



Andrus Ansip

Vice-President, Digital Single Market

Günther Oettinger

Commissioner for Digital Economy and Society

Margrethe Vestager

Commissioner for Competition

European Commission

Rue de la Loi 200

1049 Brussels

Belgium

Paris, 22nd May 2015

Dear Policymakers

The International Artist Organisation welcomes this morning's open letter from the International Music Managers' Forum, which highlighted a number of significant questions raised by the leaked Sony-Spotify contract from 2011, which was published on www.theverge.com on Tuesday of this week, but which has since been removed.

The IMMF Letter: <http://immf.com/wp-content/uploads/IMMF-Statement-3.pdf>

The leaking of that document is a turning point for Artists that cannot be underestimated.

The recorded music industry, as any other content industry, lives on the creativity of individuals and it is of the utmost importance – if we want to see a sustainable and healthy content industry continue in Europe – to make sure that a fair share of the value created finds its way back to those individuals.

Artists and their representatives have been fighting now for years to try to get information on the deals done between platforms and phonographic producers (labels) so that they in turn can negotiate for a 'fair share' of the value their work generates.

The recorded music industry is not buy-sell like supermarkets who buy products from suppliers and sell them in turn to customers, keeping the margin. Instead, Creators generally receive a royalty which is supposed to reflect a share of the value generated from the commercial exploitation of their work.

In most cases that royalty, along with an advance, is accepted in exchange for an exclusive assignment of copyright which leaves the Artist wholly dependent on the label to act in their best interests.

However, whereas Managers, for example, have a fiduciary duty of care to their artists, labels do not.

Labels are only required to fulfil the duty to the Artist laid out in the contract that they sign and that contract is subject to negotiation between two parties with vastly mismatched bargaining power.

In many examples of a new artist, a young adult or even teenager will be negotiating with a multinational corporation worth billions of Euro.

The lack of a substantive duty of care by labels for artists whose work is assigned to them for the duration of copyright has apparently given the labels the freedom to construct complex and creative deals with Users, such as digital platforms that offer opportunity not to reflect the full value of those deals under the contractual terms between label and artist.

Non-recoupable advances, minimum guarantees, technology fees and all of the other cash payments, when coupled with the benefits in kind, such as free advertising in the one contract between major label and platform that we have now seen reveal facts where up until now there had only been suspicions. The content of this contract suggests why non-disclosure clauses have been defended so fiercely.

Because of the Most Favoured Nation ('MFN') clauses in that contract, we can legitimately extrapolate the terms across all the three major labels and presume that similar terms must have been extracted from similar Users i.e the other streaming platforms.

This one contract appears to show advances of some USD40m+ plus advertising in kind of some USD9m from one label to one platform in North America only on one 2-year license with a 1-year option. To extrapolate that for all three across the landscapes of platforms and for the duration of the streaming market so far is to start to calculate some very large numbers indeed.

Sony have apparently stated that they have a policy of sharing advances voluntarily, which we would of course applaud and we know that Warner have made this claim in the past. If we could see the basis on which any such calculations were made and compare these with results that would be a good start, but we can't as until this moment, none of this information has been available to artists.

The IAO respectfully proposes the following three practical steps forward in the context of this leaked contract and the ongoing copyright review and anti-trust investigations currently underway:

1. The IAO is part of the Fair Internet Coalition which represents some 500,000 performers from across both audio and audio-visual sectors in Europe. We have been calling for EU legislators to enact a change to the Making Available Right which would give artists a fairer share of revenue derived from streaming with some paid direct via their CMO. This would also give performers some transparency and insight into the cashflow around their work - please see www.fair-internet.eu for details

2. The IAO calls on the labels to come to the table to develop a code of practise with strict penalties for transgressors that should govern all contracts between artists and record labels and which should provide a framework to better align their interests and foster relationships of partnership. For example the market would work far better with long licenses of copyrights replacing assignment, as is already the case in Germany
3. The IAO would like to propose that the Commission instate us as an official witness to any anti-trust investigations into the digital market and relationships between Producers and Platforms to provide evidence of practices that abuse the dominant position of the Major Labels and distort the market against the interests of both consumers and artists

Up until the leaking of this contract, artists and their representatives have been fishing in the dark for evidence of what we have now seen. We are repeatedly told by the labels that we are not allowed sight of the deals because of the strenuous NDAs imposed on them, however in the leaked contract we see in the confidentiality clause 1. (a) (i) the provision to reveal information about the deals to “others as may be reasonably necessary in the operation of its respective business”.

Surely artists, who are reliant on these deals to earn a living have a reasonable right to understand what the basis of their royalty calculation would be. A large percentage can look reasonable, but the key question must always be ‘a large percentage of what?’.

The IAO provides a real and direct voice for Artists in Europe for the first time and we would very much like to work with you to ensure that our perspective informs the forthcoming reviews of the legislative and competitive frameworks that govern how and whether we have a chance to make a living as artists in the Digital Age.

We sincerely hope that you will consider our proposals and would welcome any opportunity to discuss them with you.

Yours faithfully

Paul Pacifico
President
International Artist Association
226 rue St Denis
75002 Paris
France

www.iaomusic.org

About The IAO:

The IAO is the umbrella association for national organisations representing the rights and interests of Featured Artists in the Music Industry.

Our principal interests are transparency, the protection of intellectual property and a fair reflection of the value an artist's work generates.

The IAO is a not-for-profit organisation based in Paris that was officially founded in 2015 by its six founder-members: FAC (UK), GAM (France), CoArtis (Spain), Domus (Germany), Gramart (Norway) and FACIR (Belgium). The organisation is in the process of expanding its membership to welcome artist organisations from more countries across Europe and beyond.