PERFORMER PAYMENTS FROM STREAMING

CMU

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EXECUTIVE SUMMARY

Market growth in both the audio-visual and recorded music sectors has been primarily driven in recent years by the significant rise of multi-territory subscription streaming services run by companies like Netflix, Amazon, Disney, Apple, Spotify and Deezer.

However, the degree to which this growth has benefited performers varies greatly, as in many cases performer payments are entirely dependent on the specific contracts agreed between those performers and the producers, studios, broadcasters and record labels which control the copyrights in the movies, TV shows and recordings that are being exploited by the streaming services.

In some cases – for example with featured artists in the music sector – performers are due additional payments under contract when their work is exploited by a streaming service. However, what payments they receive will usually depend on each individual contract, and that contract may have been negotiated years or even decades ago.

In other cases – for example with audio-visual productions in most countries and session musicians across the music sector – performers are not due any additional payments under contract when their work is exploited by a streaming service, having been paid a one-off fee for their time when they originally worked on a production or recording. And that remains true even when streaming creates a brand new revenue stream for the copyright owner that no one ever anticipated when an original deal was negotiated.

Whenever recorded music is broadcast or performed in public, copyright law in most countries has traditionally provided performers with statutory remuneration rights from that additional exploitation of their work, oblivious of any contracts agreed with a copyright owner. In some countries similar remuneration is also provided by copyright law to performers in audio-visual productions. However, with a few exceptions, this principle has not as yet been applied to streaming in most countries.

This study sets out to explain if and when performers share in monies generated through the exploitation of their performances via streaming services. When they do, it also explains how those payments are negotiated, what share of any streaming income performers are likely to receive, and other complexities which can impact on what payments are actually made.

AUDIO-VISUAL STREAMING

Although video-on-demand services only accounted for 7% of the wider European audio-visual sector's revenues in 2019, those services are by far the fastest growing revenue stream for the industry, and will only increase in importance in the years ahead.

Traditionally producers, studios and broadcasters have controlled, and usually owned, the copyright in audio-visual productions. These copyright owners have driven new revenues over the last decade by either building their own VOD streaming services around their catalogues of content, and/or by licensing films and programmes to other services like Netflix and Amazon. Some of those streaming services have also become producers and therefore copyright owners, by commissioning new productions and/or acquiring catalogue.

In a small number of countries, performers in audio-visual productions commonly receive additional payments from the future exploitation of their performances as a result of union negotiated contracts. In the biggest markets, this principle is increasingly also being applied to streaming.

The payments received vary greatly, partly depending on what industry standard terms any one union negotiated, and partly because monies set aside by a copyright owner may be shared out between all the performers in the production pro-rata based on their original fee.

However, in most European countries performers cannot rely on collective agreements that guarantee additional payments from the future exploitation of their performances under contract.

Instead, those performers have traditionally relied on the statutory remuneration rights provided by some copyright systems when their work is broadcast and retransmitted. But, in the main, these remuneration rights have not to date been applied to streaming.

MUSIC STREAMING

In the music sector, the shift to streaming is much more advanced than in the audio-visual business. Streaming accounted for 67% of global recorded music revenues in 2020, with streaming now both the biggest and the fastest growing revenue stream for the record industry. Streaming also returned the recorded music business to growth in 2015 after fifteen years of decline.

Traditionally record labels have controlled, and usually owned, the copyright in sound recordings. Labels have then negotiated licensing deals – either directly, or via agents and distributors – with the streaming services. Under those deals, each streaming service's total revenues are allocated to each track each month based on what percentage of total listening it accounted for. Of whatever is allocated to a track, 50-55% will be paid to the label.

Whether performers share in this income – and to what extent – differs depending on whether they are featured artists (whose name a track is released under) or session musicians; whether they work with labels or choose to release music via their own labels working in partnership with a music distributor; and – where they do sign with a label – whether they signed in recent years or before the streaming age.

Featured artists that sign with record labels are usually due a share of any income that is directly attributed to the exploitation of their recordings, with the label paying the artist royalties.

With new record deals an artist is likely to receive a 15-25% share of any monies the label receives in relation to their tracks. Although that share is often subject to deductions, including payments to any studio producers and guest artists, and some other complexities.

That means on average a featured artist on a new deal might receive approximately 8.4% of any streaming service revenues that were allocated to a track on which they appear. Where the featured artist is actually a band or group – as is obviously quite common – this money is shared between the band members.

