition to broadcasting and communication to the public, it serves as a proxy to estimate the relative importance of SER revenues. 'Internet licensing' refers to revenues that come from usage of music in videos online or other purposes.

¹⁵² IFPI (2022), Global Music Report 2022 – State of the industry. Last accessed on 22/06/2022 and available at: https://www.ifpi.org/wp-content/uploads/2022/04/IFPI_Global_Music_Report_2022-State_of_the_Industry.pdf.

¹⁵³ IFPI (2020), Global Music Report 2020, last accessed on 22/06/2022 and available at https://www.ifpi.org/wp-content/uploads/2020/03/GMR2021_STATE_OF_THE_INDUSTRY.pdf; and IFPI (2022), op. cit.

However, SER revenues will remain to provide a non-negligible source of income for performers and producers alike.

Within the global trends described above, data from the recorded music industry for the 2018-2021 period (including both performers and producers) shows differences across regions:

- **The EU is the biggest generator of the performance rights' revenues worldwide**¹⁵⁴ accounting for 50 %. The US accounts for 35 %¹⁵⁵ whereas the remaining 15 % are generated by all other third countries.
- **In the EU, SER revenues account for around 75 % of the overall performance rights revenues** (40 % from the communication to the public and 35 % from broadcasting¹⁵⁶). The remaining 25 % represents private copy levies and Internet licenses. For comparison, in the US SER revenues (albeit SER is not granted as extensive as in the EU) represent 65 % of performance rights revenues.
- SER revenues have a different value for each type of rightholder within their revenue portfolio.

ii. Member States level

When zooming into IFPI's data on the total revenues of the recorded music industry in the 2018-2020 period, Germany and France are the Member States with the highest overall revenues (approximately EUR 1.1 billion and EUR 800 million per year respectively).¹⁵⁷ Belgium, Denmark, Spain, Italy, the Netherlands, Austria, Poland, and Sweden had an overall revenue between EUR 100 million and EUR 250 million. In the remaining countries, the annual overall revenue was below EUR 15 million.¹⁵⁸

When considering the share of SER within the overall revenue of the recorded music industry at national level, data from IFPI¹⁵⁹ shows that there are significant differences. The share of SER ranges from less than 20 % to more than 40 % of overall revenues.¹⁶⁰

The Figure 9 below groups EU Member States based on the values for the recorded music sector's revenues and of the share of SER revenues for the sector (also using a high-medium-low scale based on the description above).

¹⁵⁴ As provided by IFPI.

¹⁵⁵ It should be noted that when it comes to SER, the US only remunerates digital transmission uses only (both for its own rightholders and foreign rightholders).

¹⁵⁶ Based on non-public data provided to the research team by IFPI.

¹⁵⁷ Based on non-public data provided to the research team by IFPI.

¹⁵⁸ Ibid.

¹⁵⁹ Based on non-public data on global performance rights collections provided to the research team by IFPI.

¹⁶⁰ For instance, this dependency is particularly high in Croatia, where SER revenues represent more than 70 % of the total revenues of the recorded music industry.

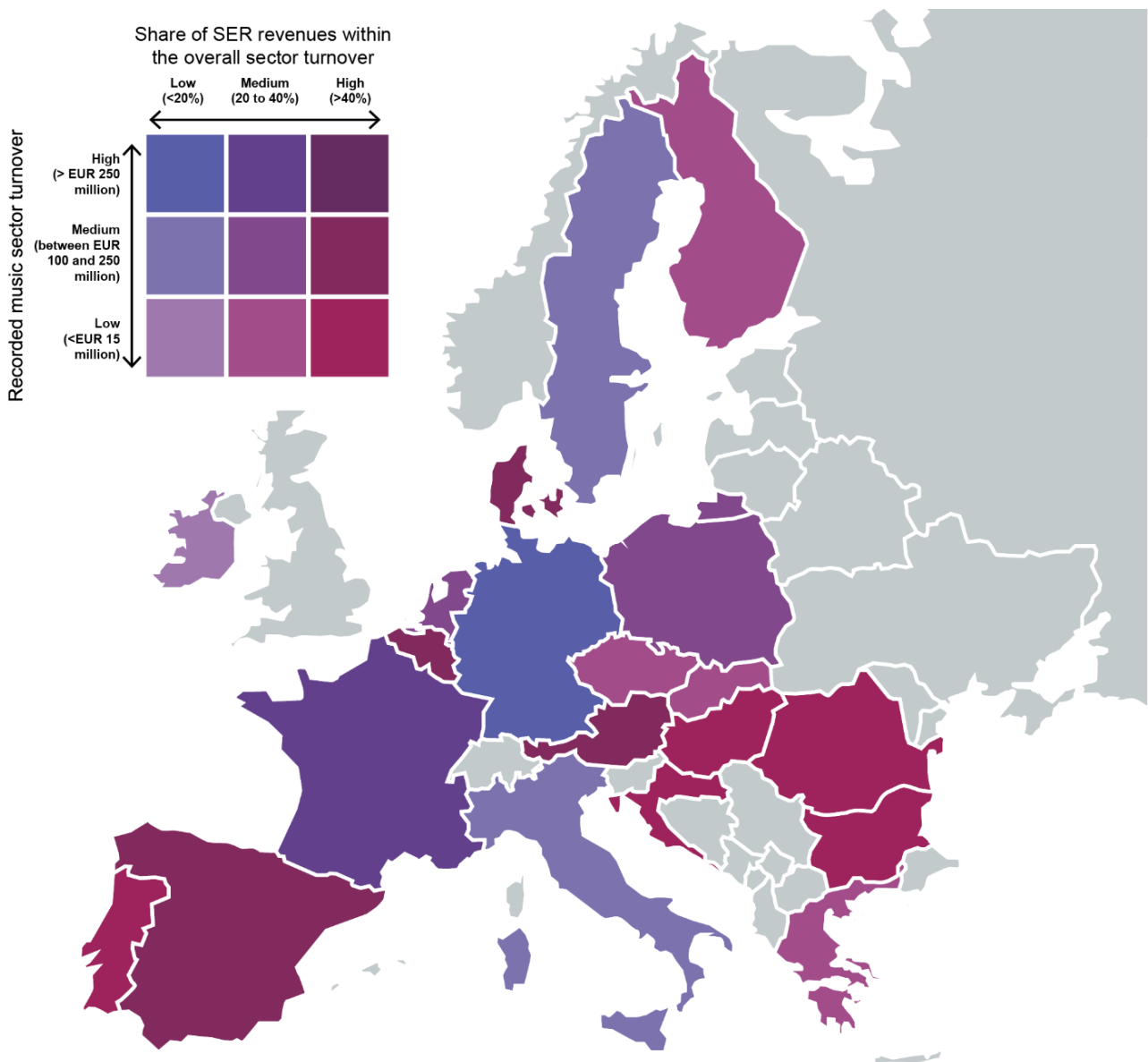


Figure 9: Grouping of EU Member States based on recorded music sector's revenues and importance of SER revenues; source: ICF & NTT DATA based on data by IFPI

Key messages

- The global revenue of the recorded music sector has increased in the last years (from 2018 to 2021) and performance rights revenues (of which the SER is a component) have increased in absolute values.
- The increase in performance rights revenues has been lower than the overall growth of the recorded music sector turnover, so the relative importance of performance rights revenues has decreased over time, accelerated by the COVID-19 pandemic.

- The EU is the biggest generator of the performance rights' revenues worldwide¹⁶¹ accounting for 50 %. The US accounts for 35 %, ¹⁶² whereas the remaining 15 % are generated by all other third countries.
- In the EU, SER revenues account for about 75 % within performance rights revenues.
- Communication to the public uses account for about 40 % of the revenues from performance rights in the EU, while broadcasting uses represent about 35 %.
- The share of SER within the overall revenues of the recorded music sector in the EU ranges widely across Member States, namely between less than 20 % to more than 40 %. The higher such share (i.e. the higher the dependency on SER of the national music sectors) the more such countries can be impacted by a change in the SER regime, at least potentially. The size of the recorded music sector is another key parameter to identify those Member States potentially impacted by a change in the SER regime.

b. Overall SER amounts collected and distributed in the EU

This section describes the general dynamics of the SER collection and distribution in the selected EU Member States.

Where partial data were collected (i.e. for performers or producers only), estimations were carried out to obtain a complete dataset for the Member State in the period considered by the study. To complete the dataset (i.e. the missing data from performers in Greece, Hungary and Portugal, and for producers in Croatia and in Belgium for 2021 only) the study used the average SER collection or distribution for each year, calculated based on rest of the dataset and applied the figures to the missing data points. The figures for Austria are exclusively based on data publicly available in the annual transparency reports published by the CMO. Such data do not cover all the dimensions explored.

i. SER collection in Member States

Over the five years considered (2017-2021), the **SER collected has overall slightly increased in the 2017-2019 period** in most of the countries considered (5.5 % per year on average). **Data for 2020 show a sharp decrease (-20 % on average)**, which can be attributed to the economic consequences of the COVID-19 pandemic on the economy in general and on the music sector in particular. The reason for such a decrease is explained by the fact that many public venues were closed for several months, which reduced the SER revenues from communication to the public uses, while broadcasters registered a decrease in turnover and revenues from advertisement. Data for 2021 shows that the effects of the economic downturn caused by the COVID-19 pandemic persist, albeit to a lower extent. Even though the volume of SER collected has increased, it has not yet achieved the levels of 2019. The differences across Member States can depend on several factors: the size of the respective music markets, the eligible uses for SER collection, and the tariffs in place in each country. In terms of future trends, no consensus emerged in the interviews with industry representatives

¹⁶¹ As provided by IFPI.

¹⁶² It should be noted that when it comes to SER, the US only remunerates digital transmission uses only (both for its own rightholders and foreign rightholders).

conducted for the study how SER revenues will evolve. This is strongly linked to trends of music consumption (which medium used). From the data analysed, it appears that there is a relative decline of the overall share of SER revenues in the sector revenue portfolio. On the one hand, music consumption via radio declines (with some exceptions to online radio)¹⁶³ to the advantage of streaming services (which strongly grew in use in particular during the COVID 19 crisis). On the other hand, evolution of SER revenues will depend on use of music in public venues and music licensing. It seems less predictable on this side. So-called 'royalty free music' providers¹⁶⁴ use different licensing mechanisms which may cost public venues less compared to licences directly issued by CMOs for music use in public venues. However, no detailed data/ or overview on the latter was found and is based on anecdotal evidence.¹⁶⁵

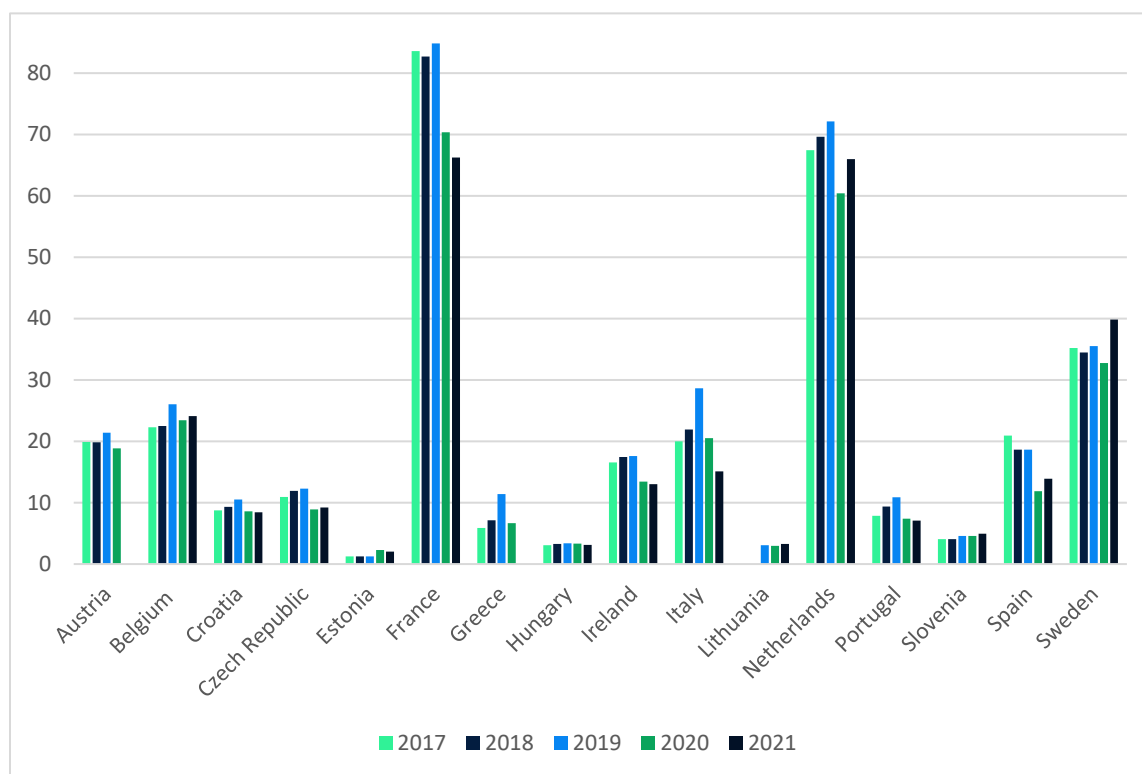


Figure 10: SER collected by the CMOs consulted in the selected Member States (2017-2020) (EUR million); source: ICF & NTT DATA based on data provided by CMOs during the study

Note: Data collected from CMOs were partial for Belgium (performers only for 2021), Croatia (performers only), Greece, Hungary and Portugal (producers only). Data for Lithuania cover 2019-2021 only, Data for Greece and Austria cover 2017-2020.

¹⁶³ IFPI (2021) Engaging with music report, infographic on weekly music consumption p.4. Last accessed on 05/09/2022 and available at: <https://www.ifpi.org/ifpi-releases-engaging-with-music-2021> ; another study that indicates similar trends but for Germany only are the yearly reports by the German industry association 'Bundesverband Musikindustrie (BVMI)' accessed at: <https://www.musikindustrie.de/markt-bestseller/musikindustrie-in-zahlen/download-jahrbuch-3-1> – for Germany the trend is terrestrial radio had a 27% of share of weekly music consumption in 2017 while in 2021 radio (internet and terrestrial) had 21,9 % share of weekly music consumption.

¹⁶⁴ 'Royalty free music' is copyrighted music offered under an all-inclusive price whereby the user acquires rights by the provider of such kind of music in form of a subscription which includes the rights to use the music. See for example explanation provided by 'royalty free music' provider Epidemic Sound (SE based) – accessed at: <https://www.epidemicsound.com/our-license-model/>

¹⁶⁵ Based on information retrieved from interviews with some CMOs and an Independent Managing Entity (IME), but also on case law identified in the desk research that points a shift of some public users (such as stores) using this type of music – for example in Greece, <https://www.lexology.com/commentary/intellectual-property/greece/a-k-metaxopoulos-partners-law-firm/greek-collecting-societies-are-not-entitled-to-collect-equitable-remuneration-for-artists-and-producers-not-represented-by-them-by>

The total SER collection usually consists of two different revenue streams. The first stream is the SER collected from national and EU/EEA users, which also tends to be more significant. The second stream corresponds to the SER revenues that the CMOs receive for the use of national repertoire in third countries, which are transferred to them by the CMOs in such countries on the basis of reciprocal representation agreements. SER revenues from third countries are a secondary source, whose relevance varies greatly across Member States (see section 6.d.i for more details). For the Member States that provided this level of detail in their data, the figures in the graph above include all sources of SER revenues. After deducting the management fee and other operating costs applied by the CMOs, this net value constitutes the general amount of SER to be distributed to rightholders.

The SER collection mainly depends on the tariffs applied by CMOs to national broadcasters and public venues (including effectiveness of collection). Tariffs applicable for the SER are generally negotiated directly between CMOs and broadcasters and public venues and organisations representing them in each sector. As explained in section 5.b, the tariff system is to a large extent independent from the repertoire actually played by broadcasters and public venues, as well as from the origin of such repertoire. As a result, many CMOs do not collect detailed data on the share of SER collected in their respective territories for the use of international (i.e. non-EEA) repertoire, let alone on the individual amounts collected for each third country based on the country of origin of the rightholders involved in the repertoire played. Therefore, it is not possible to break down the SER collected by CMOs in Member States by SER relating to the use of national repertoire, EU/EEA repertoire, and international repertoire. This distinction is however made by CMOs at the distribution level, with some exceptions and caveats explained below.

ii. SER distributed in Member States

The aggregated figures for SER distributed across Member States show similar trends to those for SER collection. Over the five years considered (2017-2021), the **amount of SER distributed has overall slightly increased in most of the countries considered** (5.2 % per year on average in the 2017-2019 period). **In contrast to the SER collection that sharply decreased in 2020, such strong trend is not mirrored in the SER distribution but seems to be rather more distributed between 2020 and 2021** (-16 % and -10 % compared to pre-COVID levels respectively).¹⁶⁶ It is therefore possible that the effects of the economic downturn will impact negatively the SER distributed also in 2022.

¹⁶⁶ This is mainly a spill-over effect and is due because revenues distributed in those years (2020, 2021) have been collected in years before 2018 and 2019.

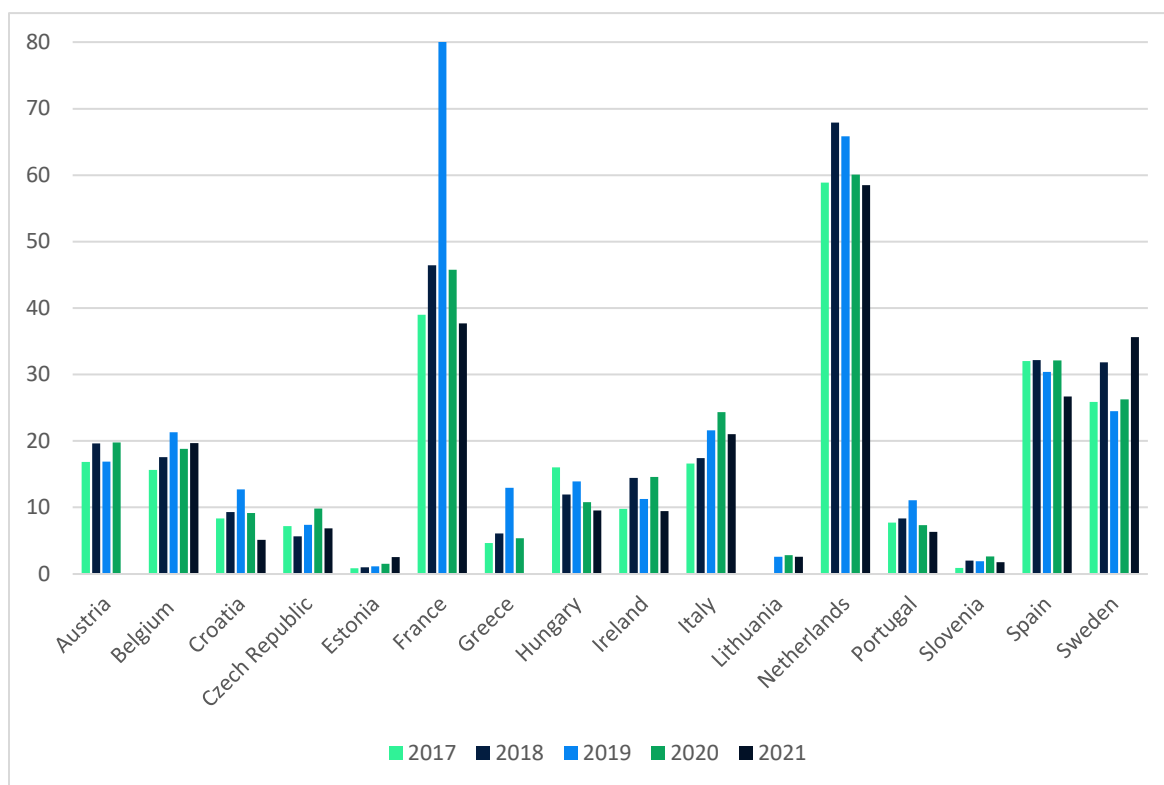


Figure 11: SER distributed by CMOs in selected Member States (2017-2021) (EUR million); source: ICF & NTT DATA based on data provided by CMOs during the study

Note: Data is partial for Greece, Hungary and Portugal (producers only), Belgium (performers only for 2021). Data from Finland presented discontinuities so they were discarded. Data for Lithuania cover 2019-2021 only. Data for Greece and Austria cover only 2017-2020. Data for France show a spike in 2019, which is largely due to the SER distributed by a performers' CMO in that year (which quadrupled the SER revenues distributed in that year compared to the previous one).

Overall, while SER is collected based on the tariffs applicable in a given year, SER is distributed based on the repertoire performed with a certain delay, as in a rolling plan. This translates in the fact that the amount of SER distributed in a certain year is higher than the amount of SER collected in the same year.

As for the SER distributed, it should be noted at the outset that the differences across Member States can depend on several factors, including the size of the respective music markets and distribution approaches in the Member States (see examples in section 5.d).

Furthermore, it is important to explain why data on SER distribution (figure 11) is in some cases higher than SER collection (figure 10). This is the case for the Czech Republic and Ireland for 2020, Hungary and Spain for the entire 2017-2021 period, Croatia for 2019 and 2020, Estonia for 2021, Italy for 2020 and 2021, and Portugal for 2019. Two main reasons that explain this situation: there are delays in the distribution of SER and longer subscription periods exist which allow rightholders to claim revenues later.

Firstly, pursuant to Article 13 of the CRM Directive the CMOs should distribute the revenues no later than nine months from the end of the financial year in which the rights revenues were collected, unless there are objective reasons relating in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject-matter with rightholders prevent the collective management organisation or, where applicable, its members from meeting that deadline. In practice, some CMOs reported that such reasons often cause **delays in the distribution of SER**.

Based on the interviews with CMOs, the more frequent problems affecting delays in distribution concern delay from broadcasters in reporting air play times, problems in identifying the correct rightholders or their bank account details, rightholders not claiming their rights within the set timeframe, or other requirements of a practical nature necessary for the payment (e.g. payment rolling plan). As a consequence, the time delay between the SER collection and the SER distribution can be longer than one year in some cases, and thus SER revenues accrued in a given year are only distributed in subsequent years.

Secondly, it appears that the standard market practice for CMOs to work with a three-year prescription period¹⁶⁷ for rightholders to claim revenues, which is even longer in some countries (e.g. Greece or Spain¹⁶⁸). As a consequence, distributed revenues from SER can be higher than the SER collection in the respective financial year.

Finally, discrepancies between SER collected and SER distributed for the years 2020 and 2021 can also be due to the consequences of the COVID-19 pandemic. SER distributed in a given year is often related to repertoire used in earlier years, and not be matched by a corresponding SER collection. The sharp decrease in SER collected in 2020 and 2021 due to the COVID-19 pandemic has been likely to widen such gap, since a (much) lower than usual SER collection may have been insufficient to cover the SER revenues to be distributed in the same year (including SER revenues accrued in earlier years). This may explain the data for Czech Republic, Estonia, Ireland and Italy, for 2020 and 2021.

Key messages

- While SER revenues collected in 2017-2019 overall slightly increased in the countries considered, 2020 was a turning point where revenues sharply decreased (-20 % on average). The COVID-19 pandemic caused closure of many public venues decreasing also the SER collection. Even if SER revenues started to increase in 2021, pre-pandemic level is not reached. Future SER revenue collection is also impacted by a current apparent shift of music consumption from radio (terrestrial and internet) to streaming.
- CMOs often face delays in distributing SER for objective reasons. Hence, SER revenues collected in one calendar year cannot be fully matched with the SER revenues distributed.
- SER revenues are distributed according to varying distribution approaches in Member States (see section 5.d.ii). Key for distribution to rightholders of SER revenues collected are airplay lists provided by larger broadcasters (any other public venue disposing of airplay lists). Smaller broadcasters (mainly radio) or public venues do not dispose of airplay lists but may be required to indicate the type of music that is being used (broad sense). Consequently, airplay times are assimilated for the latter. These information sources do not necessarily reflect the full use of repertoire used in the country.¹⁶⁹ This impacts those performers and producers whose phonograms are typically more used in public venues, as they may receive a lower share of SER revenues.

¹⁶⁷ Period of time during which the rightholder is entitled to claim due/unidentified revenues.

¹⁶⁸ The prescription period in Spain is of five years, while Greek law establishes a maximum period of 10 years during which rightholders may claim revenues to the CMOs.

¹⁶⁹ Public venues may use other music repertoire than broadcasting.

c. Breakdown by main user groups and rightholders' categories

This section analyses the SER collected by type of use (i.e. communication to the public and broadcasting)¹⁷⁰ and the SER distributed by category of rightholders (i.e. producers and performers). This gives further insights to which user groups or rightholders may be more impacted by a change in SER revenue collection or distribution rules.

On the collection side, the data gathered shows that **communication to the public represents the most important source of SER in most of the countries considered** - approximately 58 % on average of the SER collected in all the countries considered with the exception of France in 2017, Croatia, Lithuania in the 2019-2021 period, and Hungary. When looking in more details at the time series available, data show that the **relative importance of broadcasting has increased in recent years, from 30 % on average in 2017 to 46 % in 2021** (with variations across countries). This redistribution of the share of SER collected from communication to the public to broadcasting can be a signal of the increasing relevance of webcasting and simulcasting in the market (which are often reported under broadcasting). On the other hand, the increase of importance of broadcasting in 2020-2021 specifically seems related to the closure of many of the public venues due to COVID 19. However, the scarcity of data collected does not allow for an analysis with such level of granularity.

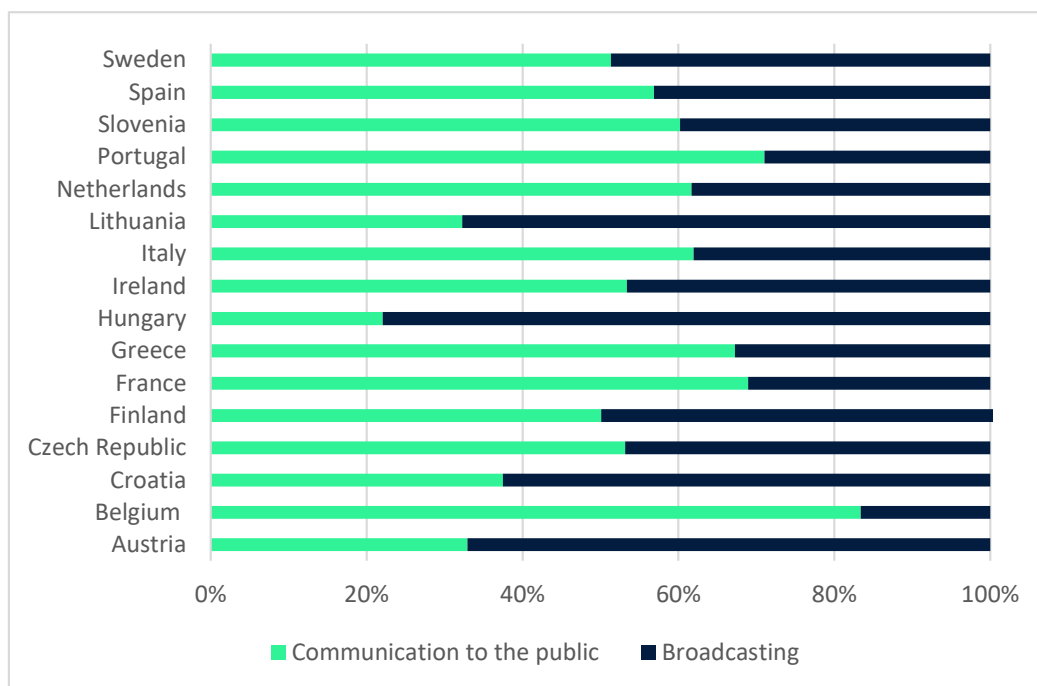


Figure 12: SER collected by type of use in the Member States for which data was available (average 2017-2020); source: ICF & NTT
DATA based on data provided by CMOs during the study

Note: Data is partial for Portugal (producers only), Belgium (performers only for 2019 and 2020, no data for 2021), Greece (producers only, for 2017-2020), Austria (2017-2020). Data for Slovenia only refers to 2017-2019. Data is missing for Estonia and Germany.

As regards the beneficiaries of SER, while most of CMOs state that SER is split 50/50 between performers and producers, data show that often performers receive a (slightly)

¹⁷⁰ The data request to CMOs included a more granular breakdown of the broadcasting category between TV and radio broadcasting, and further between simulcasting and webcasting. However, the scarcity of data collected for this detailed breakdown did not allow a meaningful analysis.

higher share of SER revenues distributed. It is unclear from the reported data whether the uneven split is due to specific reasons or it indicates a general trend. Firstly, only a few CMOs have such granular data (breakdown per performers and producers), and for limited periods of time (at least three years). Another reason is the different number of performers and producers affiliated to each CMO, and thus benefiting from the revenues distributed. In general, performers are more numerous than producers, hence in proportion they represent a higher share of SER distributed in absolute value. Thirdly, such differences in SER revenues distributed may be due to previously mentioned distribution delays (6.2.2). This may affect performers more frequently than producers.

Finally, to keep in mind, each CMO representing different groups of rightholders redistributes the SER revenues to their affiliates according to its own rules (this does not change not -regarding the type of CMO management model). Among producers, SER revenues are distributed among major and independent labels, while among performers the split is between featured and non-featured performers (see section 5.d.i).

Key messages

- Communication to the public represents the most important source of SER in most of the countries considered (about 58 % on average in the 2017-2021 period).
- The relative importance of broadcasting has increased in recent years. No clear explanation emerged from the research. COVID 19 may have contributed to this increase due to public venue closures in the period 2020-2021.

d. SER revenues collected from and distributed to third countries

This section breaks down the available data on (1) SER collected from third countries for the use of national repertoire abroad and (2) SER the Member States CMOs distributed to third-country rightholders for the use of their repertoire within the territory of a Member State.

The section is based on the (partial) data provided by CMOs from 10 Member States (Belgium, the Czech Republic, Estonia, Ireland, Spain, France, Croatia, Italy, Hungary and Sweden¹⁷¹).

i. SER collected from third countries for the use of EU repertoire abroad

As explained in section, CMOs from Member States collect the SER from third countries for the use of their national repertoire abroad. These revenues constitute a part of the SER that is collected and gets then distributed by CMOs to the corresponding rightholders (see section 6.b.i).

Overall, the volume of these SER revenues is not very significant as it is on average amounting to less than 10 % of total SER collected. However, the volume of SER

¹⁷¹ Data are missing entirely for Finland, Portugal and Lithuania, and too limited for the Netherlands to be included in the analysis. Data refer to performers only in Croatia (cover 2021 only), Estonia and France, and producers only in Ireland.

revenues collected from third countries varies greatly across Member States. Based on the limited data available, it is possible to identify three groups of countries, depending on the share of SER from third countries on the total SER collected in the 2017-2021 period (i.e. below 1 %, between 1 % and 10 %, and above 10 %). The table below groups the ten Member States for which such data are available based on the ranges described.

