

All CCS and Cross-sectoral Music Performing Arts Visual Arts Literature & Books Audiovisual - Film, TV & Radio Video Games & Multi-media Research / Surveys EU response All Europe Countries Working Conditions

Contracts that transfer creators' rights and underestimate potential economic value

CREATIVESUNITE

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A study on behalf of the Commission has revealed deep-rooted challenges in copyright and IP practices across Europe's creative industries.

In the audiovisual sector, the weak bargaining power of authors is reflected in the contractual terms, which can involve full buy-out contracts with a single lump-sum payment or royalty payments at rates which are perceived as low. In contrast, performers reported an increase in bargaining power because of the increased use of collective bargaining agreements (CBAs) concluded by trade unions.

In the music sector, the survey shows that 41% of authors and performers feel that their bargaining power has remained the same, while 38% report that their bargaining power has decreased over the last five years. Contract negotiations with counterparties, mainly record labels and music publishers, are handled directly by authors and performers (83% of respondents), although 63% of them seek external support from professional organisations, lawyers and CMOs.

Within the visual arts sector, most authors and performers (49%) feel that their individual bargaining power has not changed, while 20% report a decrease. These perceptions may be linked to increased competition, the rise of technology and social media, and the increasing use of artificial intelligence (AI).

In the literary sector, bargaining power is influenced by factors such as an author's success, experience and reputation. Where there is a lack of bargaining power, it is often due to limited resources, lack of support in negotiating contracts and the inherent imbalance of power between publishers and authors. In the literary sector, 78% of authors said that they do not benefit from CBAs and many find these agreements ineffective in some Member States. On the other hand, 68% of the professional organisations representing literary authors said that they benefited from collective agreements.

Practices in the video games sector appear to be different, with negotiations typically taking place at an individual level, with

more experienced authors tending to have greater bargaining power.

Figure 7: Changes in perceived bargaining power (Authors; Audiovisual) (n=135)

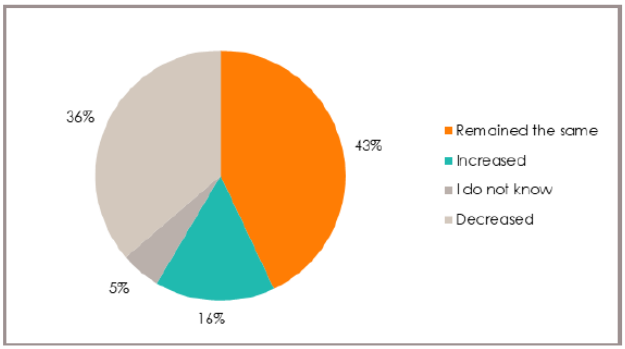
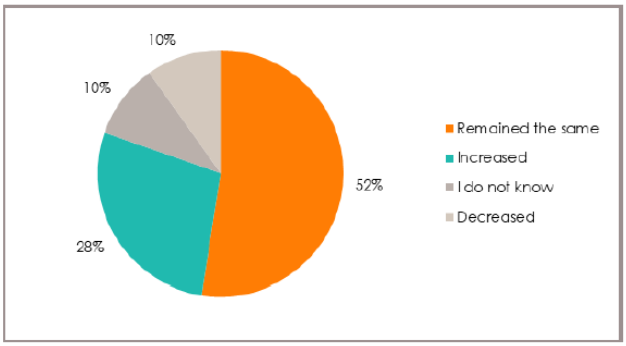


Figure 8: Changes in perceived bargaining power (Performers; Audiovisual) (n=61)



Rights transfer

In the audiovisual sector, national legislation and specific agreements determine which rights can be transferred and which rights are transferred, resulting in different levels of rights retention and statutory remuneration across Member States. Producers generally acquire broad exploitation rights, while authors and performers retain limited exclusive rights and a non-waivable remuneration.