With legacy deals signed before the streaming age the artist is likely to receive a much smaller share of monies allocated to any tracks on which they appear, and a greater number of deductions are likely to be made before the artist's royalty is calculated.

Royalty rates on legacy deals vary hugely depending on country and era, but based on an approximate average artist royalty of 12.5%, once common legacy deal deductions are taken into account the featured artist is likely receiving less than 5% of any streaming service revenues that were allocated to a track on which they appear. Again, where the featured artist is a group or band, band members share this money.

Session musicians generally have no ongoing contractual relationship with a record label, instead being paid a one-off fee for their time. And while session musicians have statutory remuneration rights when it comes to broadcast and public performance, in most counties this does not apply to streaming.

CONCLUSION

In the audio-visual sector, in the vast majority of European markets, actors and other performers generally receive no remuneration at all when productions in which they appear are subsequently made available on the streaming platforms.

In the recorded music sector, in the vast majority of countries session musicians likewise receive no remuneration when recordings on which they appear are streamed.

Featured artists in the music industry do usually receive royalties, however the level of remuneration is entirely dependent on the deal each artist signed with a record label or music distributor and therefore varies hugely across the industry, and maybe subject to recoupment of the label's upfront costs.

The average featured artist who signed a conventional record deal in the last few years – with the label's costs and risks arguably lower in the streaming age – might expect to receive approximately 8.4% of any monies allocated to their recordings by a streaming service.

However, the average featured artist on an older record deal – which will pay lower rates and be subject to more deductions – is more likely to receive approximately 4.9% of streaming monies.

AUDIO-VISUAL STREAMING

Video-on-demand services – and especially subscription-based VOD streaming – have created an important new revenue stream for the audio-visual business over the last decade, helping to counter the decline in income from some of the industry's traditional products and services, in particular the sale and rental of videos and DVDs.

It is true that when all audio-visual revenue streams are factored in – including advertising, box office income, public funding, pay TV subscriptions and physical product sales – VOD services (pay-per-view and subscription combined) only accounted for 7% of total revenues in 2019 across the European Union, according to the European Audiovisual Observatory's analysis of available figures.

However, as the Observatory has noted, VOD revenues were "by far the fastest growing revenue segments in 2019" with "most other segments either stagnant or declining". And this has been the ongoing trend in the audio-visual business for much of the last decade, and especially in recent years.

audio-visual revenue stream	percentage of total AV revenues in EU (+UK) in 2019*	evolution of annual revenues in EU (+UK) from 2015 to 2019†
video-on-demand	7%	+ €5.6 billion
pay TV	30%	+ €0.2 billion
cinema box office	6%	- €0.4 bilion
advertising	32%	- €0.5 billion
public funding	23%	- €1.6 billion
physical video	2%	- €2.2 billion

* European Audiovisual Observatory analysis of data from OBS, Ampere Analysis, Warc, EBU/MIS, company/public reports.
† European Audiovisual Observatory analysis of data from EBU/MIS, Warc, Ampere, LUMIERE.

The COVID pandemic will have only escalated this trend, of course, with the growth of VOD services – and especially subscription VOD streaming – unaffected, or even boosted, by the many lockdowns across the world, while some other audio-visual revenue streams were negatively impacted.

Another key trend to note is the rising dominance of a small number of global players in the VOD subscription streaming market. For example, according to European Audiovisual Observatory analysis, Netflix accounted for 39% of EU VOD subscribers and 55% of subscription VOD revenues in 2020, while Amazon accounted for 29% of subscribers and 19% of revenues.

Obviously, as subscription streaming itself accounts for an ever higher percentage of total audio-visual revenues, these global VOD platforms will become even more dominant.

The rise of subscription streaming has also blurred the lines between different strands of the audio-visual business, in particular the broadcasting sector and the home entertainment sector, which – within streaming – have basically become the same thing. Netflix, for example, began as a competitor for the video rental industry but now competes with the broadcasters.

01: RIGHTS OWNERSHIP AND EXPLOITATION

Traditionally producers, studios and broadcasters have been the main copyright owners in the audio-visual business. Where a broadcaster commissions a producer or studio to make a programme, the deal between the broadcaster and the producer/studio will set out rights ownership. Depending on the deal, the rights could be shared between those parties.