Table 16: Member States per share of SER revenues from third countries for the use of national repertoire over total SER collected (2017-2021); source: ICF & NTT DATA

| Share of SER from third countries for the use of national repertoire over total SER collected | Member States |
|---|---|
| Less than 1 % | Belgium, Croatia, Estonia, France, Hungary, Ireland |
| Between 1 % and 10 % | Czech Republic and Italy |
| Above 10 % | Spain and Sweden |

However, this grouping should be interpreted with caution, as the evidence collected is partial, and there are large variations across years.¹⁷²

Differences on the share of SER revenues collected from third countries can depend on several factors. Cultural and linguistic ties with third countries contribute to the popularity and thus the use of national repertoire in third countries (such as it is the case of Spanish music in Latin America). In addition, the number of reciprocal representation agreements with third countries CMOs plays an important role. As a basis, the higher the number of reciprocal representation agreements, the more SER revenues are transferred for the use of national repertoire. In addition, it depends whether a country collects the SER from broadcasters and public venues and for all types of uses. For example, in the US, SER is being collected only from digital radio and not from terrestrial. The points of attachment recognised by the SER regime in a country can also be an explaining factor, as they determine the rightholders who benefit from the protection envisaged in international agreements. As shown in section 4.a.iii, there is a high diversity of eligibility criteria across national laws, both in terms of number and formulation. As a general assumption, the more eligibility criteria are used, the higher the share of protected repertoire (and thus of SER revenues). International distribution practices also contribute to the fact that revenues are not re-distributed internationally (e.g. producers may have such agreements also in place – see sections 5.d and 5.e).

Finally, another explanatory factor is the **quality and granularity of data** available to CMOs. Many CMOs that apply national treatment do not make a distinction between national/EU rightholders and third-country rightholders in their data (e.g. Croatia, Hungary). Further to this, some CMOs consider revenues allocated to record labels established in their territory as national distribution, even if such revenue gets then transferred to affiliate offices abroad. Human and technological resources available to CMOs for collecting such detailed information also play a role.

¹⁷² Data are missing entirely for Finland, Portugal and Lithuania, and too limited for the Netherlands to be included in the analysis. Data refer to performers only in Croatia (cover 2021 only), Estonia and France, and producers only in Ireland

Breakdown by individual third countries

When considering in more details the individual third countries, despite national differences, the US and the UK¹⁷³ represent universally the most important markets for EU Member States. They account for 50 % to 80 % of SER collected from third-country CMOs for most of the EU-10 countries. However, as mentioned, these amounts still remain low and are a residual source of total SER revenues. The detailed split between the US and the UK is not always clear, as most of the countries that provided this detailed breakdown considered the UK as an EU/EEA country until 2020. In 2021, the US/UK split is approximately 50/50 in Sweden, while the share of UK is higher for the other countries.

SER revenues from third countries other than UK and US are even lower. These residual third countries differ among Member States, reflecting cultural and linguistic links. For instance, Latin American countries are an important source of SER revenues for Spain. Approximately 35 % of the overall SER revenues that Spain receives from third countries came from Latin American countries (corresponding approximately to EUR 7.3 (in 2018) to EUR 4.1 million (in 2021) in the 2017-2021 period). Similarly, Switzerland is important for Italy (about 22 % of SER collected from third countries annually comes on average from Switzerland, corresponding approximately to EUR 3.8 to EUR 6.3 million in the 2017-2021 period), while Canada is important for both Belgium and France (about 3 % - 5 % of SER collected from third countries on average for both, corresponding to approximately EUR 0.8 to EUR 1.1 million in Belgium and EUR 2.6 to EUR 3.4 million for France in the 2017-2021 period).

The share of other third countries (such as Japan, South Korea, South Africa) is residual, ranging between 1 % and 2 % of SER collected from third countries for most of the countries, as in the case of the Netherlands, Spain and Sweden.

Some of the third countries considered (such as Australia, China, Russia, India, Turkey) do not provide any or very limited SER revenues to the CMOs in the Member States considered. This is also linked to the limited SER rights regulated in these countries (see section 3.a). While some Member States have reciprocal representation agreements with these countries (see section 5.e), the situation varies across Member States. As for the reasons behind the lack of bilateral agreements, CMOs mentioned that they privilege negotiating agreements with markets that are relevant for them in terms of music consumption.

Among the third countries considered, some are either not parties to WPPT or are parties to it with reservations.¹⁷⁴ However, the SER collected from third countries other than the US is very limited due to inexistence or limited SER rights.

ii. SER distributed to third countries for the use of international repertoire in the EU

This section analyses the SER distributed to third countries for the use of international repertoire in the selected Member States.

¹⁷³ The UK did not make a reservation under Article 15(3) of the WPPT and applies the full single equitable remuneration right.

¹⁷⁴ These countries include US, Russia, Canada, China, India, Japan, and South Korea. More details can be found in section 5.e.

The set of data for SER distributed by EU Member States to third country rightholders is very limited, and so the findings presented below should be interpreted with caution (see figure below). Data on this dimension were provided by CMOs from Belgium, Ireland, Greece, Italy, Spain, the Netherlands, and Sweden, hence the analysis below focuses on those seven Member States.

Across the seven countries for the period of 2017-2020, the SER distributed to national rightholders represents about 54.5 % of the total distribution, while the SER distributed to EU/EEA rightholders account for about 19.2 %, and the SER distributed to third-country rightholders encompasses the remaining 26.3 %. However, the aggregated breakdown conceals vast differences across countries.

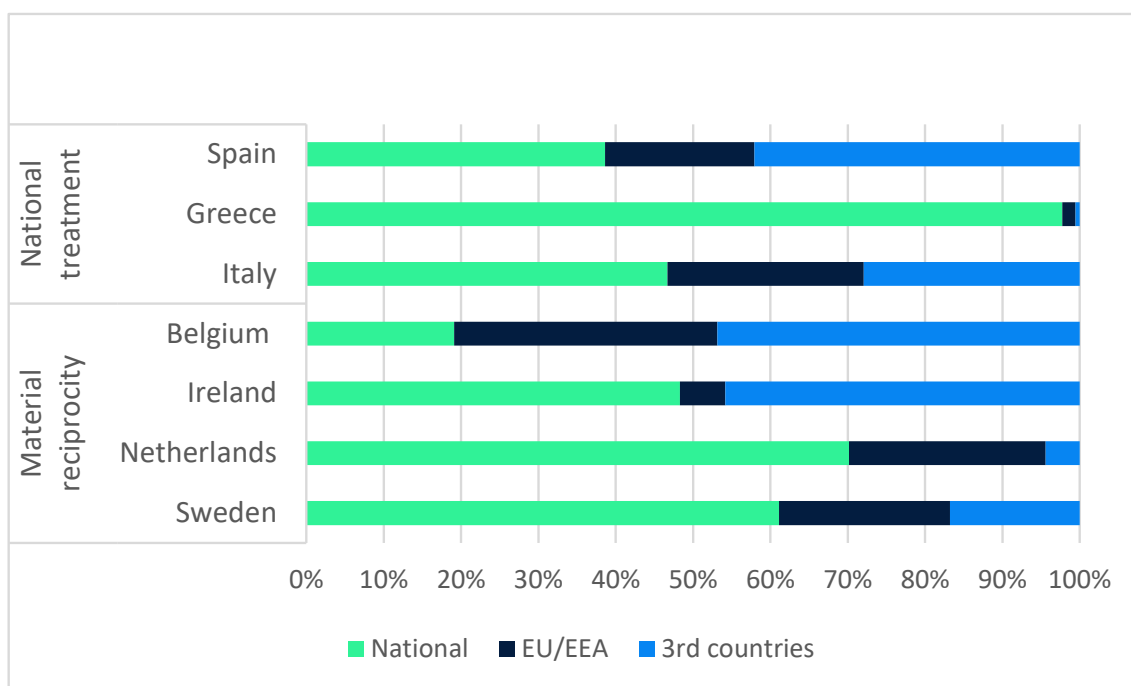


Figure 13: SER distributed by Member States by region of distribution (2017-2020); source: ICF & NTT DATA based on data provided by CMOs during the study

Note 1: Data is missing or too partial to be used for Austria, Croatia, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Lithuania, Portugal, and Slovenia. Data are partial for Belgium, Greece and Sweden (producers only), Ireland and Spain (performers only)

Note 2: The Netherlands implemented changes in the legal system and operational rules for collection and distribution of SER revenues in 2020, effective in 2021 (see sections 4.b and 5.g). However, most of the data provided by CMOs reflect the pre-2020 material reciprocity regime, so it is included in that group.

Note 3: The UK is accounted under third countries.

The share of SER distributed to third countries lies between 10 % and 40 %. There are large national variations, from the highest values in Belgium, Ireland and Spain (where it ranges between 40 % and 47 % of the total SER distributed), to the lowest value in the Netherlands, where it is about 5 %. Greece is an outlier, with only 0.6 % to third-country rightholders. Figure 13 also needs to be read by having in mind that the share of repertoire from countries where SER revenues cannot be reciprocated is not provided.¹⁷⁵

¹⁷⁵ This share is not fully available in terms of data for all countries and period analysed. Another reason is also that such repertoire is disregarded from the airplay lists (main source for determining distribution) and hence not recorded. CMOs do not represent rightholders from countries where rights cannot be reciprocated.

The peculiarities of each national markets, music preferences and commercial practices can play a role in differences among the EU Member States as shown in the data available.

The figure reported above needs to be interpreted with caution, in particular regarding the share that is distributed to the record producers, and even more so for producers in countries applying national treatment. Namely, CMOs distribute a share to those record producers that are established in their territory or to the local offices of record producers that are situated in their territory. Such distribution is treated as “national distribution”. However, such local offices redistribute the received revenues across the different national offices, both in the EU and in third countries. For instance, data on SER distribution to national rightholders in the Netherlands include the amounts distributed to producers established in the Dutch territory, but may be or not afterwards transferred to affiliate offices abroad because the national representative office collects all SER revenues for the entire repertoire national/ international of that producer. Therefore, the split of SER distribution among rightholders (national and third countries) can be misleading as it may look like national repertoire, but in reality it is from other countries.

When considering in more details the individual third countries of rightholders for SER distribution, the dataset available is even more limited than for previous analysis. However, from the evidence collected, the **US and the UK represent universally the most important countries, accounting for 30 % to 50 % of the SER distributed to third-country rightholders by Member State CMOs.**

Combining data provided by CMOs with those from music industry stakeholders,¹⁷⁶ it is possible to quantify the share of SER revenues distributed to US rightholders to about 30 % - 35 % of the total SER distributed to third-country rightholders.¹⁷⁷

Third countries with a relative importance that EU Member States distribute SER include Canada, Japan, Brazil and Argentina. Distribution to other third countries (such as South Korea, South Africa) is residual, ranging between 1 % and 2 % of SER distributed to third country rightholders.

The figures reported above seem consistent with factors such as size of national music markets, cultural and linguistic ties with third countries, share of third-country music repertoire performed in each Member States. Countries like Spain have larger music markets, both for imports and exports, while countries like the Netherlands and Sweden consume much international music. In addition, Sweden, the Netherlands (until 2021) and Belgium only distribute the SER related to certain international repertoire subject to material reciprocity. This practice translates into lower SER distributed to third-country rightholders compared to countries that apply national treatment for the same use of international repertoire. To be noted as well that data may be distorted due to distribution agreements that exist for performers and producers.

¹⁷⁶ Non-public data provided to the research team by IFPI, the international association representing the recording industry.

¹⁷⁷ These figures come from the seven EU Member States' CMOs that provided data however these findings also apply to the remaining 11 EU MS out of the 18 included in the study. Data from stakeholders' music industry corroborate this estimate.

Key messages

- CMOs from Member States collect SER from third countries for the use of their national repertoire abroad, which constitutes a limited part of the total SER collected and then distributed by CMOs to national or EU/EEA rightholders.
- There are large differences across Member States analysed¹⁷⁸ on the volumes of SER collected from third countries for the use of EU repertoire abroad. CMOs receive residual amounts of SER revenues from third countries for the use of EU repertoire abroad. Out of the total SER collected these Member States collect:
 - Six Member States receive less than 1 % of SER from third countries
 - Two Member States receive between 1 and 10 % of SER from third countries
 - Only two Member States receive above 10 % of SER from third countries
- In comparison, the EU CMOs of seven Member States¹⁷⁹ on average distribute much higher SER revenues to third-country rightholders. In period of 2017 to 2020, EU CMOs on average distributed:
 - 54.5 % of total SER to their own national rightholders
 - 19.2 % of total SER to the rightholders coming from other EU Member States or EEA
 - 26.3 % of total SER to the third-country rightholders
 - Out of the total SER that the EU CMOs distribute to the third-country rightholders, 30 and 50 % of total SER go to the US and the UK respectively..
- Across EU Member States (EU-18) US repertoire accounts for a large share (from 20 % to 45 %) of the repertoire played in EU/EEA countries, whether under national treatment or material reciprocity.
- Cultural and linguistic ties with third countries contribute to the popularity and thus the use of third country repertoire.

7. Expected economic impact of the application of the principle of national treatment in the EU

This chapter discusses the expected economic impact of the application of the principle of national treatment across the EU pursuant to the RAAP judgement. More details are provided for the Netherlands, as the only Member State that already introduced changes in its regime following the judgement. The impact analysis also considers the various stakeholders in the music value chain that are involved in the collection and/or

¹⁷⁸ 10 Member States namely: Belgium, Croatia, Estonia, France, Hungary, Ireland, Czech Republic, Italy, Spain, Sweden.

¹⁷⁹ These are: Belgium, Ireland, Greece, Italy, Spain, the Netherlands, and Sweden.

distribution of the SER, namely EU rightholders, music users and CMOs (see section 2.b for further information on the relevant stakeholders considered).

The analysis builds on information and data collated through interviews with stakeholders at EU level and in selected Member States and on relevant literature and documentation.¹⁸⁰ The data on the SER collections and distributions provided by CMOs have also been considered, including the data spreadsheets submitted by CMOs in 14 Member States (see section 2.d for more details on the data collection).

As mentioned earlier (see sections 2.e and 6.b), limited data availability required the estimations of some variables for the analysis, to have a picture as complete as possible of the total SER collected and distributed in the 18 Member States included in the study.¹⁸¹ Therefore, the overall SER collection and distribution was partially estimated for Belgium, Estonia, Greece, Croatia, and Portugal, for which the data were missing for either producers or performers, and for some of the years considered. Data for Germany were available only aggregated across the 2017-2020 period considered, so a more detailed analysis was not possible. A minimum dataset for Austria (covering the 2017-2020 period) was compiled from the annual transparency reports published by the CMO.¹⁸²

Additional data and estimations on the impacts of the application of the principle of national treatment were provided by stakeholders representing producers and US rightholders. These data were considered and added to the analysis as relevant.

The evaluation focuses on those Member States out of the selected 18 Member States that apply material reciprocity, which, without a change in EU law, will need to adapt their legislation and/or market practices accordingly (i.e. Belgium, Ireland, France, the Netherlands¹⁸³, Austria, Slovenia, Finland, and Sweden).

a. Preliminary remarks

At the outset, a few preliminary remarks are necessary regarding selection of Member States, the choice of foreign repertoire and the key variables used in the analysis.

First, in order to assess how the application of national treatment may impact the SER revenues collected and/or distributed in Member States, the starting point is to look at the Member States that currently apply material reciprocity. Based on the information collected, eight Member States out of the 18 analysed by the study apply 'material reciprocity' (see section 3.c for implications of the judgement), which are **Belgium, Ireland, France, the Netherlands, Austria, Slovenia, Finland, and Sweden** (see Table 10 in section 4.a.iv). Of these, the Netherlands has already modified the legislative framework and applies national treatment as of 2021. The stakeholders consulted in Austria reported that the Austrian CMO no longer applies material reciprocity since the RAAP judgement (for registration with the CMO) even though Austria has not modified its legislative framework.¹⁸⁴ As for the remaining six countries,

¹⁸⁰ Relevant information on the discussions by Member States at the Council Working Party on Intellectual Property on the impact of the RAAP judgement has been used.

¹⁸¹ The need to use of estimations for the analysis in sections 6, 7 and 9 (with the objective of presenting more comprehensive findings) is the main reason for discrepancies between some of the figures reported in the country factsheets for the countries that provided partial datasets and those presented in sections 6, 7 and 9.

¹⁸² LSG's annual transparency reports for 2016-2020. Last accessed on 03/07/2022 and available at: <http://www.lsg.at/voe.html>

¹⁸³ The law in the Netherlands has been amended and market practices are in the phase of adaptation.

¹⁸⁴ The current Austrian legal framework does not require a legislative change to be in line with the RAAP judgement as material reciprocity was applied a result of the interpretation of reservations that Austria introduced under international

no changes have occurred to their respective legal frameworks or to their market practices at the time of concluding this study. Therefore, the estimation is based on these eight Member States.

Overall, these eight Member States represent 53.4 % of the total SER collected and 45.8 % of the SER distributed in the 18 EU Member States specifically analysed by this study. In terms of absolute size of the music market, France and the Netherlands are the largest markets among those impacted. Based on available evidence, on average the Netherlands collects about EUR 67 million and distributes about EUR 62 million SER revenues yearly. On average France collects approximately EUR 77 million and distributes about EUR 50 million of SER revenues yearly. The reason for such difference is the application of narrower eligibility criteria for distribution compared to its collection approach. In addition, it is expected that those Member States which are net importers of music from third countries will be more heavily affected, as they will have a larger share of SER revenues to be distributed to third-country rightholders.

Focus on the impacts of the change in SER regime for the US repertoire

While the application of national treatment concerns all third countries so far excluded from receiving full SER revenues in Member States applying material reciprocity, after review of available evidence on the use of third-country repertoire, the analysis of the economic consequences of the application of the principle of national treatment in the EU focuses on the impact of the change in SER regime concerning the US repertoire.

As regards the **choice of the US repertoire**, it was already mentioned earlier that the US is by far the most important international repertoire used in EU Member States (see section 6.d). While the UK repertoire is also very important (see also section 6.d), it was not included in the analysis for the following reasons:

- First, the UK did not make a reservation under Article 15(3) of the WPPT and, like the EU, provides a full right to SER;
- Second, the right to a SER is specifically provided for in Article 229 of EU-UK Trade and Cooperation Agreement and no exception is envisaged in that regard.¹⁸⁵This means that the change from material reciprocity to national treatment at the EU side will not change anything in the transfers of monies between the EU and the UK;
- Third, the UK was an EU Member State until 1 February 2020. As such, data provided by CMOs until then often do not distinguish the share of UK repertoire or the associated collection, but rather encompass it within the figures for EU/EEA repertoire.

The two key variables that are used in the estimation of impacts from material reciprocity to national treatment are the share of US repertoire played, and the share of SER distributed to US rightholders under material reciprocity. However, both are subject to some uncertainties.

conventions. It does not mean that US performers and producers will automatically receive SER revenues collected in Austria because further market practices need to be still adapted e.g. renegotiation of tariffs, no bilateral agreements exist yet with US CMOs. This in particular impacts more on performers than producers.

¹⁸⁵ Article 229 of EU-UK Trade and Cooperation Agreement: "Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or any communication to the public."

The share of US repertoire played in the mentioned eight Member States varies. Based on information shared by the CMOs consulted, US music accounts for 30 % to 40 % of the music played in Belgium, the Netherlands, Finland and Sweden. In Austria, the US repertoire accounts for up to 45 % of the music played. Other sources representing the recording industry place the share of US repertoire at 30 % of the music played in EU countries or even slightly higher. In comparison, the interviewed CMOs stated that today on average the share of SER distributed to US rightholders for the uses that can be reciprocated (such as digital radio) are between 5 % and 10 %.¹⁸⁶

It must also be noted that the share of US repertoire is based to a large extent on data provided to CMOs by broadcasters, and often only for one or two years, only to some extent integrated by information from public venues or other sources. For practical reasons, the calculations of the share of national, EU/EEA and international (including US) repertoire are partial data, which do not necessarily reflect the full use of repertoire in the country (see section 6.b.ii). In addition, those Member States for which there are some data available (see section 6.d.ii) show large variations in the share of international repertoire from one year to another, as well as in the amount of SER distributed to third countries. As a consequence, it was considered more prudent to use ranges for the estimations. Considering the value of 30 % for US repertoire (which was the most frequent across the sources scrutinised), it was decided to use the 25 % - 35 % range for the estimations.

Similar considerations can be made for the share of SER distributed to US rightholders under material reciprocity. Limited data available from CMOs place it within 5 % and 10 %, with lower values for the Netherlands in 2020 (3 %). Uncertainties on the share of US repertoire and variations on SER distribution were also considered. Therefore, it was decided to use the 5 % - 10 % range in the estimations.

Finally, any estimate is currently limited by the fact that music consumption preferences are changing. This refers mainly to how music is consumed by type of media (radio – terrestrial, digital; streaming, CDs and Vinyl etc), which uses are eligible for SER collection, as well as consumer preferences of music (EU or third countries). This has hence not been factored into the estimate.

b. Estimations

Based on the considerations above, the estimations followed several steps, which are represented in the overview table below. As a first step, the share of SER revenues currently paid to US rightholders was estimated using the following formula:

$$\text{SER revenue paid to US rightholders} = \text{Total SER distributed} * \text{estimated share of US repertoire paid under material reciprocity (2017-2021)}$$

For the estimations, the study used the average SER distributed in the 2017-2021 period by CMOs in each of the Member States impacted. It was considered more accurate to use an average over several years, to reduce the risk of basing the calculations on values for one year only, which could be influenced by external factors

¹⁸⁶ Interviews of the study team with the Belgian CMOs, Dutch CMO and Swedish CMOs held during April/May 2022. Most of these data refer to 2019, so are not necessarily indicative of a stable share of US music played in the country. Other countries also do not reciprocate such rights currently.

and not be representative of the situation in Member States. Then, the amount of SER paid to US rightholders under national treatment was calculated by multiplying the total SER distributed by the share of US repertoire played in EU Member States (i.e. the 25 % - 35 % range described above).

Following this, it was estimated what would be additional transfers of value to US rightholders if these Member States applied national treatment. This is the (estimated) difference between the SER currently paid under material reciprocity and the total SER to be paid under national treatment to US rightholders (i.e. the net effect of the change in SER regime for the eight Member States considered). Within the resulting range, the minimum value represents the (estimated) difference between the maximum value of SER revenues currently paid to US rightholders and the minimum SER revenues to be paid under national treatment (i.e. the lowest gap between the material reciprocity and the national treatment regime, corresponding to the 15 % minimum difference in the table). Conversely, the maximum value represents the (estimated) difference between the minimum value of SER revenues currently paid to US rightholders and the maximum SER revenues to be paid under national treatment (i.e. the highest gap between the material reciprocity and the national treatment regime, corresponding to the 30 % maximum difference in the table).

For the eight Member States impacted, the difference between the amount of SER currently distributed and the amount of SER that will have to be distributed under a national treatment regime is estimated to range between EUR 35.2 and 66.3 million per year. This corresponds to 8.3 % to 15.3 %, respectively, of the total SER distributed in the EU-18. This range indicates the additional estimated transfer of value only from these EU Member States to US rightholders.

The estimations presented below should however be interpreted with caution due to the following data limitations. The estimations for Ireland need particular caution, due to the particular SER regime applied, where US producers are paid the SER in full, while US performers are only remunerated if they meet the citizenship or residency criteria in the EEA. To represent this situation, the estimations used the average SER distributed to producers to estimate the share of SER currently paid to US rightholders (as the SER paid to US performers is considered to be marginal), and the SER distributed to performers was used to estimate the SER to be paid under national treatment. It needs to be considered that a part of the estimated impact will be in fact an internal transfer of SER revenues from producers to performers, rather than new SER revenues. However, the data available do not allow more detailed estimates of the amount of such transfer.

For France, estimations of the SER currently paid to US rightsholders are based on the SER distributed, while estimations for the total SER to be paid under national treatment are based on the SER collected. This is considered a better proxy than the SER distributed due to the large share of undistributed SER to third-country rightholders and allocated to other purposes such as talent development of artists and support to festivals. Using the SER distribution to monetise the difference between the SER already paid under material reciprocity and the SER to be paid under national treatment would lead to an underestimation on the effects of the change in SER regime in that country. Estimations for Finland are uncertain, given the inconsistencies on the data collected. Data from Finland show large differences between SER collected and distributed for the 2017-2019 period, due to the long period (eight years) over which the CMO distributes SER remuneration and which are (e.g. data on SER distribution for 2021 count remunerations paid from (collection) years 2014-2021).

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Table 17: Annual estimated economic impact of the shift to national treatment in the Member States examined that currently apply material reciprocity; source: ICF & NTT DATA based on data provided by CMOs during the study

| | Overall SER collected | | Overall SER distributed | | Share of US repertoire used | | Share of US repertoire paid | | Difference between use and payment | | SER paid to the US under material reciprocity | | SER to be paid to the US under national treatment | | Expected transfer of value to the US | |
|--------------------|-----------------------|---------------|-------------------------|---------------|-----------------------------|-------------|-----------------------------|-------------|------------------------------------|-------------|---|-------------------|---|-------------------|--------------------------------------|---------------------------------|
| | Value (million EUR) | % of EU18 | Value (million EUR) | % of EU18 | Min | Max | Min | Max | Min | Max | Min (million EUR) | Max (million EUR) | Min (million EUR) | Max (million EUR) | Min (million EUR) | Max (million EUR) |
| Austria | 20.0 | 4.1 % | 18.3 | 4.4 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.9 | 1.8 | 4.6 | 6.4 | -2.7 | -5.5 |
| Belgium | 23.6 | 4.8 % | 18.3 | 4.4 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.9 | 1.8 | 4.6 | 6.4 | -2.7 | -5.5 |
| Finland | 17.3 | 3.5 % | 3.9 | 0.9 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.2 | 0.4 | 1.0 | 1.4 | -0.6 | -1.2 |
| France | 77.6 | 15.8 % | 49.9 | 11.9 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 2.5 | 5.0 | 19.4 | 27.1 | -14.4 | -24.7 |
| Ireland | 15.6 | 3.2 % | 11.9 | 2.8 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.3 | 0.6 | 1.4 | 1.9 | -0.8 | -1.6 |
| Netherlands | 67.1 | 13.7 % | 62.3 | 14.8 % | 28 % | 38 % | 5 % | 10 % | 15 % | 30 % | 3.1 | 6.2 | 15.6 | 21.8 | -9.3 | -18.7 |
| Slovenia | 4.4 | 0.9 % | 1.8 | 0.4 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.1 | 0.2 | 0.5 | 0.6 | -0.3 | -0.6 |
| Sweden | 35.6 | 7.3 % | 28.8 | 6.9 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 1.4 | 2.9 | 7.2 | 10.1 | -4.3 | -8.6 |
| EU-18 | 489.4 | 53.4 % | 431.9 | 46.5 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 9.5 | 19 | 54.1 | 75.8 | -35.2 (8.3 %) | -66.3 (15.3 %) |

The estimations above are similar to the analysis of the economic impacts carried out by CMOs.

For instance, in the case of France, the yearly economic impact estimated corresponds to the share of SER not distributed to third-country rightholders and allocated to other purposes, estimated at about EUR 22.5 million for 2019 by French authorities.¹⁸⁷ French Senate estimated an average financial impact of EUR 25 to 30 million per year.¹⁸⁸ In the case of Ireland, the CMOs interviewed estimated an impact on producers about EUR 1.2 million per year (and no impact on performers), which is close to the average value of the range estimated. In the case of the Netherlands, the CMO reported that in 2021, after the implementation of the RAAP judgement, the US received 1/3 of the revenues collected by SENA (i.e. approximately EUR 22 million), whereas before they only paid 3 % of their total collection to the US for digital broadcasting uses.

These estimates can be compared with the available similar assessments carried out by stakeholders representing producers (IFPI and IMPALA). While these exercises all differ from each other (and from this study) for their geographical scope and for the sources of data (as they all are based on proprietary information), they apply similar methodology. Also, their assessment focuses on the US repertoire and rightholders. However, the comparability of these results is limited due to certain methodological choices. Firstly, their assessments are often based their calculations on SER collected rather than on SER distributed, which gives a higher base for the estimations. These assessments usually use only one year as reference for SER collection, distribution and share of US repertoire, instead of a 5-year average. In addition, they often used 2019 as a reference, which registered particularly high values for SER collection, especially compared with 2020 and 2021 and the effects of the COVID-19 pandemic. As mentioned earlier, this study preferred to use the 2017-2021 average of SER distribution as a basis for estimations. Data collected during the study show that SER collected and distributed are sensitive to the general economic conditions of a country and can vary notably from one year to another. Including values for 2020 in the estimations (where the negative impact of the COVID-19 pandemic was particularly strong) further lowers the estimates. While it is understood that such a downturn is an exceptional event, and that recovery is ongoing, its effects on the dynamics of SER collection and distribution are likely to be evident for at least one more year, according to CMOs interviewed and data collected. The economic outlook for the next year is conditioned by the tense international situation, risks related to the rising inflation and uncertainties on future developments, which are expected to reduce economic growth in the EU¹⁸⁹. These considerations supported the methodological choice of adopting a more prudent approach to the estimations, which materialises in a lower stating point (average of SER distributed in the 2017-2019 period instead on SER collected in 2019) influencing the results. As a combination of these factors, the estimations of these analyses are usually higher than the ones presented above.

Estimations from IFPI¹⁹⁰ place the impact of the application of national treatment to about EUR 134 million per year for a group of nine Member States, Iceland and

¹⁸⁷ Relevant information on the discussions by Member States at the Council Working Party on Intellectual Property on the impact of the RAAP judgement has been used.

¹⁸⁸ French Senate (2021), Project de loi de finances pour 2021: Livres et industries culturelles. Last accessed on 06/04/2022 and available at : <http://www.senat.fr/rap/a20-143-44/a20-143-446.html#toc127>

¹⁸⁹ European Commission, Summer 2022 Economic Forecast, July 2022, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4511

¹⁹⁰ Non-public data provided to the research team by IFPI, the international association representing the recording industry.

Norway.¹⁹¹ When considering only the countries overlapping with the geographic coverage of this study (Belgium, France, the Netherlands, Finland and Sweden), the impact estimated by IFPI is of EUR 112.9 million per year, which is higher than the range estimated by this study for the same countries (EUR 31.4 million – EUR 58.6 million per year). This difference can largely be attributed to the methodological differences explained earlier¹⁹² and to the parameters used for the share of US repertoire, for most of the countries in the 30 % - 33 % range i.e. close to the upper value used by the study.

Finally, other estimations came from the European independent labels' association IMPALA,¹⁹³ which estimated the impact of the application of national treatment to about EUR 126.5 million per year for 12 countries.¹⁹⁴ Again, when considering only the countries overlapping with the geographic coverage of this study (Belgium, Ireland, France, the Netherlands, Austria, Finland and Sweden), the impact estimated by IMPALA is of EUR 97.5 million per year, which is higher than the range estimated by this study for the same countries (EUR 34.9 – EUR 65.7 million per year).

It needs to be pointed out the analysis from IFPI and IMPALA include Estonia and/ or Lithuania as impacted countries, while the findings of this study reveal that both countries already apply national treatment regime.

In order to absorb the increased SER distribution which is due under the application of national treatment, the consequences **for those Member States applying material reciprocity are likely to be:**

- **a reduction in the share of SER distributed to national and EU/EEA rightholders**, as a larger fraction of SER is distributed to third country rightholders and the SER collection (and thus tariffs) remains unchanged; and/or
- an increase in tariffs to compensate for the higher SER distribution to third country rightholders and maintain the same level of SER distribution to national and EU/EEA rightholders.