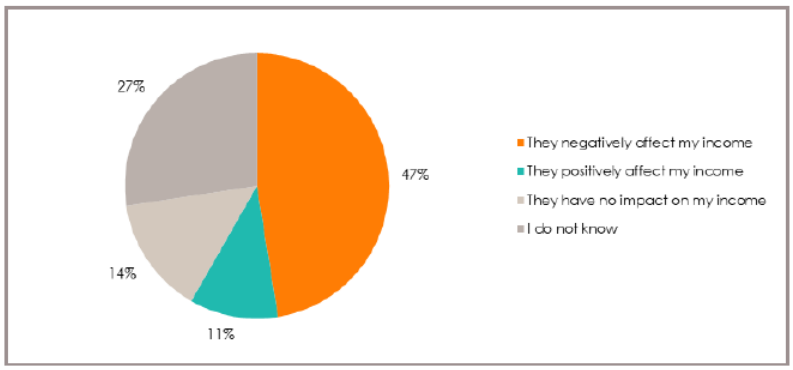
In the music sector, songwriters often transfer their rights to music publishers and performers often transfer their exclusive rights to record companies. Within the sector, session musicians appear to be in a weaker position than featured performers, who typically receive lump sum payments. Authors and performers in the music sector have generally reported that they face 'take it or leave it' situations in negotiations, particularly with video-on-demand (VOD) services and record companies.

In the visual arts sector, commission contracts are common and can be perceived as problematic as they involve the transfer of ownership and some exploitation rights in exchange for a lump sum payment, with no room for further negotiation.

In the videogames sector, authors typically make a full transfer of rights in perpetuity under employment or subcontracting

contracts. In the literary sector, authors typically sign publishing contracts in the form of licence agreements, with buy-outs being less common.

Figure 25: Impact of lump-sum payments on creators' income (n=314)



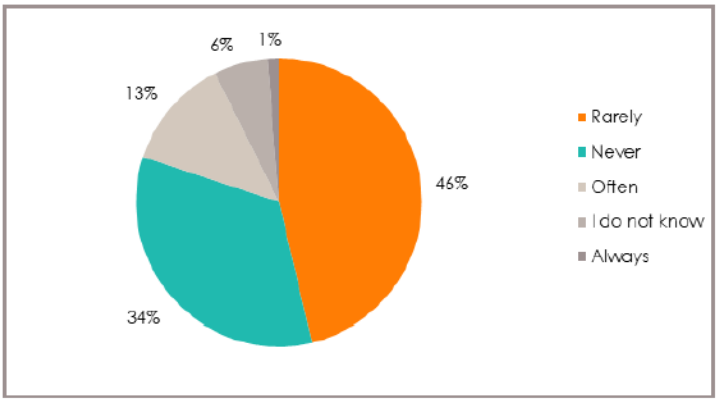
Remuneration

Most authors and performers interviewed or surveyed believe that the remuneration they receive is not fair. In many cases the reasons given relate to the rules around rights transfers (e.g. transfer against lump-sum payments which do not take into account the potential economic value of the works or performances).

In the audiovisual sector, 51% of respondents think that the remuneration is rarely fair, while 33% believe it is never fair, mainly because of the timing of negotiations (pre-production phase), the use of standard industry fees and the lump-sum payment methods.

In the music sector, 49% of music authors and performers responding to the survey consider that the remuneration is rarely fair, while 23% believe that it is never fair. Respondents explained that one reason for the unfair remuneration is that contracts are typically negotiated during the initial stages, before the true economic value of the work can be fully assessed. Additionally, when the remuneration is received in the form of a lump-sum payment, creators may find themselves unable to benefit financially if their work proves to be successful.

Figure 24: Fairness of remuneration (n=542)



Similar trends are perceptible in the visual arts sector, where 51% of respondents consider that the remuneration is rarely fair and 26% think that it is never fair, mentioning as reasons an underestimation of the real or potential economic value of their work and the impact on financial sustainability.

In the literary works sector, 43% of respondents believe that the remuneration is never fair, primarily because the real or potential economic value of the work is disregarded. No conclusive results are available for the videogames sector.
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Photo source