The copyright owner would then usually exploit their rights in various different ways to generate income.

So in the film industry, that traditionally involved cinema screenings, DVD rental, DVD sales and then licensing the film to broadcasters. In the TV industry, after the initial broadcast, there would be repeat airings, possible DVD sales, and then programmes would be licensed to other broadcasters, both domestically and internationally.

The rise of video-on-demand streaming has created at least two new ways for producers, studios and broadcasters to exploit those rights...

Some studios and broadcasters have launched their own VOD services, generating advertising or subscription income by directly providing access to their catalogues of films and/or programmes.

Most studios and broadcasters are also generating additional revenue by licensing content to other video-on-demand services, in particular the big global platforms like Netflix and Amazon.

Concurrent to that, the shift to streaming has also resulted in new producers entering the market, in that companies like Netflix and Amazon have become copyright owners in their own right by commissioning new content and/or acquiring existing catalogues.

02: PERFORMER RIGHTS AND REMUNERATION

Performers have generally not had a stake in the copyright in any audio-visual productions in which they appear (except for those big name performers who also act as producers).

Although deal specifics differ from country to country, a producer (or studio or broadcaster) would usually pay each performer a set fee for their performance.

Where performers have statutory rights in relation to the filming and subsequent exploitation of their performances, the producer would seek to gain all required approvals, assignments and waivers upfront as part of the initial deal, leaving the performer with only those statutory rights that cannot be assigned or waived.

Whether a performer shares in any subsequent income from the future exploitation of audio-visual productions in which they appear depends on the specific terms in the deal they negotiate with the producer when they are first hired for the project and also whether there are any statutory remuneration rights which cannot be assigned or waived.

REPEAT FEES, RESIDUALS AND ROYALTIES IN CONTRACT

In some countries – particularly the US and the UK – additional payments beyond an initial fee are commonly included in the initial deal, variously known as repeat fees, residuals and royalties. These are usually based on template agreements negotiated between producers and performer unions, and can cover both repeat airings and future licensing deals.

In some cases where such exploitations are anticipated from the start, a performer might actually receive additional payments upfront covering the additional exploitation. These additional payments would usually be a percentage of the original fee. In other cases, the additional payments would be made as and when new deals are negotiated by the producer, with performers usually being due a percentage share of whatever fee the producer negotiated as part of that deal.

That performer share is then shared out between all the performers in the production. These payments are often reported and paid directly to the performers by the producer, although where unions have negotiated the rates, they may also be involved in processing any royalties that are due down the line, or in some cases a collective management organisation (CMO) might administrate the payments.

It should be noted, that these union negotiated arrangements only usually apply to productions made in the country where the terms are agreed, and do not apply when broadcasters in those countries air productions made in other countries.

REMUNERATION RIGHTS IN LAW

It's important to note that this approach is not taken in most countries in Europe. Where repeat fees, residuals and royalties are not included in an upfront deal, performers are entirely dependent on statutory remuneration rights for future payments.

In terms of those statutory remuneration rights, quite how things work varies from country to country, even where copyright law is in theory harmonised by European directives.

However, performers commonly receive additional payments from certain broadcasts and retransmissions of their work, with those payments usually paid by the broadcasters via the collective licensing system. Performers would also usually receive a share of any private copy levies in any one country, the levies traditionally charged as part of the private copy exception.

03: PERFORMER REMUNERATION IN STREAMING

With the rise of the VOD services, a number of questions have been posed in terms of performer remuneration beyond any initial fee. In those countries where repeat fees, residuals and royalties are included in the initial deal, there are three key questions...

Are performers due those payments when programmes are made available via a producer's own streaming service?	Are performers due those payments when programmes are licensed to other streaming services?	As video-on-demand platforms like Netflix and Amazon start commissioning original content, will they adopt existing industry conventions on repeat fees, residuals and royalties?

Unions in these countries have been negotiating with both producers and platforms with the aim of securing remuneration for performers from the exploitation of audio-visual productions on streaming services in line with remuneration already received from the exploitation of audio-visual productions through more conventional channels.

To date there has been some success in this domain, securing new royalties for performers. Although, again, these arrangements only apply to productions made in these countries, not when streaming services make available productions that were made in other countries.

And what about the vast majority of European markets where repeat fees, residuals and royalties are not usually included in the initial deal? Here performers are currently reliant on how existing statutory remuneration rights have been interpreted in the context of streaming – ie are remuneration rights linked to broadcasts and retransmissions also applicable when content is streamed?