The two effects are not mutually exclusive. This means that a scenario combining a (limited) reduction of the SER distributed to national and EU/EEA rightholders with an increase in tariffs to compensate, at least partially, for the higher SER distribution to third-country rightholders is likely. The case of the Netherlands seems to confirm this analysis (see section 7.b.i). Other consequences anticipated by CMOs are explained in section 8. These may equally impact on SER market practices in Member States but have not been further estimated in quantitative terms.

i. Implications of the application of national treatment in the Netherlands

Out of the Member States impacted, only the Netherlands has already changed its legislation and market practices for collection and distribution of SER revenues. As the US is the most important third-country for SER distribution in the Netherlands,

¹⁹¹ Belgium, Denmark, France, Lithuania, the Netherlands, Romania, Slovakia, Finland, Sweden, Iceland and Norway.

¹⁹² The main methodological differences consist in the choice of using SER distributed instead of SER collected, and the average of the 2017-2021 period instead of one year only. Both of these parameters lower the results of the estimations.

¹⁹³ The estimates of IMPALA are based on data provided to them by IFPI and by the music tracking company BMAT for 2019.

¹⁹⁴ Belgium, Denmark, Estonia, Ireland, France, Lithuania, Netherlands, Austria, Slovakia, Finland, Sweden and Norway.

the estimations carried out by the CMO to understand the changes brought about by the application of the principle of national treatment focus on the US repertoire.

The Dutch CMO collects around EUR 67 million of SER annually. From this amount, approximately 3 % (approximately EUR 2 million) was distributed to US rightholders on the basis of material reciprocity¹⁹⁵. As an effect of the application of national treatment, **the share of SER that can be claimed by rightholders from third countries that have a reservation under the WPPT is estimated by the CMO at around 38 % of the total SER distributed on a year¹⁹⁶. This share translates into an increase of the SER to be distributed to third-country rightholders of 35 %** (i.e. the 38 % overall share, minus the 3 % already distributed to the US)¹⁹⁷. The redistribution will considerably decrease the amount available for EU rightholders (as this represents 35 % more protected repertoire than previously), unless tariffs are appropriately adjusted.

To remediate the economic loss, the Dutch CMO negotiated a cumulated **increase of the user tariff** of 26.6 % over 2021 and 2022 for public venues. Despite the increase in tariffs, the Dutch CMO forecasts that this increase is not enough to offset the reduced revenues received by EU rightholders (approximately 21 % loss of SER payments for EU rightholders)¹⁹⁸. Therefore, further negotiations for a new increase in tariffs are ongoing in order to compensate for the full economic impact of the changes to the system. The CMO reported that it is possible that the increase will go up to 40 %, which can be difficult to absorb by some of the music users. The representative of venues consulted as part of this study have expressed their concerns about such steep and quick increases in tariffs (especially for small venues), in an economic situation still conditioned by uncertainties from the recovery from the consequences of the COVID-19 pandemic on the music and HORECA sectors and the international situation¹⁹⁹.

When looking at the data provided by the Dutch CMO, it is difficult to isolate the effects of the change insert regime from the consequences of the COVID-19 pandemic. The value of SER collected in 2021 has increased compared to 2020, but it is not yet at the pre-pandemic level (EUR 66 million collected in 2021 compared to EUR 72 million collected in 2019).²⁰⁰ The value of SER distributed in 2021 is similar to the previous years, as is the share of SER distributed to third-country rightholders. Both values for 2021 are lower than in previous years, as a consequence of lower SER collection in 2020. The effects of the rise in tariffs are difficult to separate from the general economic rebound of the sector, as the rise in SER collected for the Netherlands in 2021 compared to 2020 is in line with that of other countries. The effects on distribution of SER can be more evident in 2022, taking into account the frequent time gap between SER collection and its distribution.

Key messages

- Impacts have been estimated for Belgium, Ireland, France, the Netherlands, Austria, Slovenia, Finland, and Sweden (all applied material reciprocity at the time of the judgement). Overall, these eight countries represent 53.4 % of the

¹⁹⁵ Data retrieved from the spreadsheets provided by the Dutch CMO.

¹⁹⁶ Interview of the study team with Dutch CMO (SENA) held on 12/04/2022.

¹⁹⁷ Interview of the study team with Dutch CMO (SENA) held on 12/04/2022.

¹⁹⁸ Interview of the study team with Dutch CMO (SENA) held on 12/04/2022.

¹⁹⁹ Relevant information on the discussions during the workshop organised with stakeholders for this study held on May 19th 2021.

²⁰⁰ Based on data provided by the Dutch CMO for this study.

total SER collected and 45.8 % of the SER distributed in the 18 EU Member States specifically analysed by this study.

- In these eight Member States SER that will have to be distributed after shifting to a national treatment regime is estimated to range between EUR 35.2 and 66.3 million per year (on the basis of a share of US repertoire played in EU Member States (i.e. the 25 % - 35 % range).
- While impact estimates from sector associations representing producers tend to be higher compared to this study, it was found that estimates still go in the same direction when correcting for the differences in methodology used.
- Taking the concrete example of the Netherlands, country that has already changed its legal framework and market practices (from material reciprocity to national treatment) it was found that impact is difficult to isolate from COVID 19 crisis effects on overall SER revenues. The latter may have fostered a general reduction of relative importance of SER in the sectors revenue portfolio. It is currently difficult to make accurate predictions of future developments of SER revenues.

c. Economic impacts on rightholders in the EU

This section will first examine the impact on the EU rightholders. Then the section examines the impact on the third country rightholders in the EU.

As stated in the previous section, put simply, an additional estimated transfer of value from EU to US rightholders considering only the eight sampled Member States **ranges between EUR 35.2 and 66.3 million per year.**

The application of national treatment is likely to lead to a decline of SER revenues of EU and more generally of Rome rightholders. As explained by the Dutch CMO where the change is already taking place, in spite of the agreed tariffs increase with public venues to compensate for the larger protected repertoire, the application of national treatment will still imply an approximate 21 % decrease in the revenues received by Rome rightholders in the Netherlands.²⁰¹ It should be recalled that a tariff increase has not yet been agreed with broadcasters. However the final impact of the application of national treatment may be dependent on the overall share of US repertoire in an EU Member State, eligible uses, commercial market practices, preferences of music consumption (radio or streaming for ex.), and in more general type of music consumed.

However, it appears that the consequences of application of national treatment seem to be different for the EU performers and producers. The underlying reason for this is that the absolute share of SER revenues seems to be an essential revenue for the performers than it is for the producers (in particular large ones). On the other hand, as highlighted by the same study, for producers the SER and private copying levy is only the third important revenue source after streaming and concerts representing only a share of total revenues for the producers (section 6.a).

Regarding the EU producers, it seems that **a change in share of SER distributed** may be felt differently **by the major and small and independent producers.** While big record labels like Warner Studios or Sony having an internationally diversified

²⁰¹ Estimations shared by the Dutch CMO, SENA, with the study team based on figures for 2019.

portfolio may even see an increase in SER revenues paid, IMPALA notes that **smaller EU labels that mainly deal with national or EU repertoire are going to be more negatively impacted by the decreasing share of SER distributed as a result of an increase in the international protected repertoire.**²⁰²

It is important to note that AEPO-ARTIS, an organisation representing performers' CMOs, points out that **SER is an essential source of income for performers.**²⁰³ In 2017, SER accounted for 59 % of the revenues received by performers from CMOs.²⁰⁴ It should also be added that not all SER is always claimed by performers. In comparison to the producers, as highlighted in a study by Europe Economics and the University of Amsterdam,²⁰⁵ performers lack or have limited knowledge/visibility about how performance rights are structured in different countries and how to claim their revenues from such sources. This is more so the case in cross-border situations. Performers do not always know the level of remuneration that can be earned in other countries; hence they do not claim the SER or they are not registered with the respective CMO.²⁰⁶

Overall, third country rightholders will gain from the increased SER revenues from the EU. In practice, they should receive a share of SER for all relevant uses from all EU Member States in comparison to the situation before the judgement. However, currently it is not possible to discern if any change in SER payment already occurred. While the Netherlands has already implemented changes in its rules, the change is not yet evident in SER distribution.

Nevertheless, there is indicative data from two EU Member States, France has already been collecting SER for all third-country rightholders, but the SER collected was considered as 'non-distributable' to certain third country rightholders, following the country's eligibility criteria French authorities report this amount to represent about EUR 22.5 million for 2019.²⁰⁷ In this vein, the French Senate estimated that the amount of "non-distributable" SER which will have to be distributed to third-country rightholders is EUR 25 to 30 million per year.²⁰⁸ As regards the Netherlands, section 7.b.i. already explained that the Dutch CMO estimates that under the national treatment, it will now transfer 38 % of total SER collected annually to third-country rightholders from the US (amounting to around EUR 25.5 million), in comparison to the previous 3 % paid to them under material reciprocity.

One stakeholder²⁰⁹ stated that, while the SER distributed to the third-country rightholders is very likely to increase, if more third-country nationals affiliate with the

²⁰² Interview of the study team with representatives from IMPALA, European organisations representing independent record labels.

²⁰³ AEPO-ARTIS (2018), Performers' Rights in International and European Legislation: Situation and Elements for Improvement. Last accessed on 06/04/2022 and available at: <http://www.aepo-artis.org/en/study-on-performers%E2%80%99-rights>

²⁰⁴ AEPO-ARTIS (2018), op. cit., p. 34.

²⁰⁵ IViR, Remuneration of authors and performers for the use of their works and the fixations of their performances, final report. Last accessed on 06/04/2022 and available at: <https://www.ivir.nl/publicaties/download/1593.pdf>

²⁰⁶ Interview with VTMO, the Austrian organisation representing independent record labels held on 20/05/2022. VTMO specifically recommend to their members to become also members of foreign CMOs as most of the small producers are not aware of this.

²⁰⁷ Relevant information on the discussions by Member States at the Council Working Party on Intellectual Property on the impact of the RAAP judgement.

²⁰⁸ French Senate (2021), Project de loi de finances pour 2021: Livres et industries culturelles. Last accessed on 06/04/2022 and available at : <http://www.senat.fr/rap/a20-143-44/a20-143-446.html#toc127>

²⁰⁹ International Federation of Musicians

EU CMOs it is possible that the SER distributed to individual third-country performers and producers might decrease.²¹⁰

Both stakeholders and scholars portray the revenue outflows from the EU to third countries (notably to the US) not offering the same level of protection to EU rightholders as a negative economic impact of the revised interpretation of EU law provided in the RAAP judgement. This asymmetric protection puts European rightholders in a disadvantaged position towards certain third countries according to some scholars.²¹¹

Key messages

- As SER revenue is an essential source of income for performers and small producers, a decrease in SER would be felt strongly by them.
- If the EU applies national treatment, SER distributed to the third-country rightholders will overall increase (estimates place the additional SER to be paid at 8.4 % to 15.8 % of the total SER distributed in the EU-18).
- Increasing tariffs is unlikely to fully cover the share of SER revenues now paid to EU rightholders if a higher share of third-country rightholders are also being paid their share.

d. Economic impact on users in the EU

It appears that the likely impact on the users is increase of the applicable tariffs. This would **negatively impact on the users (which would be required to pay higher tariffs)**. As explained, tariffs were already increased in the Netherlands for some uses (see section 7.b.i). CMOs in Belgium and Finland estimate a tariff increase of about 30 % to compensate for the effects of the application of national treatment.

The impact on users in the EU seem to be different depending on the category of user. In particular, **broadcasters** were identified as the most impacted users of a tariff increase, as they tend to pay a fee based on actual music usage, while public venues typically pay a lump sum based on surface or capacity, decoupled from the repertoire used.

According to AEPO-ARTIS and FIM, tariff increases may not be sufficient to offset the economic impact of the application of national treatment.

Also, in some Member States, the increase of tariffs is considered as unlikely in the aftermath of COVID-19 and also in view of the already high tariffs in some Member States such as in Sweden. In this context, AEPO-ARTIS believes that **CMOs currently cannot achieve the uplift of all the tariffs** due to the unwillingness of some users, in particular radios, to pay higher prices. Similarly, AEPO-ARTIS notes that **the uplift of the tariffs in the context of the current post-pandemic situation is challenging** considering the revenue losses experienced by users, and in particular by public venues. Similar considerations were expressed by individual CMOs, such as those

²¹⁰ A concern expressed in the Working Party for intellectual property of the Council of the EU - questionnaire to Member States as a follow up to the ruling of the CJEU on RAAP case, for example the Czech Republic p.27. In addition, also the Austrian CMO and Austrian producers organisation, as well as the German CMO have shared this view, albeit from a viewpoint that they may struggle to allocate the SER to a higher number of performers.

²¹¹ Benavou (2021), op.cit., p.5.

from Belgium, Austria and Sweden. The Swedish CMO for performers also expressed that in case tariffs would be renegotiated, specific users may also reconsider their music consumption business models overall.

Key messages

- It is likely that the users' tariffs will increase, when studying the Dutch example.
- However, users are not willing to accept an increase of SER payments.

e. Impact on collecting management organisations in the EU

Evidence collected does not show major possible impacts on CMOs' operating costs and administrative burden following changes in rules on SER distribution.

In practice, CMOs use sophisticated IT systems to correctly allocate SER revenues to rightholders.²¹² In case of any changes to the legislative framework and/or to the market practices, CMOs usually need to adapt those IT systems. Therefore, it is possible that the CMOs in impacted Member States could experience such operating costs. However, if such costs occur, there are likely to be limited to the time necessary for any system adaptations. However, interviewed CMOs from the impacted Member States reported no major effects (already experienced or expected) on their operating costs and administrative burden.

Therefore, it is not expected that the operating costs for CMOs (and the fees collected from their affiliates for the management of SER revenues) will change.

Some of the interviews industry stakeholders agree with these findings. For instance, IMPALA believe that while CMOs may have to update their systems and internal resources to manage the additional workload, the impact would still be minor. Similarly, IFPI believes that the overall management costs will largely remain the same (and rather decrease per rightholder). CMOs consulted as part of this study also considered these changes as limited.

It is interesting to observe that currently CMOs deduct on average 16 % of the SER collected for their operating costs (with minimum and maximum values of 9.3 % and 29.4 %, respectively). There are no visible differences in operating costs across Member States whether they apply national treatment or material reciprocity.

Table 18: Share of management fee over SER collected; source: ICF & NTT DATA based on data provided by CMOs during the study

| National treatment regime | | Material reciprocity regime | |
|---------------------------|-------|-----------------------------|-------|
| Czech Republic | 29.4% | Austria | 14.5% |
| Estonia | 16.2% | Belgium | 17.6% |
| Greece | 9.3% | Ireland | 23.1% |
| Italy | 16.0% | Netherlands | 10.5% |
| Lithuania | 22.0% | Sweden | 15.4% |

²¹² Interviews of the study team with German, Austrian, Irish and Dutch CMOs held on April/May 2022.

| | | | |
|-----------------|-------|--|--|
| Portugal | 15.6% | | |
| Spain | 13.0% | | |

Note: data are missing or too incomplete for analysis for Germany, Croatia, Slovenia and Finland.

However, some scholars and stakeholders representing phonogram producers argue that if the national treatment is maintained, in the medium term, the CMOs can charge larger payments from users can have a positive effect on the percentage of administrative costs to be withheld.²¹³ The data collected in this study do not however support this view, as no correlation was found between management fees of CMOs and type of SER regime applied.

Another economic impact for collecting societies may be back payments requested from third country rightholders stemming from the retroactive application of the RAAP judgement. While the CJEU did not determine the enforcement timeframe of its decision, national civil law systems do specify a prescription time for such back payments. Back payments are also an impact that is specific for EU Member States that were applying 'material reciprocity'.²¹⁴

Key messages

- CMOs do not expect any major impacts on their operating costs and administrative burden.
- In case of any impact, it is expected that they should be minor and only during the phase of adapting to new rules.
- Back payments in case of change of distribution regime (from mutual reciprocity to national treatment) will depend on the national civil law systems and specific prescription times for such back payments.

²¹³ Blomqvist, J. & Rosenmeier, M. (2021), op.cit., pp.67-68.

²¹⁴ Data on estimations for back payments have been only shared by France. Back payments cannot be assimilated to annual losses because of a change in the legal regime (from material reciprocity to national treatment). National courts have so far not judged on this issue so far.

8. Other impacts

This chapter identifies and describes other expected impacts mentioned by stakeholders consulted during this study. These include impacts on the EU negotiating leverage, on other related legal aspects on other protection schemes, as well as on legal certainty related to the application of material reciprocity and the retroactive effects of the judgement.

a. Impact on the EU negotiating leverage

Aside from the economic impacts, stakeholders also mentioned **other effects of a more intangible nature**, including the loss of EU leverage when negotiating with third countries. The EU could to promote higher standards of copyright protection in third countries. Such higher standard of protection benefits primarily national rightholders of those third countries, but also the EU rightholders who under the national treatment would benefit from equal protection. To recall (see section 6.a), the EU generates 50 % of the worldwide performance revenues compared to 35 % generated in the US, with the remaining third countries generating 15 %. These figures could change, if more countries would grant a full *sic* equitable remuneration (SER) right.

In this vein, some scholars²¹⁵ also point out the detrimental effects on the harmonization of fairness standards at a global level, as well as the generated **uncertainty among Member States with regards to their ability to make reservations to international agreements**, or the value of these, especially when they enter into the sphere of fundamental rights.²¹⁶

b. Other related legal aspects

Similarly, some national authorities consider that **the points of attachment should be harmonised at the EU level**. Some scholars²¹⁷ also argue that the decision of the CJEU might have raised additional questions, and even given grounds for **speculation on whether the principle of national treatment has been abandoned to grant protection to any performer and producer**, and not just to those rightholders from Convention States, by means of its fundamental rights considerations. According to other authors, with its decision the CJEU has removed the “back door protection” under the Rome Convention and the WPPT. More generally, these authors also contend that the CJEU’s decision has also brought to the fore the difficulties in reconciling the national treatment provisions of the Rome Convention with those of the WPPT or the Beijing Treaty on Audiovisual Performances.²¹⁸

c. Impact on other protection schemes

Some stakeholders and scholars consider that the legal reasoning of the CJEU concerning the EU’s exclusive jurisdiction in the area of related rights as regards third-country rightholders could challenge the application of similar provisions.²¹⁹ In particular,

²¹⁵ Rognstad, op.cit., p. 1544.

²¹⁶ Benavou (2021), op.cit., p.4 and Rognstad, op.cit., p. 1545.

²¹⁷ Rognstad (2021), op. cit., 1543 and ²¹⁷ Benavou (2021), op.cit., p.4.

²¹⁸ Blomqvist, J. & Rosenmeier, M. (2021), International protection of performers in the EU: Points of attachment and national treatment vs. material reciprocity after the RAAP decision by the CJEU. *RIDA - Revue internationale du droit d’auteur*, 269, Nr. 7, p.71. Last accessed on 30/06/2022 and available at :

[https://jura.ku.dk/ciir/ansatte/?pure=da%2Fpublications%2Finternational-protection-of-performers-in-the-eu--points-of-attachment-and-national-treatment-vs-material-reciprocity-after-the-raap-decision-by-the-cjeu%2Fprotection-internationale-des-artistes-et-union-europeenne--points-de-rattachement-et-traitement-national-vs-reciprocite-materielle-apres-la-decision-raap-de-la-cjue\(7a838f90-c7d7-4867-9929-3bd279fee96b\)%2Fexport.html](https://jura.ku.dk/ciir/ansatte/?pure=da%2Fpublications%2Finternational-protection-of-performers-in-the-eu--points-of-attachment-and-national-treatment-vs-material-reciprocity-after-the-raap-decision-by-the-cjeu%2Fprotection-internationale-des-artistes-et-union-europeenne--points-de-rattachement-et-traitement-national-vs-reciprocite-materielle-apres-la-decision-raap-de-la-cjue(7a838f90-c7d7-4867-9929-3bd279fee96b)%2Fexport.html)

²¹⁹ Blomqvist, J. & Rosenmeier, M. (2021), op.cit., p.58.

within other copyright areas where, according to international copyright law, the protection of rightholders from third states is granted according to material reciprocity.²²⁰ This view is also shared by some stakeholders consulted for this study, who argue that the implications of the RAAP judgement could be extended to other fields where material reciprocity applies, including the rights of fair compensation for private copying and reprography, the rental and lending right, the resale right, or the term of protection.

In the context of this study, stakeholders (authorities²²¹, EU level stakeholders²²², and CMOs²²³) are mainly concerned about private copying levy.

IMPALA and AEPO-ARTIS reported attempts by a US CMO **to extend the application of the RAAP case to private copying levy**. Italy and Slovakia reported that CMOs made bilateral agreements with a US CMO to distribute revenues of private copying levy under condition of material reciprocity.²²⁴ Under Article 5(2)(b) of the Directive 2001/29/EC (hereinafter 'Infosoc Directive') Member States may provide an exception or limitation to the reproduction of phonograms for private use, accompanied by a fair compensation – a so-called private copying levy. In some Member States, this levy is also collected by CMOs and distributed to phonogram performers and producers. Stakeholders mentioned that the **private copying levy is an increasing revenue source for performers and producers.**²²⁵ It accounts for an important share of the revenue portfolio of EU rightholders in the music industry. Stakeholders fear **that the legal situation for the private copying levy is uncertain** in the light of the RAAP case. Stakeholders explained²²⁶ that **two schools of thought exist** regarding the private copying levy. One school qualifies it **as a compensation linked to harm caused by a restriction to the full exercise of exclusive rights by rightholders**. Similarly, the CJEU characterises the private copying levy as a compensation for the loss suffered by the author due to the private copies made by the final user.²²⁷ Another school of thought sees it as a clearly **separate right** so far not regulated by international law. The private copying levy -also called blank copy levy or storage media remuneration- can be seen as legitimizing a right to private copy, but against a

²²⁰ Blomqvist, J. & Rosenmeier, M. (2021), op.cit.

²²¹ Relevant information on the discussions by Member States at the Council Working Party on Intellectual Property on the impact of the RAAP judgement has been used. In addition, national authorities interviewed in Belgium, Spain, the Netherlands, Austria and Slovenia as well as an independent expert in Spain also mentioned it once again.

²²² Interviews and written contributions from consultations with FIM, IMPALA, AEPO ARTIS, EBU.

²²³ Interviews of the study team with Austrian, Swedish and French CMOs.

²²⁴ Questionnaire of the Working Party on intellectual property rights of the EU Council, op. cit., pp. 42 and 46.

²²⁵ This has been specifically demonstrated in Germany and Austria where the private copying levy is approximately as high as the SER, according to data available in national CMOs' transparency reports. German CMO Transparency report 2020 available at https://gvl.de/sites/default/files/2021-11/GVL_Transparenzbericht_2020_DE_Doppelseiten_202111_0.pdf; Austrian CMO Transparency report 2020 available http://www.lsg.at/Geschaeftsbericht_und_Transparenzbericht_2020.pdf

²²⁶ For example, legal expert representing performers' side of the CMO in Austria interviewed end of April 2022.

²²⁷ GARROTE FERNÁNDEZ-DÍEZ, I. (2019), El concepto autónomo de "reproducción" en la Directiva 2001/29, en Cámara Águila, P., and Garrote Fernández-Díez, I (2019), La unificación del Derecho de propiedad intelectual en la Unión Europea, Tirant lo Blanch, Valencia, p. 95.

remuneration.²²⁸ According to a study carried out by WIPO in 2015²²⁹ the private copying levy exists in 22 out of 27 Member States.²³⁰ As pointed out above some CMOs seem to share the revenues from private copying levy already. The revenues collected from the private copying levy are added to the revenues of the SER and distributed to rightholders at an equal share (between producers and performers). Distribution is done by simulation as for the revenues collected from public venues.²³¹ Should material reciprocity not be applicable to the private copying levy, then this would represent an important loss for EU rightholders. It would mean that collected revenues would need to be distributed to any third country not regarding whether such a distribution could be based on reciprocity. It would lead to an overall decrease of revenues for EU artists.

d. Legal certainty

Some stakeholders at EU and national level consulted as part of this study were surprised that material reciprocity was not considered being automatically applied by Member States towards the third countries that filed reservations under the WPPT. Member States believed it was not necessary to repeat reservations made under the Rome Convention due to the EU's accession to WPPT.²³² They furthermore believe that the **RAAP judgement created legal uncertainty** for those Member States that already applied and continue to apply material reciprocity when distributing SER revenues.²³³ As mentioned earlier in this report, the majority of Member States did not change their national rules to adapt to the RAAP judgement. Several experts at the online workshop argued that the EU legislator did not aim to harmonise the subjective scope of the SER right in the RLR Directive. It was assumed that Member States had a discretion in this regard.²³⁴ Hence, stakeholders believe that Member States have not yet amended their national legal frameworks because the judgement explicitly states that such a change could only be introduced at EU level.

Meanwhile, uncertainty persists concerning the national practices of distribution of the SER in those Member States where no legal change has been introduced to the national legislation with regard to material reciprocity (Ireland, France, Austria, Sweden for example). **Stakeholders fear that additional legal disputes** could arise and block national practices for distribution of the SER to rightholders.

²²⁸ This is explained by Walter, M., professor and copyright lawyer, an opinion expressed Der Standard, 2014, accessed at: <https://www.derstandard.at/story/1397521776255/festplattenverquetung-ist-geltendes-recht>. A similar perspective was taken in the UK when aiming to introduce an exemption for private reproduction in the UK in 2014 but without the correlated compensation scheme. The proposal underwent judicial review and was judged not compliant because the legislator could not prove that there was 'no harm' linked to the exemption to private reproduction. See the judgement arguments available at: <https://www.gov.uk/government/news/quashing-of-private-copying-exception>. Similarly, the economic impact assessment that reviewed private copying levy in other EU Member States found that the private copying levy cannot be explained by an underlying concept of economic harm due to the high variety of amounts collected and the types of storage media. The assessment qualified the levy as a licencing system. The report has been accessed at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/310183/ipresearch-faircomp-201110.pdf

²²⁹ WIPO and ThuisKopie (2015) International Survey on Private Copying, accessed at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1037_2016.pdf;

²³⁰ According to the WIPO (2015) study, no information was collected from Bulgaria, no private copying levy exists in Cyprus, Ireland, Malta and Luxembourg

²³¹ Interview of the study team with German CMO, held on 13/05/2022, and with Austrian CMO, held on 13/05/2022.

²³² Austrian legal expert from the CMO pointed out specifically the opinion from the Council's legal service – (<https://data.consilium.europa.eu/doc/document/ST-5433-2005-INIT/en/pdf>) which explains the situation. The AT expert also specified that the law in Austria referring to WPPT implementation also refers to this opinion.

²³³ This concerns mainly Belgium, Ireland, France, Austria, Slovenia and Sweden.

²³⁴ Austrian and Irish interviewed experts specifically referred to the opinion from the Council's legal service, available at <https://data.consilium.europa.eu/doc/document/ST-5433-2005-INIT/en/pdf>

In addition, stakeholders consulted²³⁵ pointed out the **legal uncertainty regarding the retroactive effects of the judgement**. In particular, stakeholders are not clear how far in time back payments could be claimed by affected third-country rightholders. Only the CJEU can limit the temporal effect of its judgements, by specifying it in the judgement itself.²³⁶ Since the Court chose not to do so in the RAAP judgement, it is assumed that its effects are *ex tunc*, which means that they apply from the moment the Directive entered into force.²³⁷ As for the retroactive application of the Court's interpretation, national civil procedure rules on the prescription of actions apply. This is what generates uncertainty amongst stakeholders, as such rules may differ from one country to the other. Legal disputes and claims for retroactive payments of the single equitable remuneration could significantly impact the books of CMOs. For instance, based on data shared by the national French authority, the financial impact of the retroactive application of the RAAP judgement for the period 2015-2019 is estimated at a total of EUR 119.9 million for the French CMOs. This would represent an average total cost for each CMO of about EUR 30 million.²³⁸

In this context, some stakeholders argue that the EU should rule out the retroactive character of the judgement to avoid the financial risk it creates for CMOs, users and/or beneficiaries, whilst others contend that national rules on the prescription of actions should prevail.

²³⁵ Opinion shared by Belgian expert interviewed in April 2022, French authority interviewed in May 2022 and some participants in the workshop held on 19 May 2022 (French Authority and AEPO-ARTIS)

²³⁶ Verstraelen, S. (2013). The Temporal Limitation of Judicial Decisions: The Need for Flexibility Versus the Quest for Uniformity. *German Law Journal*, 14(9), 1687-1730, p. 1715. Last accessed on 22/06/2022 and available at <https://www.cambridge.org/core/journals/german-law-journal/article/temporal-limitation-of-judicial-decisions-the-need-for-flexibility-versus-the-quest-for-uniformity/7B81223537D08D2DEEC5FBE9188BF7C3>

²³⁷ Verstraelen, S. (2013), *op. cit.*, pp. 1687-1730. doi:10.1017/S2071832200002479 which refers to the following CJEU case law that state this principle e.g. Case 24/86, *Blaizot v Univ. of Liège*, 1988 E.C.R. 379, para. 27; Case C-347/00, *Barreira Pérez v. INSS*, 2002 E.C.R. I-08191, para. 44; Case C-453/02, *Finanzamt Gladbeck v. Linneweber*, 2005 E.C.R. I-01131, para. 41; Case C-292/04, *Meilicke v. Finanzamt Bonn-Innenstadt*, 2007 E.C.R. I-01835, para. 34.

²³⁸ Official data shared by the French Ministry of Culture with the study team in June 2022.

9. Potential policy options at EU level

This chapter assesses two possible policy options available at EU level to address the identified effects and consequences of the EU law as interpreted in the RAAP judgement, which have been discussed in the previous chapters. To recap, these consequences include possible tariff increases to be paid by users in Member States currently applying material reciprocity, revenue outflows from the EU to third countries (mainly the US) not offering the same level of protection to EU rightholders, revenue decline for EU performers and small record labels, or financial risks and liabilities faced by CMOs for incorrect application of EU law resulting from the retroactive effect of the judgement.

In the RAAP judgement the CJEU ruled that, as the EU law currently stands, third-country rightholders must be granted the full right to a single equitable remuneration (SER) in the EU (i.e. application of national treatment). However, the CJEU also stated that it is for the EU legislature to determine any limitation to the right to SER in respect of third-country nationals, and to clearly and precisely define such a limitation. In the light of this, this chapter presents and assesses the following two possible policy options available for the EU: (1) **no intervention by the EU**, which equals to maintaining the application of national treatment across the EU as ruled by the CJEU, and (2) the **introduction of a legal basis for material reciprocity at EU level**. If the EU legislature does not intervene, all EU Member States must accord national treatment to third-country nationals. In the current landscape of different national solutions, the application of the principle of national treatment challenges the existing legislation and in particular the market practices in 8 of the 18 EU Member States examined in this study that apply material reciprocity (or did so until the judgement). If these eight Member States were to apply national treatment, an additional revenue outflow from the EU-18 to the US alone is estimated at between EUR 35.2 and 66.3 million²³⁹ (based on the estimations presented in section 7.b and subject to the caveats described there). These estimations were calculated based on the difference between the average share of US repertoire in the EU-8 playlists and the share of SER paid to the US under material reciprocity. Considering the EU/EEA at large, other stakeholders representing the recording industry place the financial impact for the EU at EUR 126.5²⁴⁰ to 134 million²⁴¹ per year.

Another policy option available under international law to address the effects of the EU law as interpreted in the RAAP judgement is the introduction of a legal basis for the application of material reciprocity by the EU. The CJEU argued that, as a right related to copyright, the right to SER is considered as a fundamental right under the EU Charter of Fundamental Rights. As such, any limitation to this right in respect of third-country nationals must be clear, precise, and comply with the relevant requirements of the EU Charter. While not being the focus of this study, the research team also attempted to forecast the economic impact of the application of material reciprocity across the EU, by applying the same logic as in the scenario of national treatment application (see table below). If 10 Member States examined that currently apply national treatment were to shift to material reciprocity and only pay the SER to US rightholders for digital broadcasting uses, in accordance with the US reservation to the WPPT, it is estimated

²³⁹ This amount would be in addition to what these 8 EU Member States already transfer to the US rightholders for digital broadcasting uses under material reciprocity.

²⁴⁰ Estimates by the independent labels' association, IMPALA, based on data provided to them by IFPI and by the music tracking company BMAT for 2019.

²⁴¹ Non-public data provided to the research team by IFPI, the international association representing the recording industry.

that additional EUR 33.7 to 67.4 million EUR per year would stay in the EU, corresponding to 7.8 % and 15.6 % of the total SER distributed by the EU-18.

However, both estimations are based on no changes to consumer habits or to tariffs currently paid by users in such countries, which could be reviewed depending on the amount of repertoire remunerated under the right to SER. Additionally, the estimations presented do not factor in the adjustment costs incurred by CMOs, in particular as regards the adaptation of their systems and procedures, as well as the renegotiation of existing representation agreements with third-country CMOs. In any case, such costs are expected to be of a temporary nature only. Nonetheless, in light of the assumptions above, the net balance of any change in the currently applicable legal regimes at EU level needs to be interpreted with caution.

Considering the above, it is now for the Commission to decide whether any legislative initiative is needed. This study report is one of the information sources that will be used in the assessment on the way forward. Additionally, the Commission published a Call for evidence on 28 July 2022 to gather additional input from stakeholders, who were invited to submit their comments until 22 September 2022. The Commission also announced in the Call for evidence that it will launch a targeted consultation of stakeholders in autumn 2022.

EUROPEAN COMMISSION STUDY ON THE INTERNATIONAL DIMENSION OF THE SINGLE EQUITABLE REMUNERATION RIGHT FOR PHONOGRAM PERFORMERS AND PRODUCERS

Table 19: Annual estimated economic impact of the shift to material reciprocity in the Member States examined; source: ICF & NTT DATA

| | Overall SER collected | | Overall SER distributed | | Share of US repertoire used (and paid under NT) | | Share of US repertoire to be paid under MR | | Difference between use and payment under MR | | SER currently paid to the US (under NT) | | SER to be paid to US under MR | | Additional transfer of value to MSs | |
|--------------|-----------------------|--------------|-------------------------|---------------|---|-------------|--|-------------|---|-------------|---|-------------------|-------------------------------|-------------------|-------------------------------------|-------------------|
| | Value (EUR million) | % of EU | Value | % of EU | Min | Max | Min | Max | Min | Max | Min (EUR million) | Max (EUR million) | Min (EUR million) | Max (EUR million) | Min (EUR million) | Max (EUR million) |
| HR | 8.4 | 1.7 % | 5.1 | 1.2 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 1.3 | 1.8 | 0.3 | 0.5 | 0.8 | 1.5 |
| CZ | 10.7 | 2.2 % | 7.4 | 1.7 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 1.8 | 2.6 | 0.4 | 0.7 | 1.1 | 2.2 |
| EE | 1.6 | 0.3 % | 1.4 | 0.3 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.4 | 0.5 | 0.1 | 0.1 | 0.2 | 0.4 |
| DE | 128.0 | 26.2 % | 133.9 | 31.0 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 33.5 | 46.9 | 6.7 | 13.4 | 20.1 | 40.2 |
| EL | 7.8 | 1.6 % | 7.3 | 1.7 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 1.8 | 2.5 | 0.4 | 0.7 | 1.1 | 2.2 |
| HU | 3.2 | 0.7 % | 12.4 | 2.9 % | 28 % | 38 % | 5 % | 10 % | 15 % | 30 % | 3.1 | 4.4 | 0.6 | 1.2 | 1.9 | 3.7 |
| IT | 21.2 | 4.3 % | 20.2 | 4.7 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 5.0 | 7.1 | 1.0 | 2.0 | 3.0 | 6.1 |
| LT | 3.1 | 0.6 % | 2.7 | 0.6 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 0.7 | 0.9 | 0.1 | 0.3 | 0.4 | 0.8 |
| PT | 8.5 | 1.7 % | 3.8 | 0.9 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 1.0 | 1.3 | 0.2 | 0.4 | 0.6 | 1.1 |
| ES | 35.6 | 7.3 % | 30.7 | 7.1 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 7.7 | 10.7 | 1.5 | 3.1 | 4.6 | 9.2 |
| EU-18 | 489.4 | 46.6% | 431.9 | 52.1 % | 25 % | 35 % | 5 % | 10 % | 15 % | 30 % | 56.2 | 78.7 | 11.2 | 22.5 | 33.7 | 67.4 |
| | | | | | | | | | | | | | | | (7.8 %) | (15.6 %) |

10. Concluding remarks

This chapter summarises the main conclusions from the study. First, the most important findings regarding the national rules and market practices regarding the collection and distribution of the single equitable remuneration (SER) to third-country nationals are outlined. Secondly, the main insights of the economic analysis regarding the SER amounts collected and distributed in the selected countries to third-country rightholders are highlighted. Third, the evidence gathered on the impact of the interpretation of EU law as endorsed in the RAAP judgement is presented, along with the stakeholders likely to be most affected by it. Lastly, the possible EU interventions to address the effects of the current EU law as interpreted in the RAAP judgement are briefly assessed.

National rules on the SER: points of attachment, approaches to material reciprocity and management models

The eligibility criteria concerning the protection under the SER are currently defined at national level. A few Member States do not envisage points of attachment for third-country performers and producers. Instead, their national provisions simply refer to the protection granted under the relevant international agreements. Other Member States adhere to the criteria established by the Rome Convention, whereas others limit the application of some of these criteria by making use of permitted reservations under international law. Lastly, a few Member States go beyond the points of attachment envisaged in the international treaties. As a result of such differences across national frameworks, third-country rightholders are not treated in the same way across Member States for what concerns the acknowledgement of the SER.

Twelve of the analysed Member States envisage material reciprocity in their national copyright legislation with respect to third-country rightholders, either through specific provisions or through general provisions referring to reservations permitted under international law. Within those, only eight apply this regime in practice (or did so until the RAAP judgement). In the other four countries, despite existing provisions, material reciprocity is not applied by CMOs due to different reasons and national treatment is followed instead. By the time of submission of this study, only two Member States had amended their legislation as a result of the interpretation of EU law endorsed in the RAAP judgement: France and the Netherlands. In the case of France, though, the modification aims at limiting the retroactive effects of the judgement as regards the 'undistributed revenues' collected for the use of foreign repertoire in this country and allocated until then to support artists and cultural activities.

Market practices on the SER: organisational schemes for the collection and distribution of this revenue and distribution approaches to third-country rightholders

As confirmed in this study, in the majority of Member States, CMOs, whether by law or de facto, are the only entities which manage the SER at national level. This study identified four organisational schemes of CMOs for the collection and distribution of the SER across the sample of Member States analysed:

- **Joint societies' model**, whereby one CMO collects and distributes the SER for and to both type of rightholders;

- **Separate societies' model**, where distinct CMOs represent the rights of producers and phonograms and each of them collects the SER for a set of relevant uses for both rightholders and transfers the corresponding share to the other CMO;
- **One-stop-shop model**, where separate CMOs offer a centralised place for users to ease the collection of the SER (and/or other rights), either by means of a new entity or through an existing society, and the collected sums are then distributed by each CMO to their respective rightholders;
- **A mixed model** combining features of the one-stop-shop with features of the separate societies model, where the SER is collected by the authors' society for some uses, whereas the SER for other uses is collected by the CMOs representing neighbouring rights.

As regards the approaches to distribute the collected SER to third-country rightholders specifically, the study has identified three main models within the analysed Member States, which are related to the type of SER regime applied:

- Ten Member States²⁴² **unconditionally pay out** the collected sums for the use of non-EEA repertoire in full amount to the corresponding third-country rightholders, irrespective of any reservations made by their countries of origin to the Rome Convention and/or the WPPT (full application of the national treatment regime);
- Two Member States²⁴³ allocate certain SER revenues collected for the use of international repertoire in their territories which do not qualify for payment to third-country rightholders, either on the basis of material reciprocity or on restrictive points of attachment, to other means or rightholders (special application of the material reciprocity regime);
- Six Member States²⁴⁴ **do/did not collect or distribute the SER for the use of international repertoire considered as non-eligible for protection** in their territory on the basis of material reciprocity (full application of the material reciprocity regime).

Market practices have changed in two Member States following the interpretation of EU law endorsed in the RAAP judgement. Following the amendment of its legislation in January 2021, the Dutch CMO negotiated a surcharge to its applicable tariffs implying a 26.6 % cumulated increase for 2021 and 2022 with public venues. In Austria, while the law remains unchanged, the CMO no longer takes into account the nationality of the producer for the collection and distribution of SER revenues.

SER collected and distributed in the EU to third-country rightholders

The international SER that is collected by CMOs in the Member States and gets distributed to third-country rightholders is composed of two sources: (1) the revenues collected by Member States' CMOs for the use of non-EEA repertoire within their territories, and (2) the revenues paid to Member States' CMOs by third-country CMOs for the use of national/EEA repertoire abroad. As regards (1), many CMOs do not collect detailed data on the share of SER collected in their respective territories for the use of

²⁴² Czech Republic, Germany, Estonia, Greece, Spain, Croatia, Italy, Lithuania, Hungary and Portugal.

²⁴³ Ireland and France.

²⁴⁴ Belgium, the Netherlands (until 2021), Austria (until RAAP judgement), Slovenia, Finland and Sweden.

international repertoire, as the tariffs established do not depend on the origin of the repertoire actually played, but on other parameters. Therefore, it is not possible to break down the SER collected in the EU by SER concerning the use of national repertoire, of EU/EEA repertoire, or of international repertoire. As regards (2), despite the data limitations described in the methodological approach, the SER received from third-country CMOs for the use of EU repertoire abroad only represent a marginal share of the total SER collected by CMOs in the studied Member States, often below 10 %. The US and the UK are by far the most important international markets for EU Member States, accounting altogether for 50 % to 80 % of the SER collected from third-country CMOs in most of the selected countries. However, these amounts still remain a residual source of the total SER revenues.

On the distribution side, despite the even more important data limitations, Member States' CMOs pay over half of the total SER collection to national rightholders, while the distribution to EU/EEA and to third-country rightholders accounts on average for 19 % and 26 %, respectively. Within the revenues paid by Member States' CMOs to third-country rightholders, the evidence collected shows that 30 % to 50 % goes to the US and the UK. The data available on the share of SER distribution to national or to third-country rightholders seems to be explained by factors related to national music consumption preferences.

Economic impacts following the interpretation of EU law endorsed in the RAAP judgement and most affected stakeholders

Focusing on the US as the most important international music market for the EU and considering the eight Member States²⁴⁵ impacted by a shift to a national treatment regime out of the selected sample, this study predicts a yearly additional revenue outflow from the EU to the US alone of minimum EUR 35.2 million to 66.3 million. These figures are consistent with the analysis of economic impacts made by the CMOs in the affected countries. They are however lower than the ones drawn by other stakeholders representing the recording industry, which forecast an annual financial loss for the EU to the US ranging between EUR 97.5 million and 112.9 million considering the same sample of Member States. The figures presented in this study are conservative because of the study methodological choices, including the reference value used for the estimations (distribution vs collection), the timeframe considered (an average of several years vs one year only), and the parameters used for calculating the share of US repertoire.

As for the most impacted stakeholders, performers are likely to be the most affected by the application of national treatment. This is considering the higher absolute share of SER revenues in their respective overall revenue portfolio compared to producers. Within producers, small labels are also expected to be impacted, whilst the effect on majors is likely to be neutral or even positive because of their internationally diversified music repertoire. The data collected in this study does not allow to break down the overall financial impact by category of rightholder. As for CMOs, the evidence collected does not show major impacts of the application of national treatment on CMOs' operating costs and administrative burden. Nonetheless, the regime shift may imply important costs for them related to claims for back payments. As for the impact on users, some of the interviewed CMOs will likely seek significant tariff increases to compensate for the higher covered repertoire, but the feasibility of a tariff increase in

²⁴⁵ Belgium, Ireland, France, the Netherlands, Austria, Slovenia, Finland and Sweden.

the post-COVID-19 pandemic remains doubtful. So far, only the Dutch CMO has raised its tariffs following the RAAP judgement.

Assessment of policy options at EU level

This study has assessed two possible policy options at EU level to address the identified consequences of the current interpretation of EU law provided in the RAAP judgement: (1) **no intervention by the EU** (i.e. application of national treatment across the EU), and (2) the **introduction of a legal basis for material reciprocity at EU level**. Should the EU not intervene, this study forecasts an annual economic impact in the range of EUR 35.2 and 66.3 million in terms of additional revenue outflows from the EU-18 to the US alone, as the main international market for EU music consumption. Should the EU intervene to introduce a mandatory clause on material reciprocity at EU level, it is estimated that additional EUR 33.7 to 67.4 million EUR per year would stay in the EU, considering only the 18 Member States analysed in this study. However, both estimations are made assuming no changes to consumer habits or to tariffs currently paid by users in such countries. Additionally, the estimations presented do not factor in the adjustment costs incurred by CMOs as regards the adaptation of their systems, procedures and bilateral agreements with third-country CMOs following a shift in the legal regime for the SER. As such, the net balance at EU level of any change in the currently applicable legal regimes in the Member States needs to be interpreted with caution.

11. ANNEXES

a. Annex I: List of stakeholders consulted

| Country | Stakeholder | Type | Interview date |
|---------|---|------------------------------------|------------------|
| EU | AEPO ARTIS | EU umbrella organisation | 10/03/2022 |
| EU | International Federation of the Phonographic Industry (IFPI) | EU umbrella organisation | 16/03/2022 |
| EU | IMPALA | EU umbrella organisation | 15/03/2022 |
| EU | International Federation of Musicians (FIM) | EU umbrella organisation | Written response |
| EU | Jamendo | Independent Management Entity | 17/03/2022 |
| BE | PlayRight | Collective Management Organisation | 29/04/2022 |
| BE | SIMIM | Collective Management Organisation | 02/05/2022 |
| BE | Belgium Intellectual Property Office Federal Public Service Economy, SMEs, Self-employed and Energy (OPRI)) | National Authority | 29/04/2022 |
| BE | Ms Fabianne Brison, Professor of IP at Vrije University and at KUL | Copyright expert | 13/05/2022 |
| BE | Belgian Independent Music Companies Association (BIMA) | Producers association | 18/05/2022 |
| BE | Broadcaster | TV/Radio Broadcaster | 01/06/2022 |
| CZ | Intergram | Collective Management Organisation | 22/04/2022 |
| CZ | Ministry of Culture | National Authority | 21/04/2022 |
| DE | Gesellschaft zur Verwertung von Leistungsschutzrechten, GVL | Collective Management Organisation | 13/05/2022 |
| DE | Ministry of Justice and Consumer Affairs | National Authority | 25/04/2022 |
| EE | Estonian Performers' Association (EEL) | Collective Management Organisation | 03/05/2022 |
| EE | Estonian Ministry of Justice | National Authority | 28/04/2022 |
| ES | Asociación de Artistas Intérpretes o Ejecutantes, AIE | Collective Management Organisation | 07/04/2022 |
| ES | AGEDI | Collective Management Organisation | 11/04/2022 |
| ES | Alfonso Gonzalez Gozalo, Lawyer at Carvajal Associates | Copyright expert | 15/04/2022 |
| ES | Ministry of Culture | National Authority | Written response |
| EL | ERATO & GRAMMO | Collective Management Organisation | 29/04/2022 |

**EUROPEAN COMMISSION STUDY ON THE INTERNATIONAL DIMENSION OF THE SINGLE
EQUITABLE REMUNERATION RIGHT FOR PHONOGRAM PERFORMERS AND PRODUCERS**

| Country | Stakeholder | Type | Interview date |
|----------------|--|-------------------------------------|-----------------------|
| EL | Hellenic Copyright Organisation | National Authority | 20/04/2022 |
| EL | Dr. Theodoros Chiou, IP Lawyer | Copyright expert | 12/05/2022 |
| FR | SPEDIDAM & ADAMI & SPPF | Collective Management Organisation | 14/04/2022 |
| FR | Ministry of Culture | National Authority | 24/05/2022 |
| FR | UPFI Union des producteurs phonographiques français indépendants | Producers association | 18/05/2022 |
| HR | ZAPRAF (Producers) | Collective Management Organisation | 11/05/22 |
| HR | HUZIP (Performers) | Collective Management Organisation | 12/04/2022 |
| HR | Croatian Intellectual Property Office | National Authority | Written response |
| IE | RAAP | Collective Management Organisation | 25/04/2022 |
| IE | PPI | Collective Management Organisation | 25/04/2022 |
| IE | Intellectual Property Unit Department of Enterprise, Trade and Employment | National Authority | 06/05/2022 |
| IE | Irish Hotels Federation | Public Venues' Association | 23/05/2022 |
| IT | SCF & NUOVIMAIE | Collective Management Organisations | 26/04/2022 |
| IT | Directorate General for libraries and copyright, Ministry of Culture | National Authority | Written response |
| IT | Enrico Bonadio, reader at University of London | Copyright expert | 04/05/2022 |
| LT | AGATA | Collective Management Organisation | 26/04/2022 |
| LT | Azuolas Cekanavicius, lecturer at Mykolas Romeris University. | Copyright expert | 22/04/2022 |
| HU | MAHASZ & EJI | Collective Management Organisation | 27/04/2022 |
| HU | Hungarian Intellectual Property Office (HIPO) | National Authority | 22/04/2022 |
| NL | SENA | Collective Management Organisation | 12/04/2022 |
| NL | Ministry of Justice | National Authority | 13/04/2022 |
| NL | Anke Strijkos, lawyer at Brinkhof Advocaten | Copyright expert | 06/04/2022 |
| NL | Rob van Dongen, lawyer at Dikhoff Van Dongen Advocaten | Copyright expert | 14/04/2022 |
| NL | Dutch Public Broadcasting | TV/Radio Broadcaster | 20/05/2022 |

| Country | Stakeholder | Type | Interview date |
|---------|--|------------------------------------|------------------|
| NL | Koninklijke Horeca Nederland, Dutch Royal Horeca Association | Public venues' association | 17/05/2022 |
| NL | Dutch Producers' Association | Producers' association | 17/05/2022 |
| AT | LSG | Collective Management Organisation | 22/04/2022 |
| AT | Austrian Federal Ministry of Justice | National Authority | 04/05/2022 |
| AT | Austrian Chamber of Commerce | National Authority | 24/05/2022 |
| AT | VTMÖ | Public Venues' Association | 02/06/2022 |
| AT | ORF (Österreichischer Rundfunk) | TV/Radio broadcaster | 08/06/2022 |
| PT | AUDIOGEST & GDA | Collective Management Organisation | 04/05/2022 |
| PT | Ministry of Culture | National Authority | Written response |
| SI | Institute for Protection of Phonogram Performers and Producers Rights, IPF | Collective Management Organisation | 04/05/2022 |
| SI | Slovenian Intellectual Property Office | National Authority | 22/04/2022 |
| FI | Gramex | Collective Management Organisation | 10/05/2022 |
| SE | Swedish Artists' and Musicians' Interest Organisation, SAMI | Collective Management Organisation | 19/04/2022 |
| SE | IFPI | Collective Management Organisation | 12/04/2022 |
| SE | Ministry of Justice | National Authority | 12/05/2022 |
| SE | SOM – Svenska Oberoende Musikproducenter | Producers' Association | 25/05/2022 |
| SE | SVT | TV/Radio Broadcaster | 20/05/2022 |
| SE | Vistita & Conferation of Swedish Enterprises | Public Venues' Association | 30/05/2022 |

b. Annex II: Detailed methodological approach

The methodological approach for this study entails five main data collection activities: (1) **exploratory interviews** or an offline questionnaire with umbrella organisations representing relevant stakeholders in the music value chain, as well as with a pan-European IME, (2) **desk research** at EU level to retrieve relevant literature and in the selected Member States to gather information on the national rules and publicly available economic data, (3) a **targeted research** in official legal databases, websites of national competent authorities and CMOs to identify relevant national provisions and publicly available data on the SER in a selection of 18 Member States (4) **in-depth interviews** with CMOs, associations of rightholders, national authorities and copyright experts and scholars in the selected Member States, and (5) a **targeted quantitative data collection** exercise with CMOs in the selected Member States regarding the collection and distribution of the SER. We also organised an **EU-level online workshop** involving relevant stakeholders to present preliminary findings of the study and discuss solutions for addressing the main issues resulting from the RAAP judgement.

During the inception phase, the team had carried out **exploratory interviews** (or offered the possibility to complete the questionnaire offline) with **five EU umbrella organisations** representing all main categories of stakeholders, and with a **pan-European IME**. The purpose of these interviews was to gather preliminary information about the national legal landscape and market practices regarding the SER towards third-country rightholders and the impact that the interpretation of EU law endorsed in the RAAP judgement has had in that regard in order to steer the desk research and fieldwork activities. Additionally, these interviews served to identify relevant stakeholders to be engaged at national level as part of the fieldwork. We particularly consulted:

- **AEPO-ARTIS**, a non-profit making organisation that represents 36 European performers' collective management organisations from 26 different countries, of which 24 are EU Member States;
- The **International Federation of the Phonographic Industry** (IFPI), a London-headquartered global trade association for the recorded music sector, representing the three majors – Universal Music Group, Sony Music Entertainment and Warner Music Group – and independent labels;
- The **Independent Music Companies Association** (IMPALA), which represents European independent music companies and self-releasing artists in Europe;
- **Jamendo**, a European IME based in Luxembourg with a customer base mainly covering France, Spain, Italy, Germany and the UK; and
- The **International Federation of Musicians** (FIM), which represents musician's unions in 60 countries across the globe. Its objective is to promote and further the economic, social and artistic interests of musicians. They chose to submit a written response to the questionnaire.
- The **European Broadcasting Union** (EBU), representing both TV and radio broadcasters. They chose to submit a written response to the questionnaire after consulting its members.

Other EU and global associations representing users in both the broadcasting sector (AER²⁴⁶ and (ACT²⁴⁷) and the hospitality sector (HOTREC²⁴⁸ and IAVM²⁴⁹) were contacted, but no response was received. ACT and HOTREC did however participate in the online workshop with stakeholders and experts. Their input was gathered as part of that consultation activity.

In addition to the exploratory interviews, a **web-based desk search** of academic and grey literature covering the EU27 and published between 2012 and 2022 has been carried out. The overall goal was to gather initial insights about national rules and market practices implementing the SER towards third-country rightholders, as well as any relevant data attempting to quantify the impact of the interpretation of EU law endorsed in the RAAP judgement on EU rightholders, users and collecting societies. To this end, a research protocol was prepared to ensure a harmonised approach by the research team when carrying out the desk research, including key data sources to be checked, the approach for searching the information (including the search timeframe, keyword combinations, and the approach to analyse the collected literature), as well as instructions on how to annotate the identified literature. The search yielded a total of 41 publications, including free-access and proprietary publications – the latter mainly retrieved from specialised research databases, including EBSCO²⁵⁰, ResearchGate and HeinOnline.

A **targeted search** in official legal databases and in websites of the national competent authorities was carried out in the 18 selected Member States to identify and analyse relevant national provisions implementing the SER concerning third-country rightholders, as well as any relevant report issued by national authorities. For that matter, the study team developed detailed guidelines to steer the search to be conducted by country researchers who are native speakers of the relevant languages in the selected Member States. Our approach to data collection departed from the responses by Member States to the questionnaire on the potential impact of the interpretation of EU law endorsed in the RAAP judgement circulated by the Council Working Party on Intellectual Property. Additionally, the websites of the relevant CMOs in the target countries were analysed to compile publicly available data on the SER amounts collected and distributed.

In total, **fifty one interviews** were conducted in the 18 selected Member States, between the last week of March and May 2022, particularly with CMOs representing both type of rightholders, experts in national authorities responsible for copyright and neighbouring rights, and copyright practitioners or academics. **Thirteen additional interviews** with associations of users and producers were carried out between May and June 2022 in six Member States where the impact of the shift to national treatment following the RAAP judgement was anticipated to be the most considerable: Belgium, Ireland, France, the Netherlands, Austria and Sweden. The criteria used to select these countries are detailed in Annex III. Performers' associations were also contacted, but they either did not respond or declined the interview invitation pointing out to the CMO as the most knowledgeable stakeholder on this matter. Summaries were prepared for

²⁴⁶ Association of European Radios.

²⁴⁷ Association of Commercial Television and Video on Demand Services.

²⁴⁸ Confederation of National Associations of Hotels, Restaurants, Cafés and Similar Establishments in the European Union and European Economic Area.

²⁴⁹ International Association of Venue Managers.

²⁵⁰ EBSCO is the leading provider of research databases, academic e-journals and magazines:
<https://www.ebsco.com/products/research-databases>

each of the interviews conducted following a standard structure and they were submitted to interviewees for their validation to ensure their accuracy.

Table 20: Overview of stakeholders consulted in the target Member States; source: NTT DATA & ICF

| Member State | CMO(s) | National authority | Copyright expert/scholar | Producers' association | National broadcaster | Public venue association | TOTAL |
|----------------|----------------------|--------------------|--------------------------|------------------------|----------------------|--------------------------|-----------|
| Belgium | X (2) ²⁵¹ | X | X | X | X | | 6 |
| Czech Republic | X (1) | X | | | | | 2 |
| Hungary | X (2) | X | | | | | 3 |
| Germany | X (1) | X | | | | | 2 |
| Ireland | X (2) | X | | | | X | 4 |
| Greece | X (2) | X | X | | | | 4 |
| Spain | X (2) | X | X | | | | 4 |
| France | X (3) | X | | X | | | 5 |
| Croatia | X (2) | X | | | | | 3 |
| Italy | X (2) | X | X | | | | 4 |
| Lithuania | X (1) | | X | | | | 2 |
| Estonia | X (1) | X | | | | | 2 |
| Netherlands | X (1) | X | X | X | X | X | 6 |
| Austria | X (1) | X (2) | | X | X | | 5 |
| Portugal | X (2) | X | | | | | 3 |
| Slovenia | X (1) | X | | | | | 2 |
| Finland | X (1) | | | | | | 1 |
| Sweden | X (2) | X | | X | X | X | 6 |
| TOTAL | 29 | 17 | 6 | 5 | 4 | 3 | 64 |

Official data on the collection and distribution of the SER were submitted by CMOs in 17 of the 18 selected Member States, albeit with different levels of granularity and quality (i.e. Belgium, the Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Lithuania, Hungary, the Netherlands, Portugal, Slovenia, Finland and Sweden). For Austria the team had to rely exclusively on the data publicly available in the annual transparency reports published by the national CMO.

Lastly, an **online workshop** was organised on the 19th of May 2022 to present and gather feedback on the preliminary findings of the study. The workshop served as well to identify the main issues brought to the fore by the RAAP judgement, the underlying drivers and consequences, and in particular the possible solutions to address those consequences or impacts. The workshop brought together a total of **47 participants**, including representatives from 13 EU Member States and from EU umbrella organisations, as well as practitioners and academics in the area of neighbouring rights.

The qualitative information regarding the national frameworks, market practices and possible policy options gathered as part of the exploratory interviews, the desk research, the in-depth interviews in the selected Member States, and the online workshop with stakeholders is presented in Chapters 4, 5 and 9, respectively. The quantitative data on the SER stemming from the spreadsheets completed by CMOs in

²⁵¹ The number next to the cross indicates the number of CMOs that were consulted in those Member States where more than CMO is involved in the collection and/or the distribution of the SER.

17²⁵² out of the 18 selected Member States is analysed using descriptive statistics in Chapter 6. To collate these data the study team sent a standard spreadsheet with data requests to CMOs in the selected 18 Member States on various dimensions (i.e. organisation representativeness, SER collection and distribution by relevant breakdowns such as type of use and by origin and category of rightholder, management costs incurred for the SER, and revenues received from third-country CMOs for the use of national repertoire abroad by type of use and by country of origin). Chapter 7 presents the potential economic impact of the application of national treatment following the RAAP judgement generally at EU level and specifically in the Member States concerned by category of rightholders drawing on a combination of primary and secondary sources. On the one hand, on data provided by the CMOs which allow to compare how revenue collection and distribution has evolved since the judgement compared to the previous years. And on the other, on figures or estimates drawn by stakeholders interviewed by the study team, including EU umbrella associations representing rightholders in the recording industry, and national authorities and CMOs in some of the Member States expected to be impacted by the RAAP judgement. Additionally, **country factsheets** were developed for each the 18 selected Member States in this study. These factsheets summarise the main highlights regarding the national provisions implementing the SER, the market practices for the collection and distribution of this revenue, and the impact or potential impact of the interpretation of EU law endorsed in the RAAP judgement in that regard (see Annex VI).