In some countries, these rights have been applied to linear streaming, ie streaming services that replicate the traditional broadcasting experience, usually by simulcasting the output of channels also available via conventional broadcast networks.

And in some countries broadcasters liable for these payments through their existing broadcast channels may also be liable when they start to make content available for streaming.

However, in the main these statutory remuneration rights do not apply to video-on-demand platforms – including the big global platforms that are generating by far the most subscription revenues. This means that to date performers relying on statutory rights have not benefited from this market growth at all.

Netflix has agreed with performer unions in a small number of European markets to pay additional future royalties to performers who appear in productions it directly commissions in those markets, based on future exploitation and/or success. But to date these are the exception rather than the norm and limited in impact.

MUSIC STREAMING

Subscription streaming has been a significant growth revenue stream for the record industry for over a decade now. Monies paid to the global record industry by streaming services helped the sector return to growth in 2015 after fifteen years of decline.

recorded music revenue stream	revenue growth since 2015	revenue growth in 2020	percentage of global revenues in 2020
streaming	+378.5%	+19.9%	62.1%
downloads	-67.6%	-15.7%	5.8%
physical product	-26.3	-4.7%	19.5%
sync	0%	-9.4%*	2%
broadcast and public performance	+21.1%	-10.1%*	10.6%

Figures from the International Federation Of The Phonographic Industry

*These revenue streams were hit by the COVID-19 pandemic in 2020

01: RECORDED MUSIC STAKEHOLDERS

There are six main stakeholders involved in the creation and distribution of recorded music:

Featured artists who are the main performer on a record – and who have ongoing contractual relationships with whoever releases the recording.

Session musicians who perform on records released by featured artists – and do not have ongoing contractual relationships with whoever releases the recording.

Studio producers and sound engineers who are involved in the recording process in an artistic and/or technical manner.

Record labels which release and manage recordings – the label either owns the rights in these recordings and/or controls them under licence from featured artists. Copyright law usually refers to labels as 'producers' .

Music distributors which distribute and deliver recordings and possibly provide other services too – representing a catalogue of music licensed from record labels and/or featured artists.

Collective management organisations (CMOs) for recording rights, which issue licences and collect royalties in certain scenarios on behalf of copyright owners and/or performers.

The record industry is obviously creating and distributing recordings of songs. But the copyright in the recording and the copyright in the song (ie the lyrics and musical composition) are distinct and separate.

The **recording rights** are sometimes referred to as the 'master rights' or 'phonographic rights', and in law are often considered 'related rights' or 'neighbouring rights' (though the term 'neighbouring rights' is sometimes used differently in the record industry, especially in Anglo-American markets).

The separate **song rights** are sometimes referred to as the 'author rights' or the 'publishing rights'.

The six stakeholders on the previous page are involved in the making and exploitation of the recording rights and together make up the record industry. A separate group of stakeholders are involved in the creation and exploitation of the song rights, which are not the focus of this study. They include...

Songwriters and composers who write the lyrics and musical compositions. Copyright law usually refers to writers and composers as 'authors' .

Music publishers who publish songs, manage and exploit the song rights, and directly issue licences to users of the song rights in some scenarios.

Collective management organisations (CMOs) for song rights, which issue licences and collect royalties in many scenarios.

02: STREAMING DEALS AND PAYMENTS

Streaming services access recorded music via catalogue-wide multi-year multi-territory licensing deals with record labels and music distributors (CMOs are not usually involved).

Once a licensing deal has been agreed, the label or distributor delivers all its current and future recordings to the streaming service, which then makes monthly payments based on usage.

Record labels and music distributors then share with the featured artists monies that are directly attributed to the exploitation of their recordings.

There is basically a three stage process via which featured artists are paid...

STEP ONE: ALLOCATION

The streaming service allocates a sum of money to each track based on the percentage of listening it accounted for in any one month. If a track accounts for 0.01% of listening among premium subscribers in any one market in any one month, it is allocated 0.01% of the subscription monies paid by those premium subscribers in that market in that month.

STEP TWO: REVENUE SHARE

Each label and distributor has a revenue share agreement with the streaming service. The label or distributor which controls each track receives a share of the allocation based on that agreement. Terms of every label and distributor deal are different and confidential, though it is likely that the label or distributor receives 50-55% of the allocation.