²⁵² Belgium, the Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Lithuania, Hungary, the Netherlands, Portugal, Slovenia, Finland and Sweden.

c. Annex III: Selection criteria for second round of interviews

As part of the data collection methodology, interviews with associations of users and producers were carried out in six Member States where the impact of the interpretation of EU law endorsed in the RAAP judgement was anticipated to be the most considerable, namely: Belgium, Ireland, France, the Netherlands, Austria and Sweden. These interviews aimed at understanding better the potential impact on users and rightholders and at clarifying possible inconsistencies in the data collected until then as part of the desk research and the first round of interviews in the 18 Member States. Member States for this second round of interviews were selected on the basis of the following criteria:

- **Application of material reciprocity:** As a result of the application of material reciprocity in some Member States, third-country nationals from countries with reservations under either the Rome Convention and/or the WPPT are excluded from the payment of the SER on the basis that their countries do not recognise this right to EU rightholders. This criterion was considered departing from the assumption that Member States envisaging material reciprocity in their laws were expected to be affected by the RAAP judgement;
- **Particularities regarding points of attachment:** Some Member States do not envisage points of attachment in their legislation and/or strictly collect and distribute for all rightholders, while others take a restrictive approach to the points of attachment envisaged in Rome Convention/WPPT. The latter countries were selected in order to explore possible limitations that third-country rightholders might encounter with regard to the entitlement to the SER;
- **Expected economic impact:** The financial impact of the interpretation of EU law endorsed in the RAAP judgement is expected to be more considerable in larger Member States whose tariffs only cover the Rome Convention/WPPT repertoire, or which were not distributing all the international SER revenues collected to the corresponding third-country rightholders;
- **Changes to legislation and/or market practices as a consequence of RAAP judgement:** Some Member States have reviewed their legislation and/or their market practices (e.g. tariffs increase) to comply with the judgement, while in other Member States affected changes are expected, but they have not yet taken place;
- **Particularities regarding SER distribution rules:** In most Member States SER revenues are distributed 50/50 between producers and performers. In others, the share allocated to producers is higher than the one allocated to performers, and at least one Member State allocates some undistributed international SER revenues to support general interest actions in the area of culture;
- **Scheme for SER collection and distribution:** Four schemes for the collection and distribution of the SER were identified: joint societies model, separate societies, one-stop-shop, and mixed model. This criterion was added to ensure a balanced representation of the different models in the final country selection.

d. Annex IV: Country researchers

| Country | Country Researcher |
|-----------------|-------------------------|
| Belgium | Ezgi Erol |
| Czech Republic | Patrik Smyd |
| Germany | Olha Koshchiyenko |
| Estonia | Egge Kulbok-Lattik |
| Ireland | Ezgi Erol |
| Greece | Tatiana Eleni Synodinou |
| Spain | Marina Lanzuela |
| France | Ezgi Erol |
| Croatia | Marija Pavkov |
| Italy | Virginia Zalunardo |
| Lithuania | Ramunas Bristonas |
| Hungary | Ildiko Mazar |
| The Netherlands | Tomás Slangen |
| Austria | Olha Koshchiyenko |
| Portugal | Marta Pont |
| Slovenia | Maja Bogataj Jančič |
| Finland | Kia Likitalo |
| Sweden | Kia Likitalo |

e. Annex V: Interview questionnaires

Questionnaire for exploratory interviews with EU umbrella organisations

BLOCK 1 - About the organisation you represent

1. Please briefly describe the organisation that you represent and its role in the European music sector.
2. What type of entities are members of your organisation? How many members do you represent in the EU? How many members do you represent outside of the EU?

BLOCK 2 – National rules regarding the implementation of the single equitable remuneration in relation to third-country rightholders

3. Are you aware of any available reports/studies analysing the implementation of the single equitable remuneration, as provided for in Article 8(2) of the RLR Directive, in the various Member States?
4. Do you know of any Member State that before September 2020 (i.e. before the RAAP judgement) did not recognise the single equitable remuneration right to third-country phonogram producers and performers, or which did so with some limitations compared to EU nationals? If so, could you specify which Member States followed this different treatment?
5. Do you know of any third countries that do not recognise the single equitable remuneration right to EU performers and producers, or that grant this right to them with any limitations compared to their own nationals? (e.g. US reservation under Article 15(3) WPPT). If so, please specify what these third countries are and elaborate on any existing limitations.
6. What are the main consequences from your point of view of the RAAP judgement on the current legal framework in the Member States?
7. Have you observed any change to the national rules in any Member State regarding the implementation of the single equitable remuneration as a consequence of the RAAP judgement? Could you please provide some examples of such changes and indicate the Member States they apply to?

BLOCK 3 – Market practices regarding the collection and distribution of the single equitable remuneration in relation to third-country rightholders

Specific questions for CMOs' representatives

8. Do all your members collect and distribute the single equitable remuneration for broadcasting uses and the use of music in public venues at national level? Is there any country where this responsibility (either the collection and/or the distribution) is shared with other entities? (e.g. Independent Management Entities). Could you specify in which Member States that is the case and what the names of these organisations are?
9. Are there uses other than broadcasting and the use of music in public venues which trigger the payment of the SER in some Member States (e.g. simulcasting, webcasting, etc.)? If so, which are those uses and to which countries does they apply? Are you aware of the relevant legal basis for such uses in national law?
10. What are the main type of users that your members collect SER revenues from? (e.g. clubs, bars, restaurants, TV/radio broadcasters, exhibition halls, etc.).
11. What are the most common market practices regarding the *collection* of the single equitable remuneration with regard to third-country phonogram producers and performers in the Member States that your organisation represents (e.g. agreements among CMOs, payment flows, number of entities responsible for collection, main users from which revenues are collected, etc.)?
12. Are there CMOs collecting the single equitable remuneration for the use of international music in the EU but not distributing such revenues to the corresponding third-country performers and producers? Could you indicate in what Member States that is the case and how such "undistributed" revenues are used?
13. Do your members collect the single equitable remuneration for performers and phonogram producers from third countries that do not recognise this right to EU performers or producers, or only with certain limitations? If so, how does the money reach them?
14. What happens with the single equitable remuneration collected from the use in the EU of international music involving third country performers and producers who do not have an organisation representing them? How is that income distributed?
15. What are the most common market practices regarding the *distribution* of the single equitable remuneration with regard to third-country phonogram producers and performers in the Member States that your organisation represents (e.g. agreements among CMOs, distribution rules between producers and performers and/or other ends, etc.)?
16. Have you observed any change to these market practices as a consequence of the enforcement of the RAAP judgement? Could you please provide some examples and indicate the Member States where this is the case?

Specific questions for IMEs' representatives

17. In which countries is your organisation present and active as an IME? Are you aware of other IMEs collecting the SER in the EU?
18. Could you indicate the Member States where independent entities like yours are also involved in the collection and/or distribution of the single equitable remuneration in addition to CMOs? If so, please indicate under which arrangements.
19. What are the most common type of users approaching you to acquire licensing rights for broadcasting and communication to the public uses?
20. Are there uses other than broadcasting and the use of music in public venues which trigger the payment of the SER in some Member States (e.g. simulcasting, webcasting, etc.)? If so, which are those uses and which countries do they apply to? Are you aware of the relevant legal basis for such uses in national law?
21. How are the SER revenues from broadcasting and use of music in public venues *collected* from users and *distributed* to performers and producers? (e.g. direct agreements with individual users, collective agreements with users' associations, agreements with CMOs or IMEs in other countries, etc.)?
22. Do you collect the single equitable remuneration for performers and producers from third countries that do not recognise this right to EU performers and phonogram producers, or which only grant it under certain limitations? If so, could you indicate what these third countries you collect SER revenues for in the EU are? How does Jamendo transfer the collected SER revenues to third-country performers and producers?

Specific questions for producers' and performers' representatives

23. Which are the main third country markets for music produced in the EU? Do such countries pay SER revenues to EU performers and/or producers for the use of music by broadcasters and public venues?
24. Are there differences across Member States regarding the distribution of the single equitable remuneration to third-country performers and/or producers? Could you explain what these differences are and provide specific examples?
25. Are there differences across Members States regarding the distribution of the SER share between producers and performers? If so, please explain what these differences are.
26. Which are the entities responsible for transferring the SER revenues to your members (i.e. CMO, IMEs, both, other)? Are there differences across Member States in terms of market players involved in the management of the SER?
27. Do your EU members indirectly benefit from international SER revenues collected in the EU but not distributed to third-country rightholders? If so, please indicate

the uses of such amounts collected (e.g. subsidies to artists, concerts, festivals, etc.) and specify the Member States which follow this practice.

Specific questions for music users' representative

28. What are the main third countries your members use music from for broadcasting and/or reproduction in public venues?
29. Whom do your members pay royalty fees to under an "equitable remuneration" scheme for the commercial use of music (i.e. to CMOs, Independent Management Entities, both, other)? Do your members deal with different market players for the payment of such royalties depending on the Member State?
30. Do your members pay royalty fees only for the use of music involving EU producers and performers, or also for the use of music involving third-country producers and/or performers? Are there differences depending on the Member State? If so, could you indicate the Member States which collect fees for the use of music involving third-country producers and performers?
31. Have you observed any change to the obligations of your members regarding the payment of the single equitable remuneration for the use of music as consequence of the RAAP judgement? If so, please indicate what this change has been and in which Member State(s).

BLOCK 4 – Actual/potential economic impact of the RAAP case on EU performers, producers, users and collecting societies

32. Which stakeholders (e.g. performers, producers, users, collecting societies) do you think have been /are likely to be the most impacted by such changes to the market practices and/or national rules as a consequence of the RAAP case and in what ways? (e.g. impact on revenues, changes in procedures, administration costs, price of music, etc.).
33. Is there any particular Member State where the impact of the RAAP judgement is already noticeable? Could you indicate in what country(ies) that is the case and explain why?
34. From when do you think the effects of the RAAP case will start to be felt across the EU?
35. What do you think the impact of the RAAP judgement will be for your members based outside of the EU?
36. Are there any factors in your view other than the RAAP case which have influenced the implementation of the single equitable remuneration in relation to performers and producers from third countries?

37. Are you aware of any potential implication of the RAAP judgement for EU and third-country rightholders as regards other remuneration or compensation schemes? (e.g. private copy)
38. Do you have any other remark about the implementation of the SER at national level towards third-country rightholders and/or about the impact of the RAAP judgement in that regard?

BLOCK 5 – Data on international single equitable remuneration amounts (*only applicable to CMOs and/or IMEs*)

39. Do you dispose of comparable information of the SER amounts collected and/or distributed to third-country performers by your organisation?
40. Do you dispose of comparable information of the SER amounts collected in and/or distributed to third-country performers and/or producers by the EU Member States? Do you envisage any challenges in terms of data comparability across Member States?
41. What type of data do your members/ your organisation dispose regarding the volume of SER revenues collected for performers/ producers, tariffs per type of use, costs incurred to pay/ administer the payment of the SER over the past 10 years (2011-2021)?

Questionnaire for CMOs

BLOCK 1 – Introductory Questions

1. What type and how many rightholders do you represent in the music sector? (e.g. music performers, record producers, both). Please make a distinction between affiliates and rightholders which are not your affiliates, but to whom you pay revenues.

BLOCK 2 – National rules regarding the implementation of the single equitable remuneration in relation to third-country rightholders

2. Is the single equitable remuneration subject to mandatory collective management in your country? If not, please indicate if there are other entities authorised by law to manage this revenue and specify their names.
3. What is the applicable legal framework (including relevant articles in the national copyright law) in your Member State implementing the 'single equitable remuneration' envisaged in Article 8(2) of the RLR Directive with regard to the collection and distribution of revenues to third-country (i.e. non-EU/EEA) phonogram producers and performers? Are these rules/provisions different to the ones implementing the SER with regard to national and EU/EEA rightholders?
4. Does the national legislation in your country foresee a general provision that might indirectly affect the treatment that third-country producers and performers are granted in comparison to EU/EEA rightholders (e.g. material reciprocity²⁵³ requirement)?
5. Please indicate whether the national provisions provide for specific "points of attachment" (i.e. criteria to determine the third-country performers and producers who are eligible to this type of revenue e.g. place of recording of the phonogram) and which these are. Does national legislation in your country foresee any limitations/exceptions to the right to a single equitable remuneration to third-country rightholders? If yes, please elaborate on the exceptions or limitations and the third countries they apply to.
6. What are the specific type of music uses triggering the payment of the single equitable remuneration in your Member State? (e.g. please indicate what types of uses are subject to this revenue under the right to communication to the public and under broadcasting).
7. Are you aware of any past judgements or current court cases at national level regarding material reciprocity that may affect the payment of the single equitable remuneration to third-country rightholders in your country? If so, please elaborate on the case(s) and their implications.

²⁵³ Principle under international norms on copyright and related rights by which a country makes the protection of national of another country conditional on the existence of the same or at least similar extent of protection granted in that other country, to the nationals of the country concerned.

8. Has the legal framework in your country been amended to address the new legal situation created by the RAAP judgement? If so, please explain what these changes have been and since when they apply.

BLOCK 3 – Market practices regarding the implementation of the single equitable remuneration toward third-country rightholders

9. Does your organisation collect the single equitable remuneration for third-country phonogram producers and/or performers when their music is played or broadcasted in your country? Please specify:
- the type of rightholders you collect SER revenues for (i.e., producers and/or performers)
 - the type of users you collect the SER from in your country
 - the main countries of origin of third-country producers and/or performers you collect the SER for
 - the legal basis for the collection (e.g. bilateral agreements with third-country CMOs, affiliation of third-country rightholders, etc.)
10. Is the non-EEA repertoire already included in the tariffs that music users pay in your country? Do users pay different tariffs depending on the origin of the music repertoire?
11. Who is involved in the negotiation and determination of the tariffs covering SER uses? Are national authorities involved either directly or indirectly in this process (e.g. as supervisors of the fees, to facilitate agreements between the parties)? If so, please describe what their role is.
12. Please briefly explain the methodology and sources of information (i.e. data from users, content monitoring data providers, internal databases) used to determine the allocation of SER revenues corresponding to each phonogram/rightholder?
13. Does your organisation distribute the single equitable remuneration to third-country phonogram producers and/or performers? Please specify:
- the type of rightholders you distribute SER revenues for (i.e. producers and/or performers)
 - the criteria that your organisation applies to determine whether a third-country rightholder is entitled to the SER, or not
 - the internal distribution rules (i.e. how does your organisation calculate how SER revenues are allocated amongst the different rightholders)
 - If applicable, the average split of SER revenues between producers and performers
 - how the money is transferred to the rightholders (e.g. via third-country CMOs, as part of bilateral agreements)
 - how frequently SER revenues are paid to rightholders (e.g. annually, quarterly, indeterminate)
14. Are you aware of any entity or society (e.g. independent management entities) collecting and/or distributing the SER to third-country rightholders in your country? If so, please specify which they are.
15. Do you make any distinction in the collection and/or in the distribution of SER revenues between third countries depending on whether they do not (fully or partially) recognise the SER to EU performers and producers? In other words, do you collect and/or distribute SER to third countries which do not (fully or partially)

reciprocate on the SER? If so, please indicate the countries to which this situation applies.

16. Does your organisation collect SER revenues for the use of non-EEA repertoire in your country, but it does not distribute them to the relevant rightholders? (e.g. "undistributed revenues" or "*irrepartissables*"). What are the criteria for deciding not to distribute these revenues collected? To what uses is this money allocated? (e.g. distribution among own affiliates, aid/subsidies to cultural activities).
17. Have your approach or practices for collecting and/or distributing the SER for/to third-country rightholders changed as a result of the RAAP judgement? If so, please explain in what ways they has changed (e.g. increase in tariffs requested to users, distribution to third-country rightholders).
18. Does your organisation receive revenues for your affiliates and/or for other EU/EEA rightholders under an "equitable remuneration" concept for the broadcast and/or the use of their recorded music in public venues outside the European Economic Area? If so, what are the main third countries you receive SER revenues from? How are these revenues managed by your organisation and get transferred to the respective EU/EEA rightholders?
19. Can you name third countries you are not receiving SER revenues from? Which are the causes for not receiving any revenues from these countries? (e.g. the SER is not recognised in the third country in general or in particular regarding third-country or EU/EAA nationals, lack of application of the SER in practice, inexistence of an agreement with CMO in the third country to collect or transfer the SER for/to your affiliates, etc.).

BLOCK 4 – Actual/potential economic impact of the RAAP case on stakeholders across the music value chain

20. Has the RAAP judgement already had an impact in your country? If so, since when it started yielding effects? If not, do you anticipate the judgement to have an impact in your country in the near future? Please elaborate on the nature and scope of such an impact.
21. Which stakeholders (e.g. performers, producers, users, collecting societies) do you think have been /are likely to be the most impacted by the RAAP case and in what ways?
22. How do you anticipate the RAAP case is impacting/will impact the revenues of phonogram producers and/or performers in your country and in the EU/EEA? Is the impact expected to be higher for any of the two groups?
23. How do you anticipate the RAAP case will impact the fees that users pay in your country for the use of foreign repertoire?
24. How has the RAAP judgement impacted your revenue collection and/or distribution in terms of procedures, information systems, management costs, staff costs, etc.?
25. Do you have any figures/estimates on the impact of the RAAP judgement to share with us?

26. Are you aware of any potential implication of the RAAP judgement beyond the single equitable remuneration (e.g. regarding the interpretation of material reciprocity with respect to other types of remuneration or compensation schemes, reciprocity agreements with third-country CMOs)?

BLOCK 5 – Possible policy options at EU level

27. Are you aware of any measures being put in place in your country to address or mitigate the negative impact of the RAAP judgement? If so, please describe what these measures are and what their purpose is.
28. What potential policy options could be considered at EU level to address the actual and/or potential negative effects of the RAAP judgement for EU performers, producers, users and/or collecting societies (e.g. reciprocity clause included EU law regarding the SER, etc.)?
29. What could be the potential effects of your suggested regulatory option(s) for EU/EEA performers, producers and/or users? And for your organisation?
30. Would you like to provide us with any additional information regarding the single equitable remuneration right to third-country phonogram performers and producers or regarding the impact of the RAAP judgement?

Questionnaire for legal experts in national authorities and copyright experts/university scholars

BLOCK 1 – Introductory Questions

1. Please introduce yourself and briefly describe the organisation or institution you represent or work.

BLOCK 2 – National rules regarding the implementation of the single equitable remuneration in relation to third-country rightholders

Same set of questions as for CMOs.

BLOCK 3 – Market practices regarding the implementation of the single equitable remuneration toward third-country rightholders

Simplified set of questions of those for CMOs with one additional question on the 'protected repertoire' concept.

2. Are you aware of any distinction being made in your country, as regards the collection and/or the distribution of SER revenues, between third countries depending on whether such countries do or do not (in full or partially) recognise the SER to European performers and producers? (i.e. because these countries have filed a reservation under Article 15 WPPT or because they are not member of the WPPT). Please elaborate on any difference in treatment, to which countries it applies, and for which specific uses, if applicable.
3. Is there a market practice of a so-called "protected repertoire" in your country (i.e. foreign repertoire to which protection is acknowledged) and what it means/covers?
4. Do you know which stakeholders are involved in the negotiation and determination of the tariffs covering SER uses? Are national authorities involved either directly or indirectly in this process (e.g. as supervisors of the fees, to facilitate agreements between the parties)? If so, please describe what their role is.
5. Are you aware if SER revenues are collected in your country for the use of non-EEA repertoire, but such revenues are not distributed to the relevant rightholders? (i.e. "undistributed revenues" or "irrepartissables"). What are the criteria for deciding not to distribute these revenues collected? To what uses is this money allocated? (e.g. aid/subsidies to cultural activities, re-distribution amongst own affiliates of the collecting society).
6. Do you know if the existing market practices for collecting and/or distributing the SER for/to third-country rightholders have changed as a result of the RAAP judgement? If so, please explain in what ways it has changed (e.g. increase in tariffs requested to users).

BLOCK 4 – Actual/potential economic impact of the RAAP case on stakeholders across the music value chain

Same set of questions as for CMOs, but simplified and adjusted:

7. From when do you anticipate the RAAP judgement will start yielding effects in your country?
8. Which stakeholders (e.g. performers, producers, users, collecting societies) do you think have been /are likely to be the most impacted by the RAAP case and in what

ways? (e.g. higher tariffs to be paid by users, smaller revenues for EU/EEA rightholders, etc.).

9. Are you aware of any study or report presenting estimates on the impact of the RAAP judgement to share with us?
10. Are you aware of any potential implication of the RAAP judgement beyond the single equitable remuneration (e.g. regarding the interpretation of material reciprocity with respect to other types of remuneration or compensation schemes)?

BLOCK 5 – Possible policy options at EU level

Same questions as for CMOs.

Questionnaire for users (broadcasters or public venues)

BLOCK 1 – Introductory Questions

1. Please briefly describe the organisation that you represent, its business scope and the approximate market share in your country. Indicate as well if you operate in more than one EU country.
2. What is the average size of the organisation (broadcasters) or the members that you represent? Please indicate it either in terms of employees (1-50 employees, 50-250 employees, or more than 250 employees), or in terms of surface of the business (approximate square meters of floor area).
3. Indicate your familiarity with the concept of a (single) 'equitable remuneration' and with the implications of the RAAP PPI case.

BLOCK 2 – Market practices regarding the implementation of the single equitable remuneration towards third-country rightholders

4. Whom do you pay royalty fees to under an "equitable remuneration" concept for the use of music (i.e., to collecting societies, Independent Management Entities, both, other)? Do you deal with several market players for the payment of such royalties in your country?
5. For what kind of uses are you obliged to pay a fee under an equitable remuneration concept (i.e. radio broadcasting, webcasting, TV broadcasting, other)?
6. Do you know if the tariffs that you pay cover the global music repertoire or only music repertoire protected under national legislation? Does your organisation pay different tariffs depending on the origin of the music repertoire? Do you receive a detailed breakdown of the tariffs you pay for the use of music?
7. Who is involved in the determination of the tariffs for the use of music? Are tariffs individually negotiated with users or through representative bodies? Are national authorities involved either directly or indirectly in this process (i.e., as supervisors of the fees, to facilitate agreements between the parties)? How often are tariffs reviewed? Is there a mechanism available for users to review the applicable tariffs?
8. How is the tariff that you pay calculated (i.e. lump sum % of your annual revenues, fee per number of tracks used/broadcasted, fee depending on venue size, etc.)? Please elaborate on the parameters and the methodology used to calculate the applicable fees.
9. How often do you pay (collecting societies) for the use of music? (e.g. annual basis, twice a year, every quarter, etc.)?
10. Do you have any reporting obligations on the music broadcasted/played with regard to collecting societies? Do you share any data with them for calculation purposes (e.g. playlists)? If so, what type of data do you share with them and with what frequency?

11. Have you observed any change to your obligations regarding the use of music as consequence of the RAAP judgement? (e.g. increase of tariffs). If so, which one(s)?

BLOCK 3 – Actual/potential economic impact of the RAAP case on stakeholders across the music value chain

12. Have you noticed any impact of the RAAP judgement on the fees you and other users pay for the use of music in your country? If so, please elaborate on the scope of the impact and since when and how it is affecting you.
13. Has the impact been higher for a specific type of user? If applicable, please indicate which users you think have been most negatively impacted by this judgement.
14. In case you have not yet noticed any impact of this judgement, do you anticipate it to have an impact on the fees you pay for the use of music in the near future? If, so, please describe the expected scope of the impact.
15. What are your sources of information regarding the implications of this judgement for your company/organisation? (e.g. collecting society, government, etc.).
16. Do you have any figures/estimates on the impact of the RAAP judgement to share with us?

Questionnaire for rightholders' associations (producers/performers)

BLOCK 1 – Introductory Questions

1. Please briefly describe the organisation that you represent and its role in the national music sector.
2. What type of rightholders are members of your organisation? How many members do you represent overall? Do you represent members from other EU countries? And from outside the European Economic Area? If so, what are the main countries of origin of the rightholders you represent outside of your country?
3. Indicate your familiarity with the concept of a (single) 'equitable remuneration' and with the implications of the RAAP PPI case.

BLOCK 2 – Market practices regarding the implementation of the single equitable remuneration towards third-country rightholders

4. Which are the entities responsible for transferring the revenues stemming from the right to an equitable remuneration to your members (i.e. collecting societies, independent management entities, both, other)?
5. How do your members receive the revenues from the equitable remuneration? Please specify:
 - how the money gets transferred to your members (e.g. direct payments via the national collecting society or via another collecting society, through agency contracts, through intercompany contracts, other). Please indicate if your members need to be affiliated to a collecting society to receive payments from it and, if so, in which countries this is the case.
 - the frequency of the payments (e.g. annually, quarterly...)
6. Is the share of revenues from the equitable remuneration evenly split between producers and performers? If not, please specify how the share is distributed and if this situation concerns particular countries. Please also indicate if there is any further distinction made between featured and non-featured performers and between majors and independent labels, as applicable.
7. Do your members receive revenues under an "equitable remuneration" concept for the broadcast and/or the use of their recorded music in public venues outside of the European Economic Area? If so, what are the main third countries they receive such type of revenues from? How do these revenues get transferred to your entitled members?
8. Is there any country that is not paying your members for the broadcasting or use of their music in public venues? If applicable, please indicate what these countries are. Are you aware of the causes why your members are not receiving any revenues from these countries?
9. Are you aware if the tariffs that users (i.e. broadcasters, public venues) pay for the use of music in your country cover the use of EU/EEA music repertoire only, or the whole global repertoire? Is your association involved in the negotiation of such tariffs, either directly or indirectly, or at least kept informed?

10. Are your members indirectly benefiting from international revenues collected under the equitable remuneration right? (e.g. via subsidies to festivals, culture, etc.). If so, please elaborate on the answer.

BLOCK 3 – Actual/potential economic impact of the RAAP case on stakeholders across the music value chain

11. Have you noticed/ do you anticipate any impact of the RAAP judgement on the revenues of the rightholders you represent? If so, please elaborate on the scope of such an impact. Is there any specific type of rightholder bound to be more affected? (i.e. featured performers vs session musicians, major labels vs independent labels).
12. Do you have any figures/estimates on the (expected) impact of the RAAP judgement to share with us?

f. Annex VI: Country factsheets

The following country factsheets summarise the main highlights for each the 18 selected Member States in this study.

Country Factsheets – Explanatory Note

The figures presented in the country factsheets below are calculated based on data on the collection and distribution of the SER submitted by CMOs in 17 of the 18 Member States analysed in detail in this study. In seven Member States (Belgium, Estonia, Greece, Croatia, Lithuania, Hungary and Portugal), the data provided by CMOs is partial as it does not reflect the whole SER revenue collection or distribution for both categories of rightholders and/or uses, or only covers a limited timeframe. In three Member States (Germany, Slovenia and Finland) CMOs only submitted a minimum set of data out of the whole dataset requested. The figures presented for Austria are solely based on the data publicly available in the CMO's annual transparency reports.

Furthermore, the data collected for each Member State shows different levels of granularity and quality. As a result, the completeness and number of indicators available may vary across countries. Additionally, in some cases the figures presented in the country factsheets may differ with respect to the values included in the report. This is due to the fact that the indicators in the factsheets are based on actual submitted by the CMOs, while in the economic analysis presented in the report the data gaps referred to above for certain Member States had to be estimated for comparability purposes.

The reference timeframe for calculating the indicators presented in the factsheets is 2017-2021. However, for some Member States the indicated values are based on a shorter timeframe due to data unavailability for certain years. Discrepancies are indicated in the factsheets where applicable. Lastly, it should be noted that all figures are calculated as annual averages considering the available time series for each Member State and specific indicator.



Key Figures explained

XX.XM Annual SER collected

This amount encompasses the entire SER collected in a given Member State, including revenues collected by CMOs in the national territory and abroad (i.e. received from other CMOs).

XX.XM Annual SER distributed

This amount encompasses the entire SER distributed by CMOs to rightholders, including revenues paid to national/EEA and to non-EEA rightholders.

The higher amount of revenues distributed to rightholders compared to the collection in some Member States (i.e. Germany and Hungary) is due to the minimum three-year prescription period for claiming the remuneration. This is why revenues collected in a given year may be in practice distributed over subsequent financial years.



Share of SER collected concerning non-EEA repertoire

Percentage of revenues collected concerning the use of repertoire of non-EEA rightholders in a Member State out of total SER collected.



Share of SER distributed to non-EEA rightholders

Percentage of revenues distributed to non-EEA rightholders out of total SER distributed in a Member State.



Share of SER per type of use

Percentage of SER by type of use (i.e. broadcasting and communication to the public) out of total SER collected.



Share of SER in total revenues collected by the CMOs

Percentage of SER out of the revenues collected by the consulted CMOs. For Ireland, Greece and the Netherlands this indicator has been omitted as the CMO consulted only collects revenues for the SER.


National Rules Implementing the Single Equitable Remuneration (SER)
Relevant provisions

The right to a single equitable remuneration is regulated in **Articles XI.211 to XI.214** of the Code of Economic Law.¹

Points of attachment considered

The Code of Economic Law does not explicitly lay down any points of attachment to benefit from the SER. Based on the obligations taken by Belgium in the relevant international agreements, two criteria are used to determine the protection of third-country rightholders: (1) **Fixation of the phonogram in a Convention country** (i.e. WPPT and Rome Convention) and (2) **Nationality/residency of the producer in the EU/EEA**.

Management of the SER

The management of the SER is subject to mandatory collective management, following **Article XI.213 (4)** of the Code of Economic Law. Only CMOs can manage this remuneration.

Approach to material reciprocity

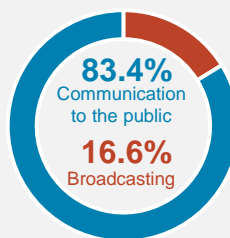
The principle of material reciprocity is envisaged in **Article XI.289 of the Code of Economical Law**. According to this provision, foreign rightholders in Belgium only enjoy neighbouring rights (including the SER) to the extent that their countries of origin grant Belgian rightholders a similar degree of protection. This provision does not specify the third countries affected by it, so it applies to any third country, regardless of whether they are parties to relevant international conventions or not.


Key Figures on the Single Equitable Remuneration

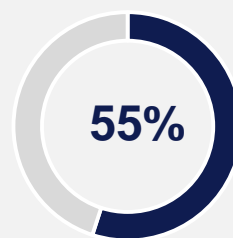
€23.6M
Annual SER collected



Share of SER collected from non-EEA repertoire (no data available) |

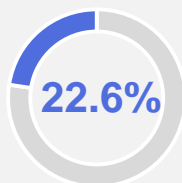


Share of SER per type of use*



Share of SER in total revenues collected by the CMOs*

€18.3M
Annual SER distributed



Share of SER distributed to non-EEA rightholders

Average values calculated from data provided by the Belgian CMOs for 2017-2020.

*The figures with an asterisk are calculated based on data provided by the Belgian producers' CMO only.

Main international markets for Belgian music from which SER revenues are received


UK



USA



Japan



Canada



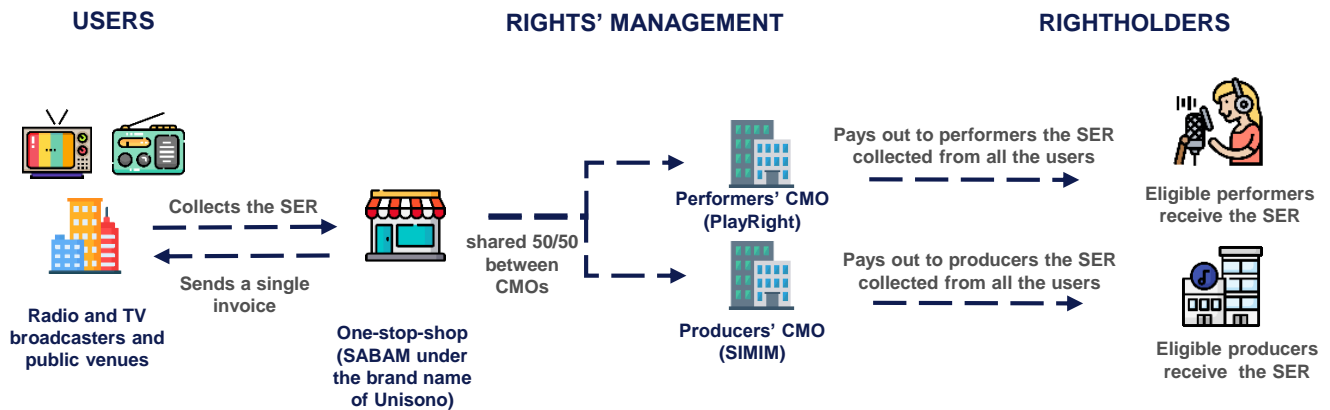
South Africa

Main third countries for which SER revenues are collected in Belgium (national music consumption)


UK

¹Belgian Code of Economic Law, available in French at: <http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel>

² Arrêté Royal du 17 décembre 2017 relatif à la rémunération équitable au profit des artistes-interprètes ou exécutants et des producteurs pour l'exécution publique de phonogrammes ou la radiodiffusion de phonogrammes, available at https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2017121719


Market Practices
SINGLE EQUITABLE REMUNERATION REVENUE STREAMS

Eligible uses

- Communication in public venues (e.g. hotels, restaurants, cinemas, discos, shops, cultural centres, youth centres, hairdressers and beauticians, workplaces, etc.)
- Radio broadcasting only (TV broadcasting is excluded pursuant to Article XI.212)

Tariffs for the SER are regulated by a Royal Decree². Tariffs for broadcasters depend on three parameters: hours of protected music broadcasted, audience and financial resources. For public venues the parameters are surface and number of full-time employees (workplaces).

Collection approach

- Since 2020 the authors' CMO, SABAM, acts as a **one-stop-shop** for the collection of the SER on behalf of SIMIM (producers' CMO) and PlayRight (performers' CMO) under the brand name of 'Unisono'.

Distribution rules

- The SER is not collected for the non-eligible repertoire (i.e. international repertoire that is not protected following the points of attachment envisaged and the application of material reciprocity), and it is consequently also not distributed.
- The collected SER is **shared equally** between the eligible performers and producers, as so prescribed by Article XI.214 of the Code of Economic Law.
- SIMIM distributes the SER **twice a year** to producers, and PlayRight does it on an **annual basis**.


Impact of the RAAP judgement

Changes to legislation or to market practices

- There has been no change to the Belgian legislation or to the market practices thus far.


Potential Economic Impact

- On average, the US repertoire accounts for 30-35 % of the music played in Belgium. To compensate for the application of national treatment, CMOs argue that tariffs should increase between 30 to 50 %. However, the complex system of tariffs establishment in Belgium makes it very difficult to review them, since any change implies a legislative process.

² Royal Decree of 17 December 2017 on the re-establishment of equitable profits for the benefit of artistic performers and the production of phonograms for the production of phonograms. Available at: https://etaamb.Openjustice.Be/fr/arrete-royal-du-17-decembre-2017_n2017031945.html



Country Factsheet



National Rules Implementing the Single Equitable Remuneration

Relevant provisions implementing the SER

The right to single equitable remuneration is regulated in **Article 72(1) of Copyright Act No. 121/2000 (CA)** for performers and in **Article 76(3)** of the same Act for producers.

Points of attachment considered

Article 107 CA establishes the following points of attachment: (1) **First publication** of the phonogram in the Czech Republic and (2) **Nationality or residency of the producer/performer** in the Czech Republic.

Management of the SER

The management of the SER is subject to mandatory collective management. The SER is exclusively managed by CMOs, as provided for in **Article 95(a) CA**.

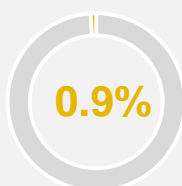
Approach to material reciprocity

Material reciprocity is envisaged in **Article 107 CA**, but only in the absence of applicable international treaties. Therefore, national treatment applies to all phonograms of Rome Convention and WPPT signatory countries. |



Key Figures on the Single Equitable Remuneration

€10.7M
Annual SER collected

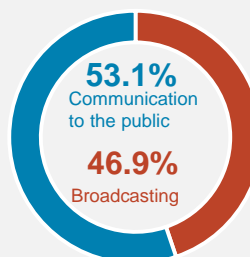


Share of SER collected from non-EEA repertoire

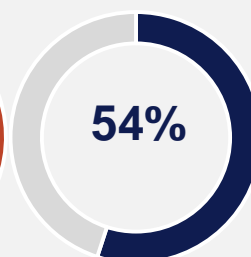
€7.4M
Annual SER distributed



Share of SER distributed to non-EEA rightholders (no data available)



Share of SER per type of use



Share of SER in total revenues collected by the CMO

Average values calculated from data provided by the joint Czech CMO for 2017-2020.

Main international markets for Czech music from which SER revenues are received



Canada



UK

Main third countries for which SER revenues are collected in the Czech Republic (national music consumption)



USA



UK

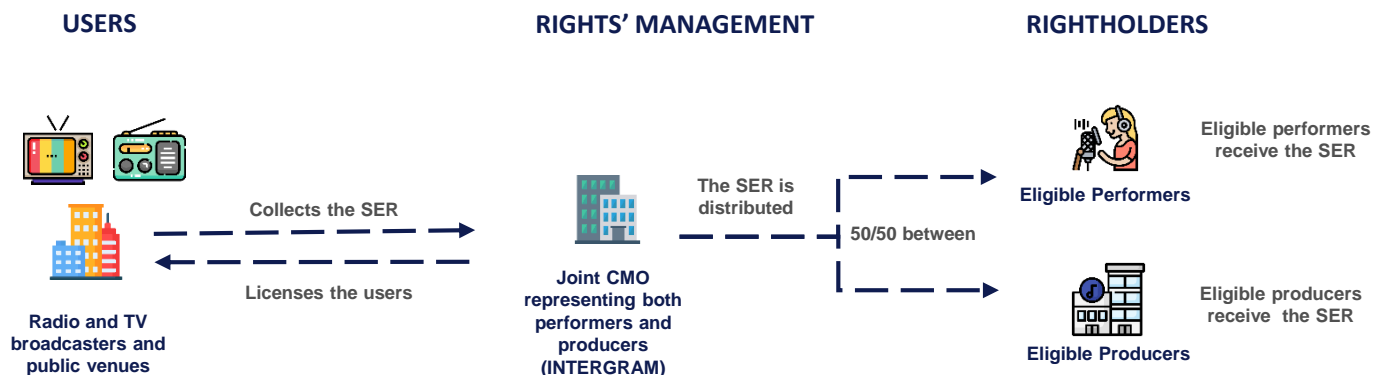


Canada



Market Practices

SINGLE EQUITABLE REMUNERATION VALUE CHAIN



Eligible uses

- Communication in public venues (e.g. restaurants, hotels, cafes)
- Radio and TV broadcasting

Tariffs are set on the basis of playlists provided by broadcasters, which show how many times a phonogram is played.

Collection approach

- The Czech CMO, Intergram, collects the SER from users on behalf of both performers and producers.

Distribution rules

- In practice, Intergram pays out the SER to all third-country rightholders that meet any of the points of attachment, regardless of material reciprocity.
- SER revenues collected are **equally split** between performers and producers.
- SER revenues are paid to rightholders on a **yearly basis**



Impact of the RAAP judgement



Changes to legislation or to market practices

- The Czech Republic does not envisage any changes to its legislation.
- Market practices have not changed.



Potential Economic Impact

- The Czech CMO was already applying national treatment. As such, its protected repertoire has not changed and no impact on tariffs or on distribution practices is envisaged.



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated in **Section 78(2) of the Copyright Act (Urheberrechtsgesetz, UrhG)** for performers, and in **Section 86** for phonogram producers.¹

Points of attachment considered

As stated under **Section 126 of the UrhG**, main eligibility criteria for the payment of the SER are the **publication and/or simultaneous publication** of the phonogram in Germany. All rightholders involved in these phonograms protected enjoy full protection regardless of their nationality.

Management of the SER

The SER is subject to mandatory collective management under **Section 78 (3) UrhG**. CMOs are the only entities authorised to manage it.

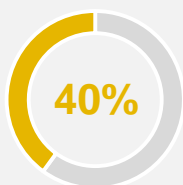
Approach to material reciprocity

Material reciprocity is **not envisaged**. The principle of national treatment is applicable to all phonograms published in Germany (including phonograms produced by nationals of countries not parties to the Rome Convention or the WPPT).

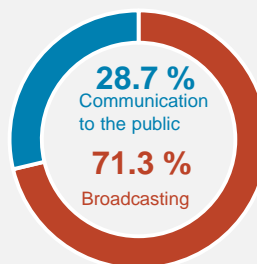


Key Figures on the Single Equitable Remuneration

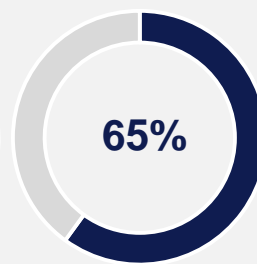
€128M
Annual SER collected



Share of SER collected from non-EEA repertoire



Share of SER per type of use



Share of SER in total revenues collected by the CMO

€133.9M
Annual SER distributed



Share of SER distributed to non-EEA rightholders (no data available)

Average values calculated from data provided by the joint German CMO for 2017-2021.

Main international markets for German music from which SER revenues are received



USA



Canada



UK



Japan



Switzerland

Main third countries for which SER revenues are collected in Germany (national music consumption)



USA



Canada



UK



Japan



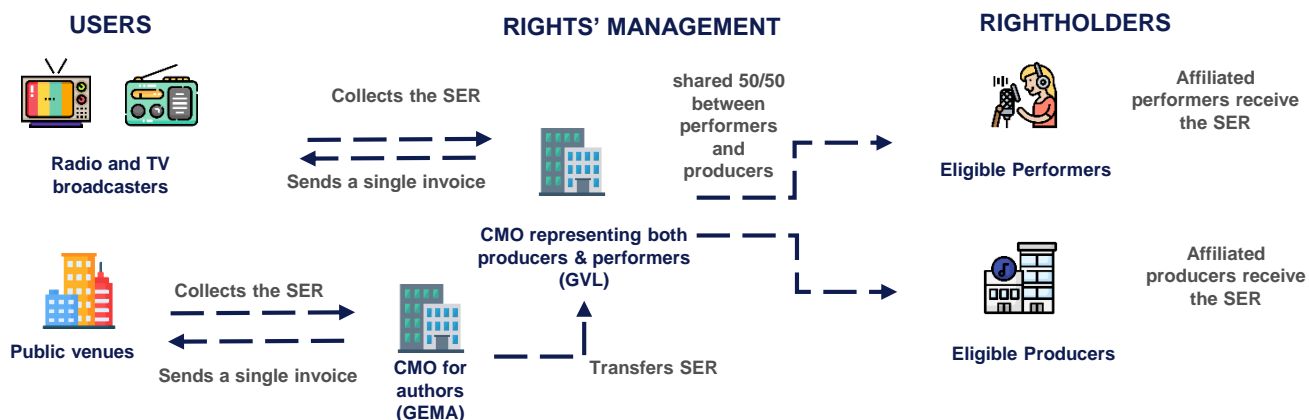
Switzerland

¹The Copyright Act is available at: https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html

²Series of decisions rendered by the Tribunal de Grande Instance de Paris, 3ème Chambre Civile, on 10th March 2017.

Market Practices

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. discotheques, hospitality venues, stores, etc.)
- Radio and TV broadcasting
- Simulcasting
- Webcasting (web radio stations)

Tariffs are regulated in Sections 34-40 of the German Collecting Societies Act.³ As a general rule, tariffs are calculated on the basis of the pecuniary benefits derived on account of the exploitation. Tariffs are agreed with certain users for three years.

Collection approach.

- GVL, the performers' and producers' CMO, collects the SER for any phonogram published in Germany from broadcasters.
- GEMA (CMO for authors) collects the SER from public venues on behalf of GVL, and transfers the amount to GVL.

Distribution rules

- Affiliated performers and producers (directly or indirectly via reciprocal agreements) receive their share of the SER.
- GVL **distributes equally** the total SER between performers and producers, as per Section 86 UrhG.
- GVL distributes the SER about **four times a year** to both rightholders.



Impact of the RAAP judgement



Changes to legislation or to market practices

- No changes have occurred or are expected to occur in Germany. On basis of simultaneous publication, the entire repertoire used is as equally protected. █



Potential Economic Impact

- There is no economic impact as national treatment is already applied.

³ Act on the Management of Copyright and Related Rights by Collecting Societies: https://www.gesetze-im-internet.de/englisch_vgg/englisch_vgg.html#p0201

National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

§72 of the **Copyright Law**¹ provides for the SER that phonogram producers and performers are entitled to when their phonograms are communicated to the public. This includes making them available in places open to the public or in places not open to the public but where an unspecified number of people are present, as well as (re)transmission via technical devices (§10).

Points of attachment considered

§ 63 of the **Copyright Law** provides for the eligibility criteria for rightholders to benefit from this revenue: (1) **First fixation** of the phonogram in Estonia; or (2) **First publication** of the phonogram in Estonia.; or (3) **Citizenship or permanent residency** in Estonia.

Management of the SER

The management of the SER is subject to mandatory collective management. As opposed to other rights envisaged in §76(3) of the Copyright Law, the exercise of the SER can be managed by other entities than CMOs. In practice, only two CMOs are authorised to manage this revenue.

Approach to material reciprocity

Material reciprocity is **not envisaged** in the national legislation. Pursuant to §63(2) of the Copyright Law, national treatment is applied to rightholders from third countries parties to the same international agreements as Estonia.



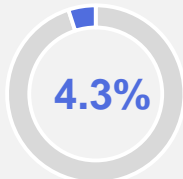
Key Figures on the Single Equitable Remuneration

€1.6M
Annual SER
collected



Share of SER
collected from
non-EEA repertoire
(No data available)

€1.4M
Annual SER
distributed



Share of SER
distributed to
non-EEA
rightholders



Share of SER per
type of use
(No data available)



Share of SER in
total revenues
collected by the
CMOs
(No data available)

Average values calculated from data provided by the Estonian performers' CMO for 2017-2021.

Main international markets for
Estonian music from which SER
revenues are received



Japan



UK

Main third countries for which SER
revenues are collected in Estonia
(national music consumption)



USA



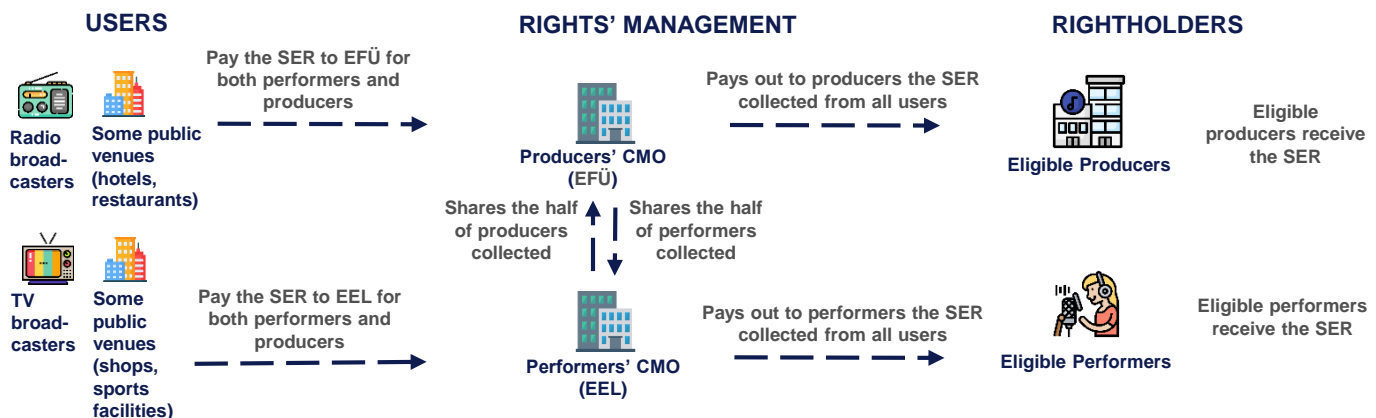
Russia



Latin America

¹ Estonian Copyright Act is available in English at: <https://www.riigiteataja.ee/en/eli/525112013002/consolide>

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. nightclubs, restaurants, hotels, gyms, cinemas, museums, shops, sports events, prisons, dentists, etc.)
- Radio and TV broadcasting

Tariffs with users are set for a period of five years.

Collection approach

- The SER in Estonia is collected separately by two CMOs. Each CMO collects this revenue for certain uses for both categories of rightholders. The CMO representing producers (EFÜ) collects the SER from radios and HORECA sector, whilst the CMO representing performers (EEL) collects it from TVs and other public venues.

Distribution rules

- Estonian CMOs only distribute the SER to affiliated performers and producers.
- The SER revenues **are shared equally** between the phonogram producers and performers, in line with the legal provision §72(3) Copyright Law.
- The SER is paid out to rightholders **once per year**.



Impact of the RAAP judgement



Changes to legislation or to market practices

- No changes occurred to the national legislation as national treatment was already applied in Estonia.



Potential Economic Impact

- Estonian CMOs already paid the foreign rightholders. Therefore, no impact is expected.

National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The single equitable remuneration is regulated by **Sections 38 and 208 of the Copyright and Related Rights Act (CRRRA)**.

Points of attachment considered

Different points of attachment are envisaged for performers and producers in **Sections 184 and 287 of the CRRRA**. For producers: (1) **First or simultaneous publication** of the phonogram in a convention country and (2) **Citizenship or domicile** in a convention country. For performers: **Citizenship or residence in the EEA**. Hence, almost all producers qualify to receive the SER, whereas a more restricted protection is offered to performers.

Management of the SER

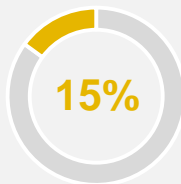
The SER is **not subject to mandatory collective management**. As provided under **Section 38 of the CRRRA**, rightholders can choose to manage this right directly or assign its management to a CMO or another authorised licensing body.

Approach to material reciprocity

Material reciprocity for producers is envisaged in sections 188-190 CRRRA, conditional on the issuing of a Government's Order establishing the countries qualifying for protection. Pursuant the transitional provisions of the CRRRA, the country order (SI 36/1996) adopted under the previous Copyright Act of 1963 is still applicable. However, **material reciprocity is not envisaged for performers**. Articles 287 to 289 CRRRA provide for the possibility of applying reciprocity on the basis of a Foreign Countries Order, but such an Order has not been issued thus far.

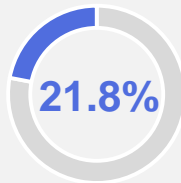
Key Figures on the Single Equitable Remuneration

€15.6M
Annual SER
collected

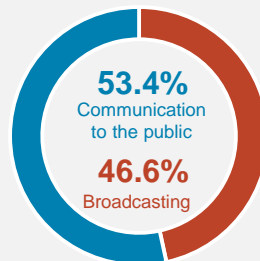


Share of SER
collected from
non-EEA repertoire

€11.9M
Annual SER
distributed



Share of SER
distributed to
non-EEA
rightholders*



Share of SER per
type of use



Share of SER in
total revenues
collected by the
CMOs**

Average values calculated from data provided by the Irish producers' and performers' CMOs for 2017-2021.

*The figures with an asterisk are calculated based on data provided by the Irish performers' CMO only

**SER revenues represent the total revenue collection of the Irish producers' CMO. No data for this indicator is available for the other CMO representing performers.

Main international markets for Irish music from which SER revenues are received



Japan



Brazil



Canada



African
countries

Main third countries for which SER revenues are collected in Ireland (national music consumption)



UK

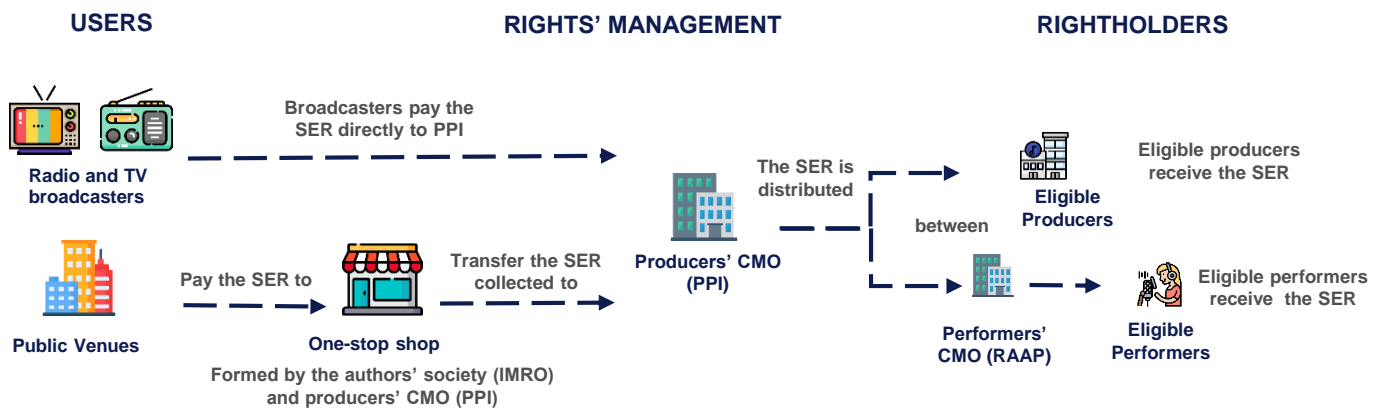


USA



Canada

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g., gyms, bars, restaurants, discotheques, hotels, cafes, shops, hairdressers, banks, cinemas, offices, museums, coaches, doctors and dentist waiting rooms, etc.)
- Radio and TV broadcasting
- Cable transmission

Tariffs for public venues are determined by the venue size. In the case of broadcasters, the tariffs are based on their advertising income.

Collection approach

- Since 2015 IMRO (authors' society) collects the SER from users for public performance rights on the basis of a dual music license with PPI, and PPI collects the SER directly from users for broadcasting uses.
- The SER is collected for all third-country phonograms used in Ireland, and tariffs reflect the global music repertoire.
- PPI receives the SER revenues collected for both producers and performers, and they transfer the corresponding share to producers, and the performers' share to RAAP.

Distribution rules

- Third-country producers are paid if their phonogram is first or simultaneously published in a Convention country, whereas performers are only protected if they have their residence or the nationality of an EEA country.
- The revenues that cannot be allocated to third-country performers in application of the points of attachment (i.e. **non-qualifying performances**) are paid to the producers involved.
- Section 208 CRRA does not specify the split of the SER amongst rightholders.
- The SER is paid **twice a year** to producers and **once a year** to performers.



Impact of the RAAP judgement



Changes to legislation or to market practices

- There has been no change to the Irish legislation, even though the amendment of the provisions establishing the points of attachment is a priority of the Government. Additionally, the non-qualifying revenues for 2020 and 2021 have not been paid out and have been put in reserve instead until the law is changed or a final decision on the Court's interpretation is made.



Potential Economic Impact

- Both CMOs expect the revenue distribution to performers to increase by about 30% if national treatment is applied, considering the average share of non-qualifying performances between 2016-2020. This would represent about EUR 1.2 million annual transfers from local producers to US performers mainly;
- Applicable tariffs for the SER are not expected to increase as the global repertoire is already reflected in the current tariffs. Hence, users are not expected to be affected.



Country Factsheet

National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated in **Article 49 of Law 2121/1993** on Copyright, Related Rights and Cultural Matters (CRRCM).¹

Management of the SER

The SER is subject to **mandatory collective management** pursuant Article 49(2) CRRCM. According to the same provision, only CMOs can administer this right.

Points of attachment considered

Greek law does not explicitly lay down any points of attachment to be eligible for the SER. Following the obligations taken by Greece under international agreements, the reference eligibility criterion considered for the payment of the SER is the **publication or the simultaneous publication of a phonogram in the EU.**

Approach to material reciprocity

Material reciprocity is envisaged under **Article 67 of CRRCM, but only in the absence of international treaties.** Therefore, national treatment applies to all phonograms of Rome Convention and WPPT signatory countries.

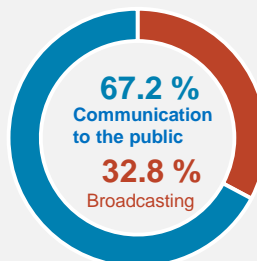


Key Figures on the Single Equitable Remuneration

€3.9M
Annual SER collected



Share of SER collected from non-EEA repertoire (No data available)



€3.1M
Annual SER distributed



Share of SER distributed to non-EEA rightholders (No data available)

Share of SER per type of use

Share of SER in total revenues collected by the CMOs*

Average values calculated from data provided by Greek producers' CMO for 2017-2020.

* SER revenues represent the total revenue collection of the Greek producers' CMO (Grammo). No data is available for the other CMOs representing performers.

Main international markets for Greek music from which SER revenues are received



Russia

Main third countries for which SER revenues are collected in Greece (national music consumption)



USA



Canada



UK



Russia

¹Law 2121/1993, Copyright, Related Rights and Cultural Matters” (published in the Governments’ Gazette nr. A 25/4-3-1993), available at: <https://www.opi.gr/en/library/law-2121-1993#a49>

² First-Instance Court of Athens in 2022 stated in this way regarding – further explanations available here: <https://www.lexology.com/commentary/intellectual-property/greece/a-k-metaxopoulos-partners-law-firm/greek-collecting-societies-are-not-entitled-to-collect-equitable-remuneration-for-artists-and-producers-not-represented-by-them-by>

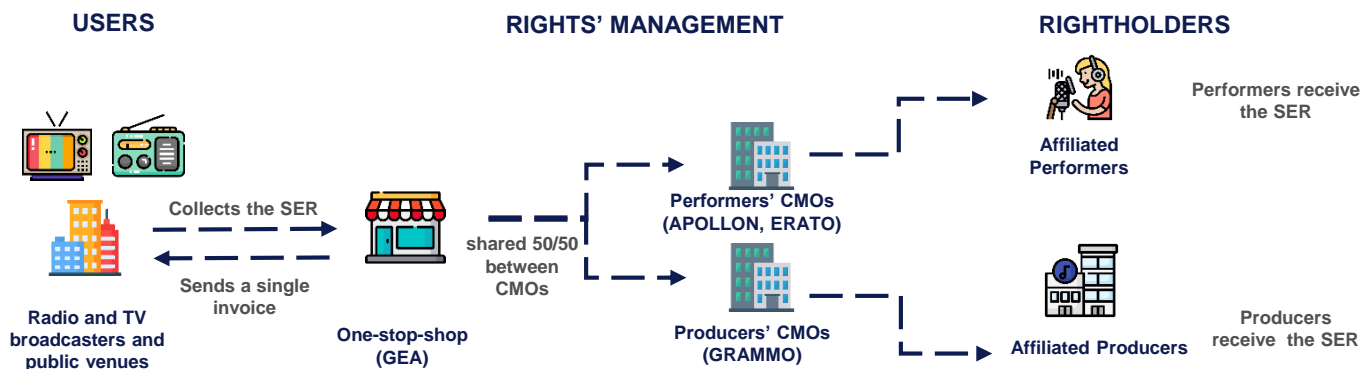


Country Factsheet



Market Practices

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues
- Radio and TV broadcasting
- Webcasting

Collection approach

- GEA acts as a **one-stop-shop** for the collection of the SER on behalf of GRAMMO, APOLLON and ERATO.
- The collected amounts are then transferred twice a year by GEA to the three CMOs representing rightholders according to the following share: 50 % is transferred to GRAMMO, 25% to APOLLON, and 25% to ERATO.

Distribution rules

- Greek CMOs only distribute the SER to performers and producers represented by them (either affiliated to them or indirectly represented through reciprocal agreements) .
- The SER is **equally shared** between performers and producers (Article 49(3) of Law 2121/1993)
- The SER is distributed to rightholders **once per year**.



Impact of the RAAP judgement



Changes to legislation or to market practices

- No changes occurred to the national legislation as national treatment was already applied.



Potential Economic Impact

- No economic impact is known or expected.

Country Factsheet

National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated in Articles **108(4)** and in **116(2)** of the Copyright Law (TRLPI).¹ Article 108(4) refers to “any form of communication to the public” as being subject to this revenue, with the exception of making available in an interactive format.

Points of attachment considered

Spain provides an extensive list of points of attachment in Articles 200(2) and 201(2) of TRLPI: (1) **First fixation of the performance** in Spain, (2) **First or simultaneous publication** of the phonogram in Spain; and (3) **Nationality or habitual residence** in Spain or in the EEA.

Management of the SER

The SER is subject to **mandatory collective management** under Articles 108(4) and 116(3) TRLPI and reserved to the authorised CMOs.

Approach to material reciprocity

Material reciprocity is not applied. Instead, the Copyright Law provides for a general clause establishing the **national treatment principle** with regard to third-country performers and phonogram producers in **Articles 200(3) and 201(2) TRLPI**. Spain protects third-country performers, including those from countries not parties to international agreements alongside Spain, to the extent that such countries also treat Spanish rightholders in the same way as their own nationals.

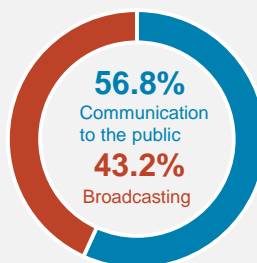


Key Figures on the Single Equitable Remuneration

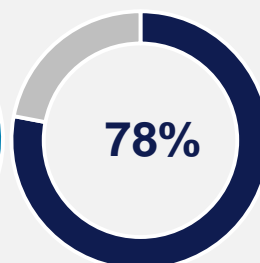
€35.6M
Annual SER collected



Share of SER collected from non-EEA repertoire (No data available)

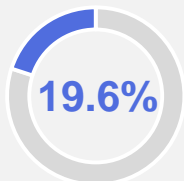


Share of SER per type of use



Share of SER in total revenues collected by the CMOs

€30.7M
Annual SER distributed



Share of SER distributed to non-EEA rightholders*

Average values calculated from data provided by the Spanish performers' and producers' CMOs for 2017-2021.

*The figures with an asterisk are calculated based on data provided by the Spanish performers' CMO only.

Main international markets for Spanish music from which SER revenues are received



USA



UK



Japan



Chile³



South Korea

Main third countries for which SER revenues are collected in Spain (national music consumption)



USA



UK

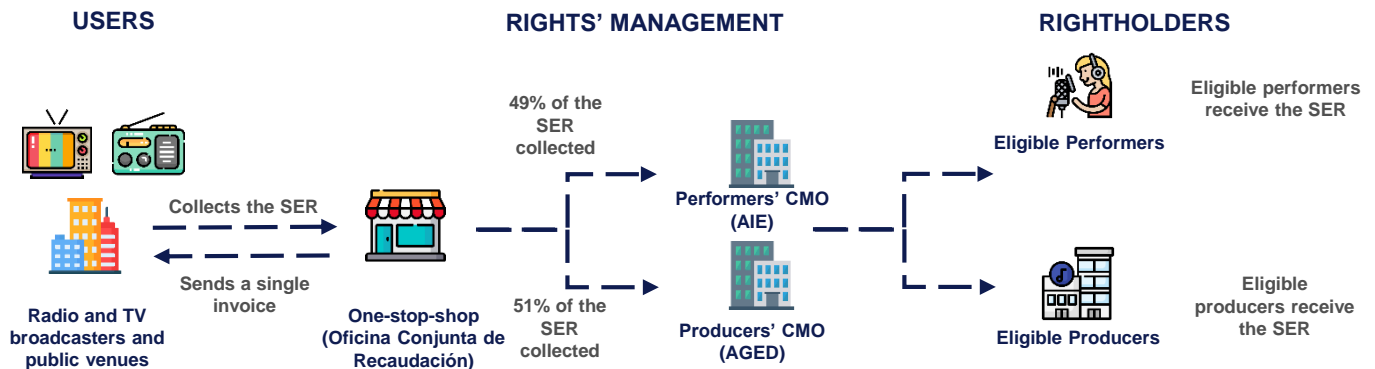


Latin American Countries

¹ Real Legislative Decree 1/1996 of 12 of April, Consolidated Text Intellectual Property Law. available at <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

² Chile and other Latin American countries

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. discos, hospitality venues, stores, shopping malls, transport companies, offices, exhibitions, stadiums)
- Radio and TV broadcasting
- Simulcasting
- Non-interactive webcasting

Users pay a different fee depending on the type of use, on the sector, and on the importance of the music for their business activities. These parameters are defined in the TRLPI and developed in a Ministerial Order.