STEP THREE: ARTIST ROYALTY

Of the monies directly attributed to the exploitation of any one recording, a percentage is then passed onto the featured artist. This percentage depends on what royalty rate was agreed in each artist's label or distribution contract. These royalty rates vary hugely across the industry and can therefore be anything from a few percent on older record label contracts to 100% on distribution contracts where the artist pays an upfront fee (and is basically acting as the label too).

Streaming services negotiate separate licences covering the song rights from music publishers and CMOs, which are then paid separately, albeit usually to a similar model as outlined above. Generally 10-15% of a track's allocation is shared with the entities that control the song rights.

03: FEATURED ARTIST ROYALTIES

Featured artists signing new deals around their recorded music today have at least five options to choose from, each of which is outlined in the chart below.

The choice they make will directly impact the ‘artist royalty’ they receive – ie what percentage of the monies paid by the streaming service to the label or distributor for each specific track each month is in turn paid to the artist. The artist’s share can vary hugely depending on their specific deal, and industry conventions also vary a little from country to county.

The chart below shows current approximate and average artist royalty rates that are common for each of the options. This artist royalty may also be subject to deductions and recoupment, which we explain further below. All of this is set out in each artist’s label or distribution contract.

deal type	deal description	artist royalty
royalty label deal	The featured artist signs with a label which provides investment, distribution, marketing and other support – the label then pays the artist a royalty which is usually a percentage of the monies paid by the streaming service. These deals are usually offered by major and larger independent record labels.	**up to 25%** 15-25% on modern deals, but less on older deals. Also subject to recoupment and deductions.
profit share label deal	The featured artist signs with a label which provides a lower level of investment, distribution, marketing and other support – the label shares any income generated with the artist, often on a 50/50 basis, after all its upfront costs are recouped. These deals are usually offered by smaller independent record labels.	**50%** This is 50% of the profits – ie after all the label’s upfront costs are recouped.
artist services	The featured artist acts as the label and releases their own recordings in partnership with an artist services company that delivers the recordings and provides a range of other support and services in return for a commission charged on subsequent income.	**50-70%**
distribution	The featured artist acts as the label and releases their own recordings utilising the services of a distributor that delivers the recordings and might provide some other support and services in return for commission charged on subsequent income.	**70-85%**
DIY distribution	The featured artist acts as the label and releases their own recordings utlising the services of a DIY distributor which delivers the recordings to the streaming services in return for an upfront fee – depending on the distributor this can be a fee per release or per year, or a combination.	**100%**

04: DEAL OPTIONS FOR FEATURED ARTISTS

In the pre-digital era most artists would sign label deals, with the majors and bigger indies offering royalty deals and the smaller indies more likely to offer profit share deals. The royalty rates on the former were traditionally 15% or lower, as we will discuss in more detail below.

Because in most countries record deals were traditionally life-of-copyright deals, most artists who signed these pre-digital record contracts are still relying on the label to distribute and monetise their recordings today, and to pay through the royalties they are due based on the old contract.

Today most new artists begin with the DIY distribution option, because initially that is the only option on the table. During the 2000s when the value of recorded music was in decline, as a general rule labels started to sign artists slightly later in their careers so to reduce the risks associated with new talent deals.

This coincided with the rise of DIY distribution and social media, making it more realistic for artists to self-release and self-promote their first records.

Although the record industry has been in growth again since 2015, labels still tend to get involved with artists slightly later in their careers than in the pre-digital age.

This basically means that featured artists are investing more heavily themselves in the recorded music side of their personal artist businesses before allying with any music industry partners. That increased investment on the part of artists obviously comes at the most risky phase, and reduces the subsequent risks of any future business partners.

Nevertheless, once an artist's career gains momentum they are likely to require extra support, especially around marketing, which is when they would usually look to 'move up' to one of the other deal types.

Quite what deal options are available – in terms of distribution, artist services, profit share and royalty – does vary from artist to artist and market to market. In countries where there are more labels – and more distributors looking to work with artists directly – there will be more options.

However, for various reasons, many artists still chose royalty deals.

05: DEDUCTIONS MADE TO FEATURED ARTIST ROYALTIES

It is important to remember that deals often allow a label to make deductions of one kind or another that reduces the actual share of any monies the artist receives.

Quite how these deductions work varies greatly from deal to deal, making it hard to identify industry-wide conventions, even within one country let alone across Europe.