Collection approach

- Since 2013, a joint body managed by AIE and AGEDI acts as a **one-stop-shop** for the collection of the SER from all users.
- The tariffs are jointly set between AIE and AGEDI and reflect the global repertoire.

Distribution rules

- The collected amounts are transferred by the CMOs to their respective rightholders.
- The SER revenues are split between phonogram producers and performers in a 51% /49% ratio. Within performers, 60% of the collected amount goes to featured performers, and 40% to session musicians.



Impact of the RAAP judgement



Changes to legislation or to market practices

- Spain already applied national treatment. Therefore, no changes are expected.



Potential Economic Impact

- No direct economic impact has yet been observed. However, the application of national treatment across the EU could have an indirect positive impact for the foreign rightholders affiliated to the Spanish CMOs, who will be able to claim revenues from those Member States that previously excluded third-country performers from payment in some cases. Spanish CMOs have many affiliates from Latin American countries.

National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated in Articles **L214-1** to **L214-5** of the French Intellectual Property Code (IPC).¹

Points of attachment considered

France considers the following points of attachment for the payment of the SER: (1) **First fixation of the phonogram in the EU/EEA** (envisaged in Article 214-2 of IPC) and (2) **Nationality of the producer from a Convention country** (by reference to France's reservation to the Rome Convention).

Management of the SER

The SER is subject to **mandatory collective management** under Article **L214-5** of the IPC, and both CMOs and IMEs can in theory collect it.

Approach to material reciprocity

Material reciprocity is indirectly envisaged in **Article L. 214-2 of IPC**, which refers to the international agreements that allow contracting parties to provide for this exception to national treatment. On this basis, France only grants the SER to third-country nationals from countries parties to the Rome Convention and/or to WPPT, and to the extent that they have made reservations to this right. The Paris judicial court confirmed this interpretation in a series of decisions issued in 2017².

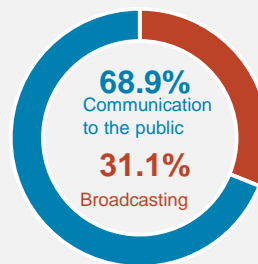


Key Figures on the Single Equitable Remuneration

€77.6M
Annual SER
collected



Share of SER
collected from
non-EEA repertoire
(insufficient data)*



Share of SER per
type of use

39%

Share of SER in
total revenues
collected by the
CMOs

€49.9M
Annual SER
distributed



Share of SER
distributed to
non-EEA rightholders**
(insufficient data)

Average values calculated from data provided by the French performers' and producers' CMOs for 2017-2021.

* Complete data for this indicator was only provided by one of the two CMOs representing performers in France. One of the two CMOs representing producers also provided data for this indicator, but only for 2021. No data was received from the other CMOs.

** Data for this indicator was only provided by one of the two CMOs representing performers.

**Main international markets for
French music from which SER
revenues are received**



USA



Japan



Canada



UK



Switzerland

**Main third countries for which SER
revenues are collected in France
(national music consumption)**



USA



Canada

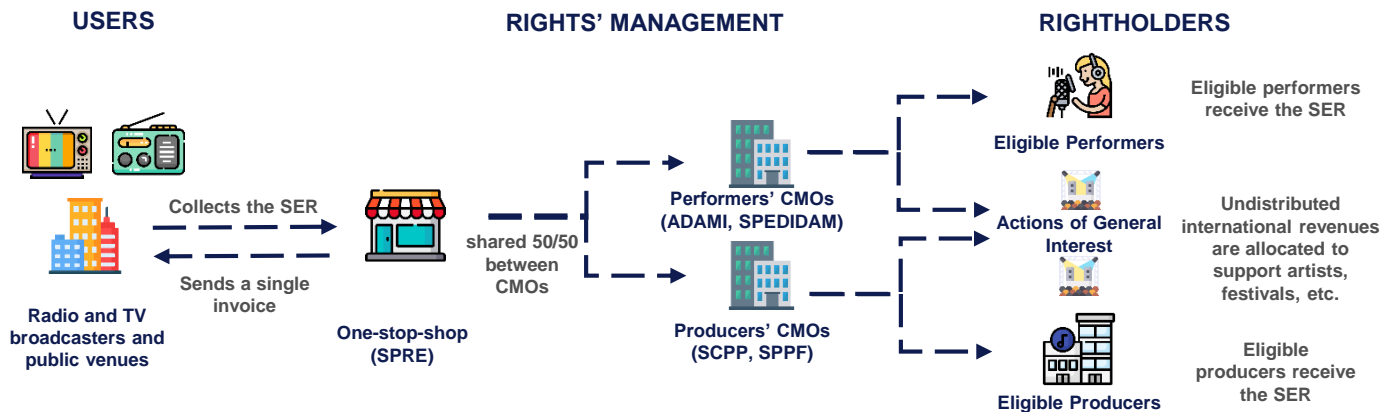


Australia

¹Book II on related rights to copyright of French Intellectual Property Code (Chapter IV), available at: <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006069414/>

²Series of decisions rendered by the Tribunal de Grande Instance de Paris, 3ème Chambre Civile, on 10th March 2017.

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. discotheques, hospitality venues, stores, etc.)
- Radio and TV broadcasting
- Simulcasting
- Webcasting (web radio stations)

Users for which music constitutes an essential part of their activities (e.g. broadcasters, discos) pay a **proportional fee** based on usage, whereas public venues using background music (e.g. cafés, restaurant, shops) pay a **lump sum**.

Collection approach

- SPRE acts as a **one-stop-shop** for the collection of the SER. The collected amounts are then shared with the CMOs representing performers (i.e. ADAMI and SPEDIDAM) and producers (SCPP and SPPF), which transfer it to the rightholders.
- SPRE collects the SER for **any phonogram used in France**, regardless of the place of fixation, publication or the nationality of the producer.

Distribution rules

- French CMOs only distribute the SER to rightholders who meet the envisaged points of attachment, subject to material reciprocity. For the rest of phonograms, the SER collected is considered as **non-distributable**.
- Pursuant to Article L324-17 IPC, the non-distributed amounts are allocated to '**general interest actions**' (i.e. support to creation, dissemination of live shows and training for performers).
- SER is **equally shared** between performers and producers, as provided for in Article L241-1 IPC.



Impact of the RAAP judgement



Changes to legislation or to market practices

- A new provision was added to an existing law implementing various EU financial and economic obligations³ to avoid the **immediate financial risk** in view of retroactive application of the RAAP judgement. In particular, the amendment provides a legal ground for the undistributed revenues collected by French CMOs for the use of foreign repertoire which had been allocated until then to cultural activities.



Potential Economic Impact

- The non-distributable amounts previously invested to support artists and cultural activities in France will need to be included in the calculation of the revenues distributed to third-country rightholders. Since 2020 these revenues are kept aside in view of an expected EU intervention on the matter.

€120M

estimated as back payments for non-distributed revenues between 2015-2019⁴

€25-30M

estimated annual money flows from France to third countries⁴

³ Article 35 of Law n° 2020-1508 of 3 December 2020, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607095/>

⁴ Based on the official estimates shared by the French Ministry of Culture and on data available at the website of the French Senate



Country Factsheet



National Rules Implementing the Single Equitable Remuneration

Relevant provisions

The right to single equitable remuneration is regulated in **Articles 136 and 142** of the Copyright and Related Rights Act (CRRRA) for performers and producers, respectively.

Management of the SER

The **SER is subject to mandatory collective management** according to Article 142(3) of the CRRRA. Article 244 establishes that this revenue may be managed by an organisation for the collective exercise of rights that has been authorised by the Government.

Points of attachment considered

CRRRA does not lay down specific provisions with regard to the rightholders considered to be eligible for the payment of the SER. The national rules refer to the protection granted under relevant international treaties signed by Croatia (i.e. Rome Convention and WPPT), subject to the reservations made by Croatia. Croatia does not recognise the fixation criterion.

Approach to material reciprocity

Article 7(4) of CRRRA establishes a general provision on material reciprocity. In spite of this provision, the Croatian CMOs reported that they collect for the whole music repertoire and pay out the SER for all the recordings claimed by rightholders, thus applying national treatment.

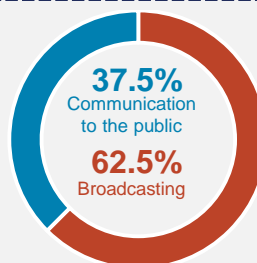


Key Figures on the Single Equitable Remuneration

€4.6M
Annual SER collected



Share of SER collected from non-EEA repertoire
(No data available)



€4.3M
Annual SER distributed



Share of SER distributed to non-EEA rightholders
(No data available)

Share of SER per type of use

Share of SER in total revenues collected by the CMOs
(No data available)

Average values calculated from data provided by the Croatian producers' CMO for 2017-2020 and by the performers' CMO for 2021 only.

Main international markets for Croatian music from which SER revenues are received



UK

Main third countries for which SER revenues are collected in Croatia (national music consumption)



US



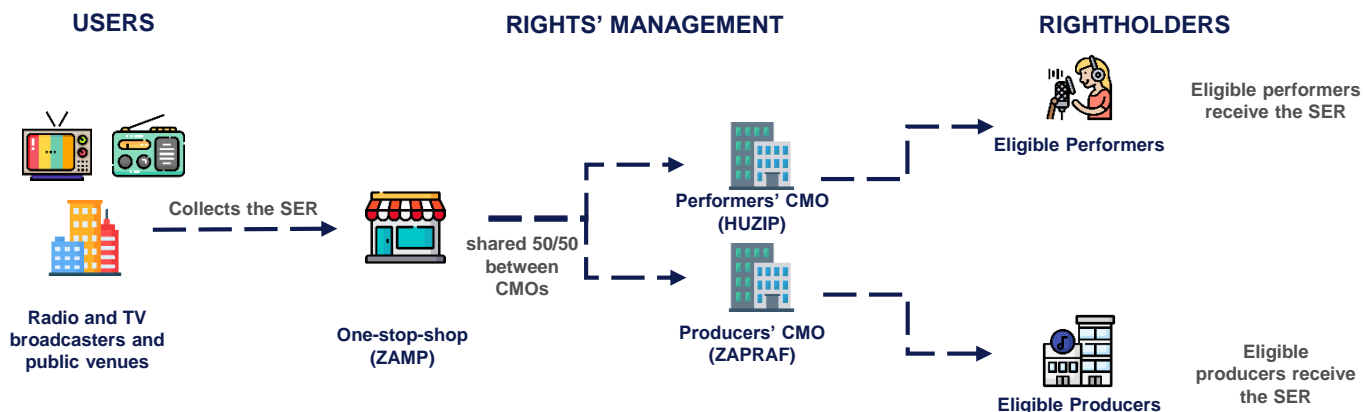
Australia

¹Croatia Copyright and Related rights Act and Acts on amendments , available at: <https://wipolex.wipo.int/en/text/357287>



Market Practices

SINGLE EQUITABLE REMUNERATION VALUE CHAIN



Eligible uses

- Communication in public venues (e.g. shops, restaurants, hotels, museums, sports venues, amusement parks, transport services, etc.)
- Radio and TV broadcasting

Collection approach

- ZAMP (CMO for authors rights) acts as a **one-stop-shop** for the collection of the SER on behalf of the performers' CMO (HUZIP) and the producers' CMO (ZAPRAF).
- The non-EEA repertoire is already included in the tariffs that music users pay in Croatia.

Distribution rules

- CMOs distribute all the collected revenues to rightholders regardless of nationality of the rightholder or place of fixation/publication of the phonogram.
- CMOs distribute to third-country nationals that are affiliated to them or where bilateral representation agreements exist.
- The **average split** of SER revenues between producers and performers is 50/50.
- Depending on the amount, SER revenues are paid **monthly, every three months, or yearly** to the rightholders.



Impact of the RAAP judgement



Changes to legislation or to market practices

- Croatia already applies national treatment and their tariffs cover the global repertoire. Therefore, no changes are expected.



Potential Economic Impact

- No economic impacts have been reported.



Country Factsheet



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated for performers and producers in **Articles 73 and 73 bis** of the Copyright Act (CL).¹

Points of attachment considered

Articles 185(2) and 189(1) CL provide for the following points of attachment: (1) **First fixation** of the phonogram in Italy; (2) **Nationality** of the producer or performer in Italy; and (3) **Residency of the performer or producer in Italy**.

Management of the SER

Article 73 CL provides for **mandatory collective management** of the SER. According to this provision, the management of the SER can be entrusted to any of the CMOs and IMEs that comply with the legal requirements for the collective management of related rights to copyright.

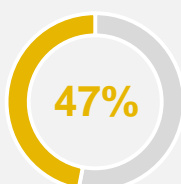
Approach to material reciprocity

Material reciprocity is envisaged in **Articles 186(2) and 187 of the CL**. However, the Legislative Decree no. 82/1946 **suspended indefinitely** their application. Therefore, national treatment is applied in Italy.²



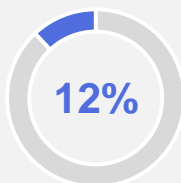
Key Figures on the Single Equitable Remuneration

€21.2M
Annual SER collected

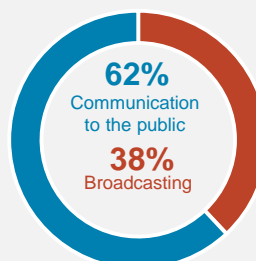


Share of SER collected from non-EEA repertoire*

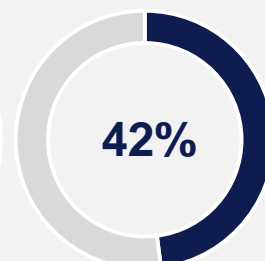
€20.2M
Annual SER distributed



Share of SER distributed to non-EEA rightholders



Share of SER per type of use



Share of SER in total revenues collected by the CMOs

Average values calculated from data provided by the Italian performers' and producers CMOs for 2017-2021.

* The figure has been calculated based on the data provided by the Italian producers CMO alone for 2017-2019.

Main international markets for Italian music from which SER revenues are received



USA



Canada

Main third countries for which SER revenues are collected in Italy (national music consumption)



USA

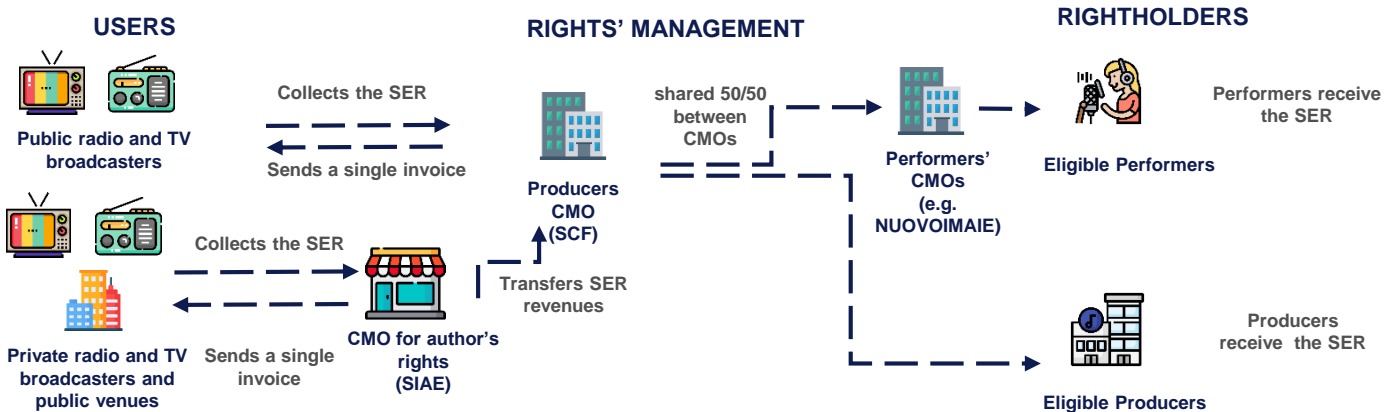


UK

¹ Legislative act of 22 april 1941, amended by (Amended Up To Law 124 Of August 29, 2017). n. 633 "Protection of copyright and other rights related to its exercise" available at: [LEGGE 22 aprile 1941, n. 633 – Normativa](https://www.legge.gov.it/legge/22-aprile-1941-n-633-normativa) (as amended up to November 16, 1994)

² Legislative Decree no. 82/1946 <https://wipo.lex.wipo.int/en/text/306471>

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues
- Radio and TV broadcasting

In comparison with other Member States, a remuneration is also foreseen when the phonogram is used with non-profit purposes (e.g. parishes, senior centres)

Collection approach

- The CMO for authors' rights, SIAIE, collects the SER for both performers and producers from public venues and private broadcasters on behalf of SCF.
- SCF collects by itself the SER from public radio and TV broadcasters for both performers and producers.
- SCF transfers the share of revenues to the various CMOs/ IMEs³ representing performers.

Distribution rules

- The collected amounts are distributed by the CMOs to their respective rightholders.
- The SER revenues collected are **equally shared** between performers and producers.
- NUOVOIMAIE (performers' CMO), distributes the SER at least **once a year** to the foreign CMOs and **twice a year** to all other artists.
- SCF distributes the SER **four times a year** to producers.



Impact of the RAAP judgement



Changes to legislation or to market practices

- No changes occurred to the national legislation as national treatment was already applied.



Potential Economic Impact

- No economic impact is known or expected.

³ According to the list held by the Italian Communications Authority pursuant to art.40 of Legislative Decree no.35/2017 (implementing in Italy the EU Directive 2014/26/EU "Bamier"), as of July 27 2021 (last updated) the following CMO and IME are entitled to manage the single equitable remuneration under art. 73/37-bis ICL: AFI – ASSOCIAZIONE FONOGRAFICI ITALIANI, AUDIOCOOP, EVOLUTION S.r.l., GETSOUND S.r.l., ITSRIGHT S.r.l., NUOVO IMAIE, RETE ARTISTI SPETTACOLO PER L'INNOVAZIONE, SCF S.r.l.



National Rules Implementing the Single Equitable Remuneration

Relevant provisions

The right to SER for any communication of a phonogram to the public is regulated in **Article 55 of the Copyright and Related Rights Law (CRRL)**.¹

Points of attachment considered

Article 3 of the **CRRL** and obligations of Lithuania in international agreements foresee the following eligibility criteria: (1) **First fixation in Lithuania** (2) **First or simultaneous publication in Lithuania** (3) **Nationality or residence of the producer/performer in Lithuania**.

Management of the SER

The SER is subject to mandatory collective management according to **Article 65 of CRRL** and only CMOs can manage it.

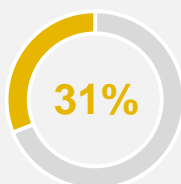
Approach to material reciprocity

Material reciprocity is **not envisaged**. In fact, the **CRRL** specifies that national treatment is the rule under Article 3. Therefore, national treatment applies to all phonograms of Rome Convention and WPPT signatory countries.

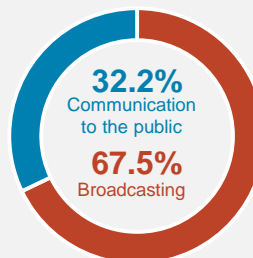


Key Figures on the Single Equitable Remuneration

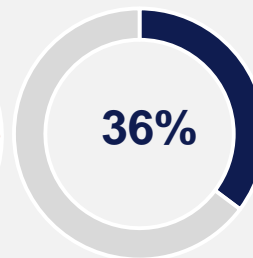
€3.1M
Annual SER collected



Share of SER collected from non-EEA repertoire

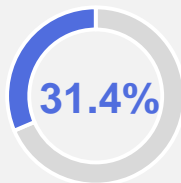


Share of SER per type of use



Share of SER in total revenues collected by the CMO

€2.6M
Annual SER distributed



Share of SER distributed to non-EEA rightholders

Average values calculated from data provided by the joint Lithuanian CMO for 2019-2021.

Main international markets for Lithuanian music from which SER revenues are received



UK

Main third countries for which SER revenues are collected in the Czech Republic (national music consumption)



USA



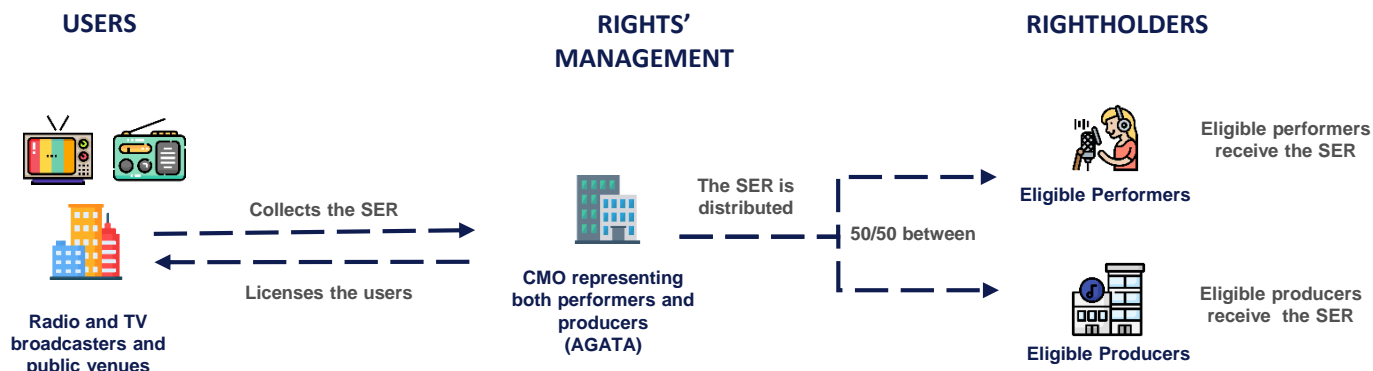
UK

¹ Law on Copyright and Related Rights, 18 May 1999, No XII-2237, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5f13b560b2b511e59010bea026bdb259?jfwid=32wf6i76>



Market Practices

SINGLE EQUITABLE REMUNERATION VALUE CHAIN



Eligible uses

- Communication in public venues (e.g. restaurants, bars, cafes, hotels, nightclubs, gyms, waiting rooms, events, conferences)
- Radio and TV broadcasting
- Webcasting

Collection approach

- AGATA, the joint society representing the rights of both phonogram performers and producers, collects and distributes the SER to all rightholders.

Distribution rules

- The SER is distributed according to music playlists of TV and radio broadcasters, as well as of streaming platforms.
- The collected SER is **distributed equally** between performers and producers, as specifically provided for in Article 55(1) of the CRRA.
- AGATA distributes the SER revenues **four times per year** to local rightholders and **twice per year** to international rightholders.



Impact of the RAAP judgement



Changes to legislation or to market practices

- There have been no changes either to the law or to the market practices since Lithuania already applied national treatment.



Potential Economic Impact

- No impact is anticipated.



Country Factsheet



National Rules Implementing the Single Equitable Remuneration

Relevant provisions

The single equitable remuneration is established in **Article 77 (1)-(3) of the Act LXXVI of 1999 on Copyright (CA)**¹.

Management of the SER

The SER is **subject to mandatory collective management** according to Article 77(1) of the CA. Only CMOs are authorised to manage it.

Points of attachment considered

Hungarian law does not lay down particular points of attachment for the payment of the SER. Hungary has not made any reservation to the Rome Convention/WPPT regarding the application of the points of attachment. Therefore, all the eligibility criteria to determine the protection of third-country rightholders envisaged in the Rome Convention are acknowledged by this country.

Approach to material reciprocity

Material reciprocity is **not envisaged**, therefore **national treatment applies**. Section 2 of the CA extends the national treatment to the nationals of practically all the countries of the world. Article 4(2) of the CA prohibits any discrimination of rightholders.

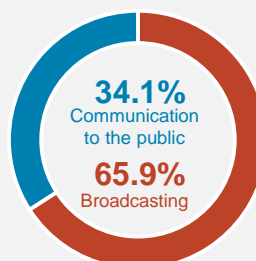


Key Figures on the Single Equitable Remuneration

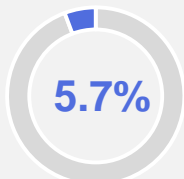
€3.5M
Annual SER collected



Share of SER collected from non-EEA repertoire



€7.6M
Annual SER distributed



Share of SER distributed to non-EEA rightholders*

Share of SER per type of use

Share of SER in total revenues collected by the CMOs
(No data available)

Average values calculated from data provided by the Hungarian producers' and performers' CMOs for 2017-2021

* This figure is based on data provided by the performer's CMO only. It reflects the average share of SER paid to non-EEA CMOs out of the total SER distributed by that CMO during 2017-2021.

Main international markets for Hungarian music from which SER revenues are received



US

Main third countries for which SER revenues are collected in Hungary (national music consumption)



UK



Canada



Russia



US



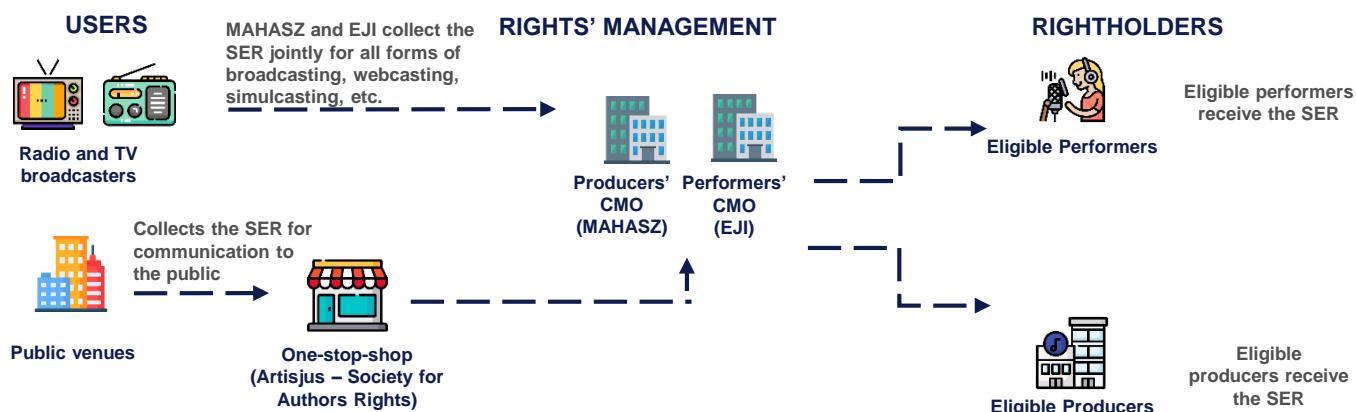
Serbia

¹ 1999 LXXVI. Law, available in English at: <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/hu/hu035en.pdf>



Market Practices

SINGLE EQUITABLE REMUNERATION VALUE CHAIN



Eligible uses

- Communication in public venues
- Radio and TV broadcasting
- Webcasting
- Simulcasting

Collection approach

- CMOs representing producers and performers (MAHASZ and EJI, respectively) jointly collect the SER for all forms of broadcasting, webcasting, simulcasting, direct injection and retransmission.
- The SER from communication to the public uses is collected by the authors' collecting society Artisjus on behalf of MAHASZ and EJI.

Distribution rules

- CMOs pay out the collected SER for the use of foreign repertoire in full amount to the corresponding rightholders
- SER revenues collected are **split equally** between producers and performers, in accordance with Article 71 CA.
- MAHASZ distributes SER revenues depending on when the income comes in, therefore the distribution **frequency varies** (quarterly, every six months or yearly).
- EJI distributes on a **yearly basis**, but on multiple occasions (over 100 distributions a year).



Impact of the RAAP judgement



Changes to legislation or to market practices

- Neither the legal framework nor the market practices have been amended as Hungary already applied national treatment.



Potential Economic Impact

- No direct economic impacts have been reported by the stakeholders consulted. |



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated in **Article 7 of the Neighboring Act (NRA)**.¹ The making available of a phonogram for on-demand uses is expressly excluded from this remuneration.

Points of attachment considered

Dutch legislation envisages various **eligibility criteria** for performers and producers to benefit from protection in Article 32 of the NRA: (1) **First fixation** in the Netherlands or in a Rome Convention country (2) **First or simultaneous publication** in the Netherlands or in a Rome Convention country and (3) **Nationality of the EU/EEA or in a Rome Convention country** (4) **Habitual residency or registered office in the Netherlands**.

Management of the SER

The SER is subject to **mandatory collective management** pursuant to Article 15 of the NRA and can only be collected by the Dutch CMO (SENA).

Approach to material reciprocity

Until January 2021, material reciprocity was envisaged with regard to both the repertoire protected under the Rome Convention and the WPPT in **Article 32(4) of the NRA** and **Article IIIa of the Act Implementing the InfoSoc Directive**, respectively.² In January 2021, Article IIIa was amended to remove material reciprocity regarding WPPT repertoire, but the NRA wording remained unchanged. In practice, though, the Dutch CMO has ceased to apply material reciprocity as most of the foreign repertoire played in the Netherlands is already protected under the WPPT.

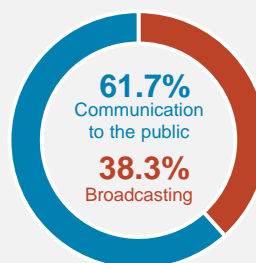


Key Figures on the Single Equitable Remuneration

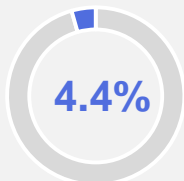
€67.1M
Annual SER collected



Share of SER collected from non-EEA repertoire (No data available)



€62.3M
Annual SER distributed



Share of SER distributed to non-EEA rightholders

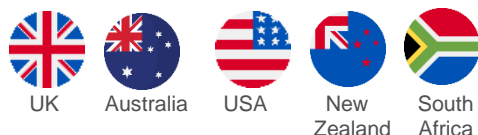
Share of SER per type of use

Share of SER in total revenues collected by the CMO*

Average values calculated from data provided by the joint Dutch CMO for 2017-2021.

*SER revenues represent the total revenue collection of the Dutch joint CMO reporting the data above (SENA).

Main international markets for Dutch music from which SER revenues are received



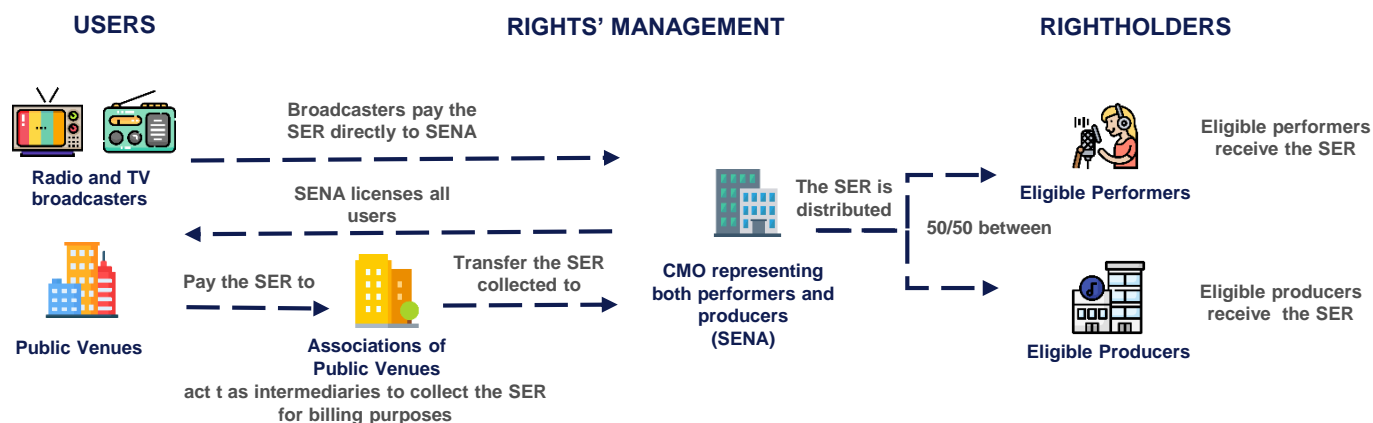
Main third countries for which SER revenues are collected in the Netherlands (national music consumption)



¹Dutch Neighbouring Rights Act (WNR in Dutch), available at: <https://wetten.overheid.nl/BWBR0005921/2021-06-07>

² Article IIIa of the Amendment Act 1912 Copyright Act (implanting the directive on copyright and related rights in the information society. Last accessed on 05/04/2022 and available at <https://wetten.overheid.nl/BWBR0016987/2021-01-01>

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues
- Radio and TV broadcasting
- Webcasting
- Cable transmission

Broadcasters pay a lump sum that considers different parameters, including volume of music used, number of channels and outreach. Public venues pay a fee based on the venue size, functionality of the music, the visitor intensity and public accessibility.

Collection approach

- The Dutch CMO (SENA) collects and distributes the SER for/to both performers and producers.
- SENA collects the SER directly from broadcasters. In the case of public venues (hospitality venues, retailers, etc.), the CMO sometimes relies on associations that take care of the billing to their members.
- Until January 2021, SENA only collected the SER for phonograms made by producers from Rome Convention countries or from WPPT countries to the extent of their reservations as regards the protection of Dutch producers.

Distribution rules

- In practice, the Dutch CMO uses as main criterion for the distribution of the SER revenues the **country of origin of the producer**.
- Until January 2021 only the phonograms financed by producers from Rome Convention countries or from WPPT countries which reciprocated on the protection of Dutch producers were remunerated by SENA.
- The collected SER is **shared equally** between the eligible performers and producers pursuant to Article 71(4) NRA.



Impact of the RAAP judgement

€24M

estimated annual money flows from the Netherlands to third countries

40%

increase in the tariffs applicable to public venues in order to compensate for the impact of RAAP³



Changes to legislation or to market practices

- Article IIIa of the Act Implementing InfoSoc Directive was amended in January 2021 to ensure that the SER applies in full to any beneficiary eligible for protection under the WPPT irrespective of any existing reservations to that Treaty. However, Article 32(4) of the Dutch Neighbouring Act maintains the material reciprocity provision with regard to the Contracting States of the Rome Convention.



Potential Economic Impact

- SENA already negotiated a surcharge to its applicable tariffs, but this increase is only valid for 2021 and 2022 and it only covers public performance users. No agreement has yet been reached with broadcasters.

³ Article IIIa of the Amendment Act 1912 Copyright Act (implanting the directive on copyright and related rights in the information society. Last accessed on 05/04/2022 and available at <https://wetten.overheid.nl/BWBR0016987/2021-01-01>

⁴ Estimations made by SENA



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to equitable remuneration is regulated in **§76 (3) of the Copyright Act¹**

Points of attachment considered

As set out under §99 of the Copyright Act, Austria considers two main eligibility criteria for the payment of the SER: (1) the **Publication of the phonogram in Austria** and (2) the **Nationality of the producer in Austria**. Additionally, phonograms produced by foreigners and published abroad enjoy protection on the basis of material reciprocity in accordance with international treaties.

Management of the SER

The SER is subject to mandatory collective management under **§ 16 (a)** and **§ 76 (3) of the Copyright Act**.

Approach to material reciprocity

§99(5) of the Copyright Act provides that foreign producers and performers may claim the SER in accordance with international agreements. As Austria had made reservations under Article 12 of the Rome Convention, material reciprocity as regards the SER was thus implicit in the referred general provision. However, the national CMO contends that it now interprets the law in the light of the RAAP judgement and no longer applies material reciprocity.²



Key Figures on the Single Equitable Remuneration

€20M
Annual SER collected

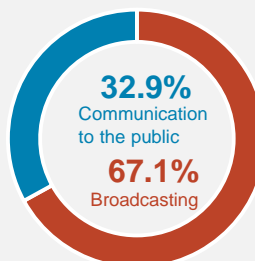


Share of SER collected from non-EEA repertoire
(No data available)

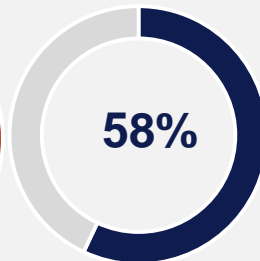
€18.3M
Annual SER distributed



Share of SER distributed to non-EEA rightholders
(No data available)



Share of SER per type of use



Share of SER in total revenues collected by the CMO

Average values calculated from data publicly available in the transparency reports of the Austrian CMO for 2017-2020.

Main international markets for Austrian music from which SER revenues are received



Canada



Switzerland

Main third countries for which SER revenues are collected in Austria (national music consumption)

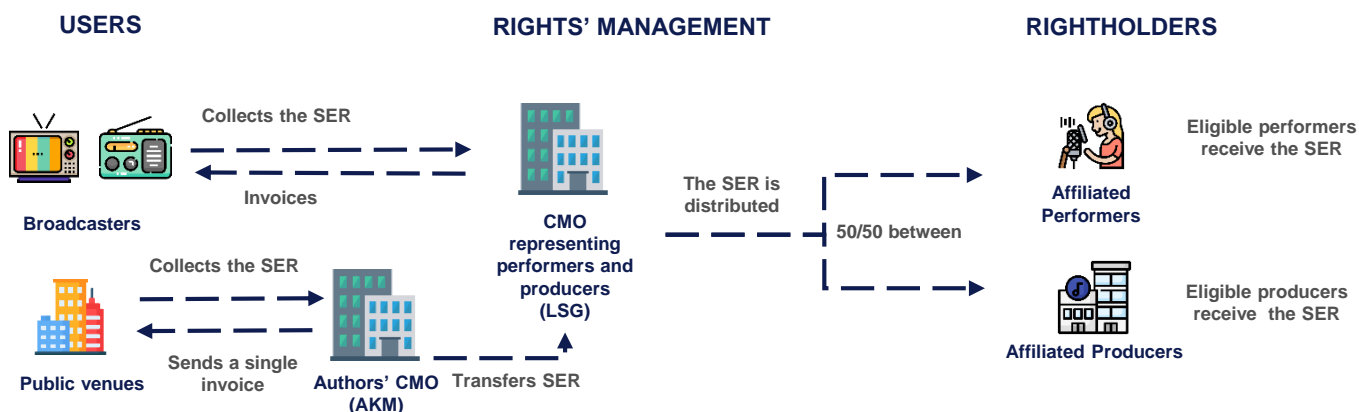


Switzerland

¹Austrian Copyright Law is available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>

² Information based on interpretation of the Austrian Ministry and the CMO interviewed.

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. discotheques, hospitality venues, stores, etc.)
- Radio and TV broadcasting
- Simulcasting
- Webcasting (web radio stations)

Broadcasters pay a **proportional fee** based their music usage and commercial income from advertisement.

Collection approach

- AKM (CMO for authors) collects the SER from public venues and transfers the revenues collected to LSG.
- LSG, the joint society representing performers and producers, collects the SER directly from broadcasters.
- The LSG is a joint society representing performers and producer.

Distribution rules

- LSG distributes the SER only to producers and performers affiliated to it.
- The SER collected is **split equally** between performers and producers, pursuant to **§ 76(3)** of the Copyright Act in absence of agreement.
- The SER is distributed to producers **once per year** (except in the case of major labels, which are paid twice a year). The distribution for performers follows a rolling plan, and it is distributed as soon as it becomes available (but **at least once per year**).



Impact of the RAAP judgement



Changes to legislation or to market practices

- No legislative amendment is considered necessary, as the law is already being interpreted in the light of the judgement. Accordingly, Austria already applies national treatment.



Potential Economic Impact

- Following its change of approach, the CMO anticipates an increase in the number of affiliations from third-country performers and small labels in order to receive the SER.

€10 M

estimated annual money outflows from Austria to third countries, representing 40% less revenues for Austrian performers, and 15 % less revenues for Austrian producers (Indies)³

³ Information shared by OESTIG (the performers association) and VTMO (independent labels association) based on estimates.



Country Factsheet



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is provided for in **Article 184(3) of the Portuguese Copyright and Related Rights Act (CRRA)**.¹

Points of attachment considered

Article 190 CRRA envisages **multiple eligibility criteria** for performers and producers to benefit from protection: (1) **First fixation** of the phonogram in Portugal, (2) **First or simultaneous publication in Portugal** (after the first publication of the phonogram in a Rome Convention or WPPT country) and (3) **nationality of the producer or performer in Portugal or in the EEA** (or establishment i.e. headquarters in the case of producers).

Management of the SER

The SER is subject to **mandatory collective management**. However, entities other than CMOs can manage this revenue. In practice though, only two CMOs are authorised to do it.

Approach to material reciprocity

Material reciprocity is not envisaged in the CRRA. While Article 64 CRRA foresees material reciprocity with regard to authors' rights, this exception does not apply with regard to the SER given the existence of a more specific provision in Article 190 that protects third-country phonograms. Therefore, Portugal applies national treatment to phonograms of Rome Convention and WPPT signatory countries.

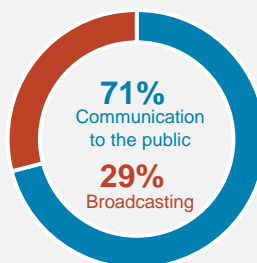


Key Figures on the Single Equitable Remuneration

€4.3M
Annual SER collected



Share of SER collected from non-EEA repertoire
(No data available)



€3.8M
Annual SER distributed



Share of SER distributed to non-EEA rightholders
(No data available)

Share of SER per type of use

Share of SER in total revenues collected by the CMOs
(No data available)

Average values calculated from data provided by Portuguese producers' CMO for 2017-2021.

Main international markets for Portuguese music from which SER revenues are received



USA Brazil

Main third countries for which SER revenues are collected in Portugal (national music consumption)



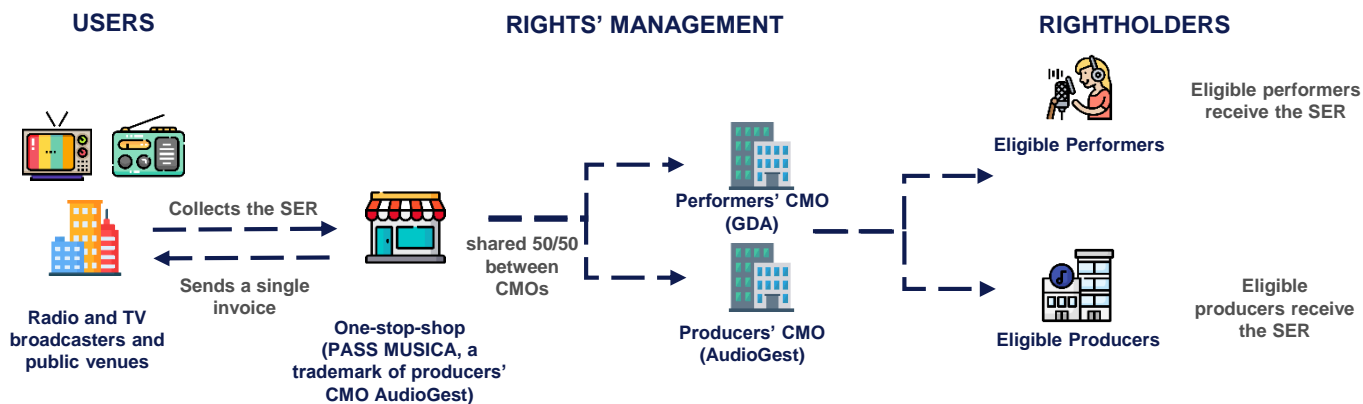
UK USA Brazil

¹Code of Copyrights and Related Rights (CDADC in Portuguese), available at: https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php? ficha=101&artigo_id=&nid=484&pagina=2&tabela=leis&nversao=&so_miolo=



Market Practices

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. discotheques, hospitality venues, stores, festivals)
- Radio and TV broadcasting
- Simulcasting
- Webcasting (web radio stations)

Users pay a different fee depending on various factors (e.g. type of use, sector, seasonality, venue capacity).

Collection approach

- Pass Música, a trademark of the producers' CMO AudioGest, acts as a **one-stop-shop** for the collection of the SER. The share corresponding to performers is then transferred to the performers' CMO (GDA).
- AudioGest mainly looks at the simultaneous publication criterion for the protection of third-country phonograms used in Portugal.

Distribution rules

- The collected amounts are transferred by the CMOs to their respective rightholders.
- SER revenues are shared **on equal parts (50/50)** between performers and producers. Article 184(3) simply states that producers must split the remuneration with performers.
- GDA pays out the SER **four to five times a year** to performers, whilst AudioGest distributes this revenue **twice a year** to producers.



Impact of the RAAP judgement



Changes to legislation or to market practices

- Portugal already applied national treatment as regards the SER. |



Potential Economic Impact

- No economic impact is expected.



National Rules Implementing the Single Equitable Remuneration

Relevant provisions

The right to the SER is established in **Article 130 of the Copyright and Related Rights Act (CRRA)**.¹ **Article 176 CRRA** regulates the SER with regard to third-country rightholders.

Points of attachment considered

CRRA does not explicitly lay down any qualification criteria to benefit from the SER. Pursuant to Article 176(1) and obligations undertaken in international agreements, the eligibility criteria for the SER are: (1) **First fixation of the phonogram in the EU** (2) **Nationality of the rightholder in the EU** (3) **Residency of the rightholder in Slovenia**. Moreover, other third-country rightholders shall enjoy the same protection if international convention provide it (Article 176(2) CRRA).

Management of the SER

The SER is subject to **mandatory collective management** as per Article 147(1) of the CRRA and Article 9 CMCRRA).²

Approach to material reciprocity

Material reciprocity is envisaged in **Article 176(2) of the CRRA**. According to this provision, third-country rightholders enjoy the same protection as EEA rightholders if it is envisaged in an international convention, or if "factual reciprocity" exists (i.e. term used in Slovenian law to refer to "material reciprocity").

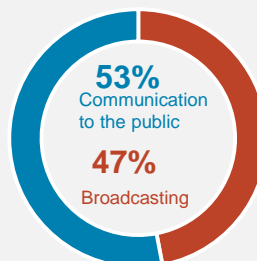


Key Figures on the Single Equitable Remuneration

€4.4M
Annual SER
collected



**Share of SER
collected from
non-EEA repertoire**
(No data available)



€1.8M
Annual SER
distributed



**Share of SER
distributed to
non-EEA rightholders**
(No data available)

**Share of SER per
type of use**

**Share of SER in
total revenues
collected by the
CMO**
(No data available)

Average values calculated from data provided by joint Slovenian CMO for the period 2017-2021.

*Gap between revenues collected and distributed is mainly due to a system of debt collection for unpaid invoices that extends over five years. Therefore, some invoices may not be effectively distributed until five years after their issuance.

**Main third countries for which SER
revenues are collected in Slovenia
(national music consumption)**



USA

**Main international markets for
Slovenian music from which SER
revenues are received**

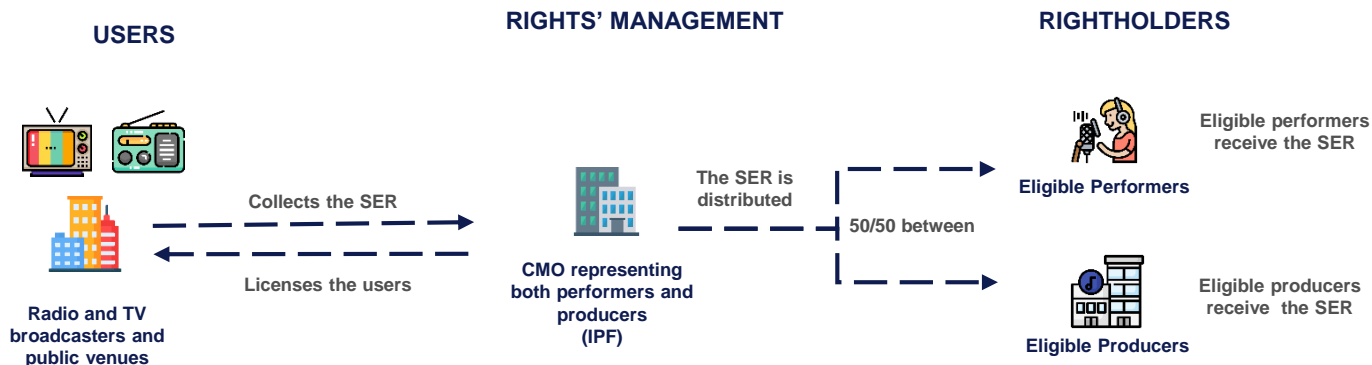


Japan

¹ Slovenian Copyright Law available at: <https://dokumen.tips/documents/copyright-and-related-rights-act-of-30-copyright-and-related-rights-act-1-of.html?page=1>

² Collective Management of Copyright and Related Rights Act (CMCRRA) available at: [https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/si/si004en.html#Management of Copyright and Related Rights Act \(wipo.int\)](https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/si/si004en.html#Management of Copyright and Related Rights Act (wipo.int))

SINGLE EQUITABLE REMUNERATION VALUE CHAIN



Eligible uses

- Communication in public venues
- Radio and TV broadcasting
- Rebroadcasting and secondary broadcasting;

Collection approach

- The joint CMO (IPF) collects and distributes the SER to both performers and phonogram producers.
- Collection and distribution of the SER to third-country rightholders is based on what is provided for in international agreements and subject to material reciprocity.

Distribution rules.

- The average split of SER revenues between producers and performers **is done 50/50** in accordance with Article 130(2) CRRA, which establishes that the SER is payable to the producer, who shall pay half of it to the performers participating in the phonogram, unless otherwise agreed.
- The SER is distributed to rightholders **on an annual basis**.



Impact of the RAAP judgement



Changes to legislation or to market practices

- The Slovenian legal framework has not been amended thus far. The Slovenian CMO consulted reported not having yet received any guidelines.
- As a result of the regime change, the CMO expects to be able to sign more bilateral agreements with CMOs from third countries that do not reciprocate on the rights acknowledged by Slovenia, which might result in additional revenues to collect and distribute.



Potential Economic Impact

- So far, no economic impact has been detected. However, according to the national authority, an increase in the fees paid by users cannot be ruled out. Additionally, a possibility exists that third-country rightholders could bring actions claiming compensation within the 5-year prescription period. This could have an impact on the functioning of the CMO and on possible state liability.



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The right to a single equitable remuneration is regulated in **Section 47** of the Copyright Act¹. This right is extended to third-country rightholders through the ratification of the Rome Convention and WPPT by Decree No. 95/2010².

Points of attachment considered

Section 64(2) of the Copyright Act lays down the main eligibility criterion for the payment of the SER: (1) the first **fixation of the phonogram for the first time in an EU/EEA Member State**. (2) the **nationality of the producer in a Rome Convention or WPPT country**. For this latter criterion the CMO considers the headquarters of the company.

Management of the SER

The SER is subject to **mandatory collective management** under Paragraph 47 and 47(a) of the Finnish Copyright Act and reserved to the authorised CMO upon mandate from the Ministry of Education and Culture.

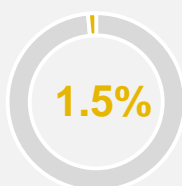
Approach to material reciprocity

Material reciprocity is envisaged under **Section 65** of the Copyright Act with a general scope, and an order from the Government is needed to apply it to specific rights. An Order was issued by Decree 575/1995³ to apply this exception to the SER. As a result, Finland only protects foreign rightholders to the extent and during the time that their countries of origin also acknowledge the remuneration right to Finnish nationals.



Key Figures on the Single Equitable Remuneration

€17.3M
Annual SER collected

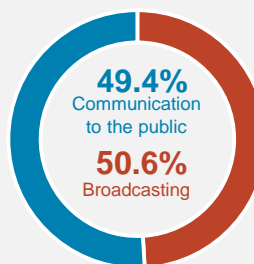


Share of SER collected from non-EEA repertoire

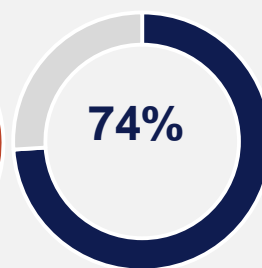
€13.4M
Annual SER distributed



Share of SER distributed to non-EEA rightholders



Share of SER per type of use



Share of SER in total revenues collected by the CMO*

Average values calculated from data provided by the joint Finnish CMO for 2017-2021.

* Based on data published in Gramex' transparency reports for 2017-2021.

Main international markets for Finnish music from which SER revenues are received



USA



Canada



UK



Japan

Main third countries for which SER revenues are collected in Finland (national music consumption)



USA



Japan



Canada



UK



Australia

¹ Finnish Copyright Act, available at: <https://www.finlex.fi/fi/laki/kaannokset/1961/en19610404.pdf>

² Decree No. 95/2010 of the President of the Republic, available at:

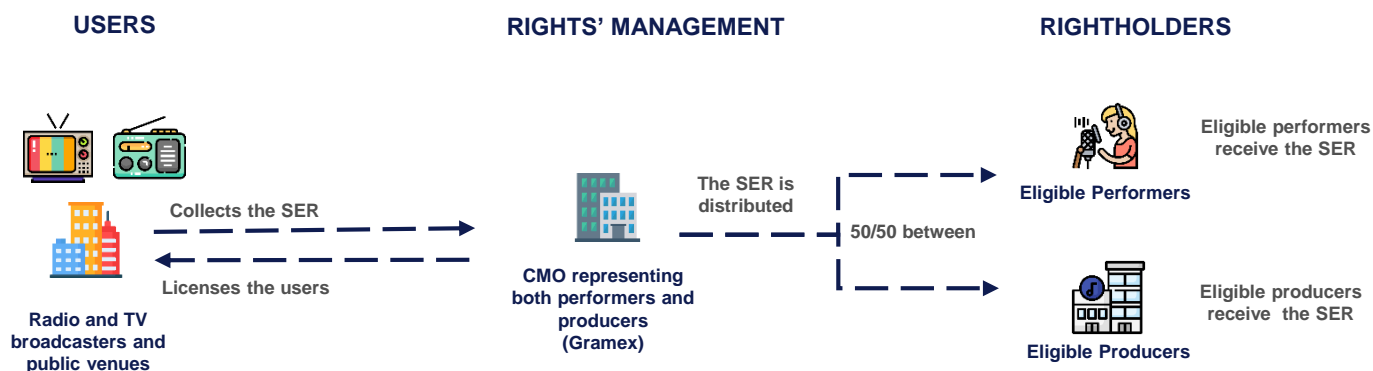
<https://www.finlex.fi/fi/laki/alkup/2010/20100095?search%5Btype%5D=pika&search%5Bpika%5D=WIPOn%20esitys-%20ja%20C3%A4%C3%A4nitesopimus>

³ Decree 575/1995 on the Application of the Copyright Act in Certain Cases to Protected Items Originating in States Belonging to the European Economic Area, available (in Finnish) at <https://www.finlex.fi/fi/laki/alkup/1995/19950575>



Market Practices

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. discotheques, hospitality venues, stores, etc.)
- Radio and TV broadcasting
- Simulcasting
- Webcasting
- Cable retransmission

Broadcasters pay a **flexible fee** depending on the amount of protected music used, whereas public venues pay a **blanket license** based on surface or seat capacity that covers all the protected repertoire regardless of usage.

Collection approach

- Gramex collects the SER on behalf of both performers and producers.
- Gramex collects the SER for for phonograms played in Finland which have been fixed in an EEA country or whose producer is a national of a Convention country, to the extent that such countries also protect Finnish rightholders through an equivalent protection.

Distribution rules

- The SER is not collected for the non-eligible repertoire, and it is consequently also not distributed.
- For the distribution of the income amongst performers in a same phonogram, Gramex uses a **system of roles** that allocates different shares depending on the contribution of the artist.
- The collected SER is **shared equally** between the eligible performers and producers and pay out to them by Gramex.
- The SER may be distributed **monthly, quarterly or annually** depending on license and use.



Impact of the RAAP judgement



Changes to legislation or to market practices

- There has been no change to the Finnish legislation or to the market practices thus far. Finland has a dual legislative system regarding the application of the EU law. As such, the CJEU's decisions are not directly enforceable in Finland until the Government ratifies them. However, a ratification of the RAAP judgement has not yet taken place.



Potential Economic Impact

- Neither the Ministry of Education and Culture nor the Finnish CMO have yet precisely quantified the economic impacts of the judgement. However, according to Gramex the application of national treatment could imply an increase in some of its tariffs, in particular those for public performance, by approximately 30%.



National Rules Implementing the Single Equitable Remuneration (SER)

Relevant provisions

The single equitable remuneration for nationals and EEA rightholders is regulated in **paragraph 47** of the Copyright Act¹, whereas the Swedish International Copyright Regulation provides for the SER in relation to third-country nationals in **Paragraphs 13 and 26**.²

Points of attachment considered

Sections 13 and 26 of the Swedish International Copyright Regulation provide for two points of attachment as regards third-country nationals: (1) **First fixation of the phonogram** in a country party to the Rome Convention or to WPPT, and (2) **Nationality, residency or legal entity** of the producer from a Rome Convention or a WPPT signatory country.

Management of the SER

The SER is subject to the **mandatory collective management under Article 47** of the Copyright Act. Any entity registered with the Swedish Intellectual Property Office and representing a considerable number of rightholders could collect it, even though in practice it is only CMOs doing it.

Approach to material reciprocity

Material reciprocity is envisaged under **Section 13** of the Swedish International Copyright Regulation both with regards to the Rome Convention and the WPPT repertoire.



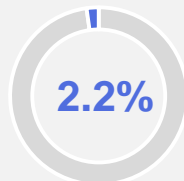
Key Figures on the Single Equitable Remuneration

€35.6M
Annual SER collected

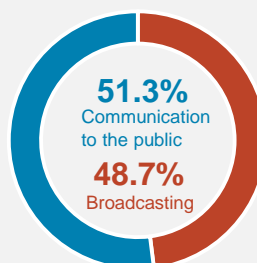


Share of SER collected from non-EEA repertoire (No data available)

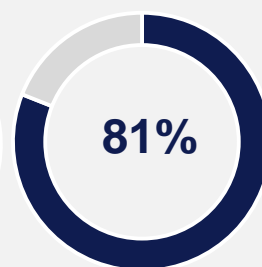
€28.8M
Annual SER distributed



Share of SER distributed to non-EEA rightholders*



Share of SER per type of use



Share of SER in total revenues collected by the CMOs*

Average values calculated from data provided by Swedish performers' and producers' CMOs for 2017-2021.

* The share of SER distributed to non-EEA rightholders has been calculated based on data from performers' CMO only. Revenues from SER account for 100% of IFPI's total collection, while they represent about 60% of SAMIs' collection.

Main international markets for Swedish music from which SER revenues are received



Main third countries for which SER revenues are collected in Sweden (national music consumption)



¹ Law (1960: 729) on copyright in literary and artistic works, available at: <https://rkrattsbaser.gov.se/sfst?bet=1960:729>

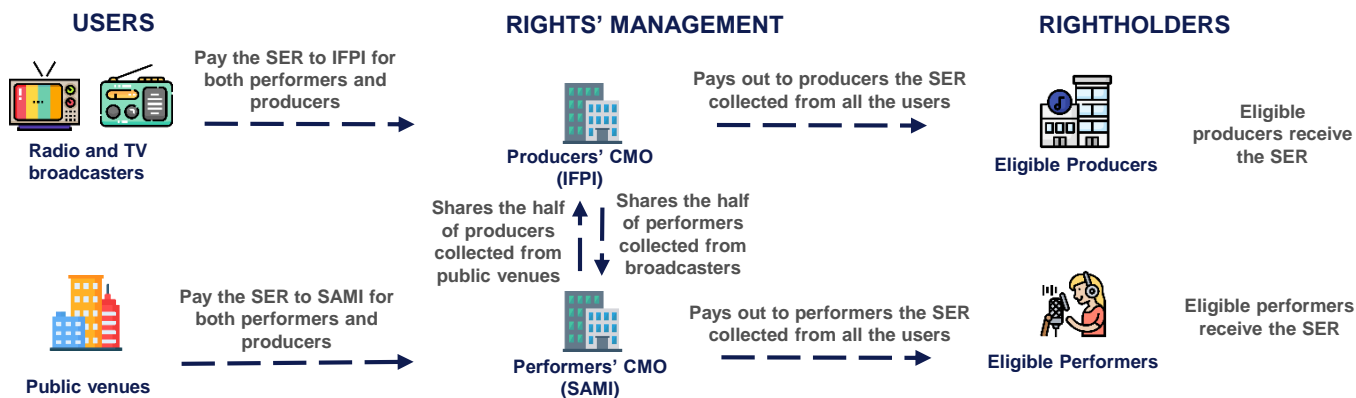
² Act (1960: 729) on copyright in literary and artistic works International Copyright Ordinance (1994: 193), available at <https://rkrattsbaser.gov.se/sfst/adv?fritext=&sbt=1994%3A193&rub=&org=&upph=false&sort=desc>



Country Factsheet

Market Practices

SINGLE EQUITABLE REMUNERATION REVENUE STREAMS



Eligible uses

- Communication in public venues (e.g. shops, restaurants, hotels) Radio and TV broadcasting
- Simulcasting
- Webcasting
- Cable retransmission

Big broadcasters pay a fee reflecting their music usage, whereas small broadcasters pay a share of their revenues. Public venues pay a different fee depending on different parameters (e.g. opening hours, venue size, capacity, etc.)

Collection approach

- The collection of the SER is split between the two CMOs: the performers' CMO collects the SER from public venues and the producers' CMO collects it from broadcasters.
- The SER is only collected for phonograms fixed in a Rome Convention/WPPT country or made by a producer which is a national (or resident) of a Rome Convention/WPPT country, to the extent that such countries also protect Swedish rightholders.

Distribution rules

- CMOs mutually exchange half of the SER collected for one use with the other CMO. SAMI pays out performers for both uses and IFPI does the same with producers.
- The collected SER is **shared equally** between the eligible performers and producers.
- SAMI and IFPI distribute the revenues to performers and producers **four times a year**.



Impact of the RAAP judgement



Changes to legislation or to market practices

- There has been no change to the Swedish legislation or to the market practices thus far.



Potential Economic Impact

- Neither the Ministry of Justice nor the CMOs have yet quantified the impacts of the application of national treatment. However, a potential change in the legislation would imply an increase in the tariffs to reflect the whole music repertoire. According to the performers' CMO such an increase would be challenging, as the tariffs paid by users are already considered as high.

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