Even within one company, different approaches may be employed on different contracts, especially where one label has acquired catalogue – and therefore contracts it didn't negotiate – from another label.

This means that what any one artist earns from streaming will depend very much on the specific details of their deal – and also how that deal has been interpreted and implemented.

Deductions that might apply include: packaging and marketing deductions, international deductions, withholding taxes, studio producer royalties and guest artist royalties.

PACKAGING & MARKETING DEDUCTIONS

Traditional record contracts might allow deductions related to things like packaging costs or specific marketing activity, such as TV advertising. Although these should not be included in modern record deals, many managers and accountants have reported deductions of this kind still being routinely applied on digital income based on terms contained in pre-digital record contracts.

INTERNATIONAL DEDUCTIONS

Monies generated in other markets may first pass through other labels – or international divisions or subsidiaries of the same label – before being passed onto the local label or division that has the actual contract with the artist. Those foreign labels or divisions will often charge a commission on that income. To what extent that impacts the artist depends on the deal, with conventions differing between modern and pre-digital deals, and across the industry.

With modern deals an artist royalty would usually be calculated based on the "at source" income, so they are paid a percentage of what the foreign label or division received – although the top line royalty rate might be a one or two percent lower for some markets.

With older deals the artist royalty may be calculated based on the figure received by the local label, ie after the foreign label or division has made its deduction. Given the foreign label or division's commission could be in the region of 50% that has a big impact on the monies received by the artist on this income stream.

It is important to note that international income has become much more important in the streaming age as certain emerging markets have become key revenue generators for the first time and many artists have more global fanbases. This trend makes any international deductions more significant.

WITHHOLDING TAXES

Although copyright revenues are usually mainly taxed in an artist's home country, in some cases withholding taxes may be due in other markets, which the foreign label or division will deduct from the monies they pay to the local label.

However, the local label should receive a certificate for this withholding tax that can be set off against any tax liabilities in its home country. Therefore this deduction should not affect the artist and their royalty rate should be applied to the gross income received before tax.

However, this is not always the case, possibly because the home label has structured their finances in a way that reduces their local tax liabilities, meaning they can't use the withholding tax certificate. In that case the withholding tax might reduce the artist's royalty.

STUDIO PRODUCER ROYALTIES

A studio producer who works on a track may be paid an ongoing royalty in addition to any upfront fee – this is often referred to as that producer "getting points". A common studio producer royalty is 3-4%. This would usually come out of the artist's royalty. So if the artist was on a 20% royalty, they would receive 16-17% after the studio producer has been paid.

GUEST ARTIST ROYALTIES

If a guest artist appears on a track – as has become much more common in recent times, partly because collaborations of this kind are good marketing tools that drive more streams – that guest artist will also usually negotiate a royalty. Again this will usually come out of the main artist's royalty.

The guest artist royalty will usually be paid to that artist's label, which has exclusivity rights over their recordings. That payment is then often split 50/50 between the guest artist and their label. That principle is often applied even if the main artist and the guest artist are signed to the same label.

The guest artist royalty is often 50% of whatever is left in the main artist's pot after other deductions, like the studio producer royalty, have been accounted for.

TRANSPARENCY ISSUES AROUND DEDUCTIONS

Many managers complain that there is often a lack of transparency regarding what deductions, if any, are made on digital income. Many modern label or distribution contracts may clearly state that no deductions can be applied, other than studio producer and guest artist royalties. But older record contracts routinely allowed various kinds of deductions, and it is not always clear which of those deductions are being applied on digital income.

Many labels could be a lot clearer in communicating this information, both in terms of communicating any company-wide policies regarding the interpretation of pre-digital contracts in the digital age, and in sign-posting any deductions that are being made when reporting royalties, clearly explaining why monies are being deducted.

06: RECOUPABLE COSTS

A label or distributor will also usually be able to recoup some or all of their upfront costs from any monies generated. What costs are recoupable depends on the deal – with profit share arrangements it is all or most upfront costs, on royalty deals it would usually be limited to initial recording costs, certain very specific marketing costs and any cash advance paid. It is worth noting that any costs incurred by the artist before or during the deal are not generally recoupable out of future income in this way.

Quite how recoupment works also differs from deal to deal...

On a **profit share deal** these costs will be deducted from any monies generated, and then the artist's royalty will be calculated from what is left.

On a **royalty deal** the artist's share will usually be calculated first, and then any recoupable costs will be taken from the artist's share until they have all been repaid.

So for example, if there is €1000 of income and €200 of recoupable costs:

Under a **profit share deal**, the label would take the €200 first, and then pay the artist their share from what is left. So if it was a 50/50 deal, the artist would earn €400.

Under a **royalty deal**, the artist's share would be calculated first, so if it's a 20% royalty they'd be allocated €200. That €200 would then be used to pay off the recoupable costs.

07: ROYALTY TRENDS

There has been a general if very gradual increase in the percentage of monies paid to artists under royalty-based label deals over the years – as in as artists sign new contracts the rate has increased – and this trend continues. There are various reasons for this trend – though a key reason is the lowering of the label's upfront risks with the shift to digital.

As digital has become the primary revenue stream, costs and risks associated with manufacturing and distributing physical product have been removed. And with labels often signing newer artists slightly later in their careers, the label's risk is also reduced as a result of the artist's own investment in the recorded music side of their individual artist business before they ally with any music industry partners. Therefore you could argue that the slightly higher royalties mainly provide the artist with a return on that personal investment.

Although this royalty trend is being seen in much of Europe – there are also regional variations.

The rates commonly being offered have increased the most in those countries with a more mature and therefore more lucrative streaming market, including the UK and the Nordic region.

In those countries 20% would now generally be seen as a pretty basic royalty rate, with managers and lawyers seeking to push the rate up further within the 20-25% bracket. More established artists might be able to negotiate a rate in the 25-30% bracket.

In countries with less mature and therefore less lucrative streaming markets, such as some Eastern and Southern European countries, rates being offered are often lower, with managers and lawyers commonly negotiating in the 15-20% bracket.

In those emerging markets in Eastern Europe where a record label infrastructure is still being built, artists may be offered particularly unfavourable rates due to the lack of competition in the talent marketplace, so artists will accept bad terms in order to access any support.

That said, as DIY distribution has become available in these markets, where artists pay an upfront fee and receive 100% of royalties, artist expectations have risen, and as labels launch in those markets they may have to offer more favourable terms to attract talent.

08: LEGACY DEALS

This general if very gradual increase in artist royalties actually pre-dates the digital age, with artist royalties in the mid-Twentieth Century often single figure percentages. By the end of the 1990s – and at the peak of the CD era – a common royalty rate in many markets was 15%.

As noted, because in most markets record deals would traditionally see the label own the recording rights for 'life of copyright', many artists are still receiving royalties today from deals they signed decades ago. In many cases recordings covered by those old deals have become much more valuable as streaming removed the logistical and transactional barriers to exploiting catalogue, meaning older recordings account for a higher percentage of consumption.

Obviously older deals do not provide a specific royalty rate for streaming. How labels choose to interpret these old deals when it comes to paying royalties on streams varies greatly – there isn't really any industry-wide convention even within individual markets. Different approaches include...

- Many labels will pay whatever rate was payable on physical product – which could be a few percent on very old deals.
- Some will pay a rate a few percent higher than the physical product rate – so the physical rate with a slight premium.
- Some will pay whatever the standard royalty rate is for streams in new deals, usually in the 15-25% bracket.

WHY ARTIST ROYALTY RATES SHOULD BE HIGHER IN DIGITAL

Artists and managers argue that a higher royalty should be paid on digital income across the board – oblivious of old contract terms – simply because a label's risks and costs are lower once the manufacture and distribution of physical discs is taken out of the equation.

There is another cost that labels incur on physical that they do not incur on digital which should also be factored in. With physical, the label has to pay a royalty to the songwriter and/or music publisher of the song contained in the recording out of the wholesale price of the disc. This was usually done via the collective licensing system. This 'mechanical royalty' rate varies from country to country, but is often around 8-10% of the wholesale price. On a royalty label deal, this would usually be the label's cost.

With digital – and certainly streaming – the digital service pays the song royalty directly to a music publisher or CMO, therefore this is not a cost that needs to be taken out of monies a label receives from a streaming service. This means where a label is paying an artist royalty on digital that is a few percent higher than on physical, that increase will be more than covered by the saving on the mechanical royalties that the label would have incurred on a disc.

FUTURE PROBLEMS CAUSED BY NEW LIFE-OF-COPYRIGHT DEALS

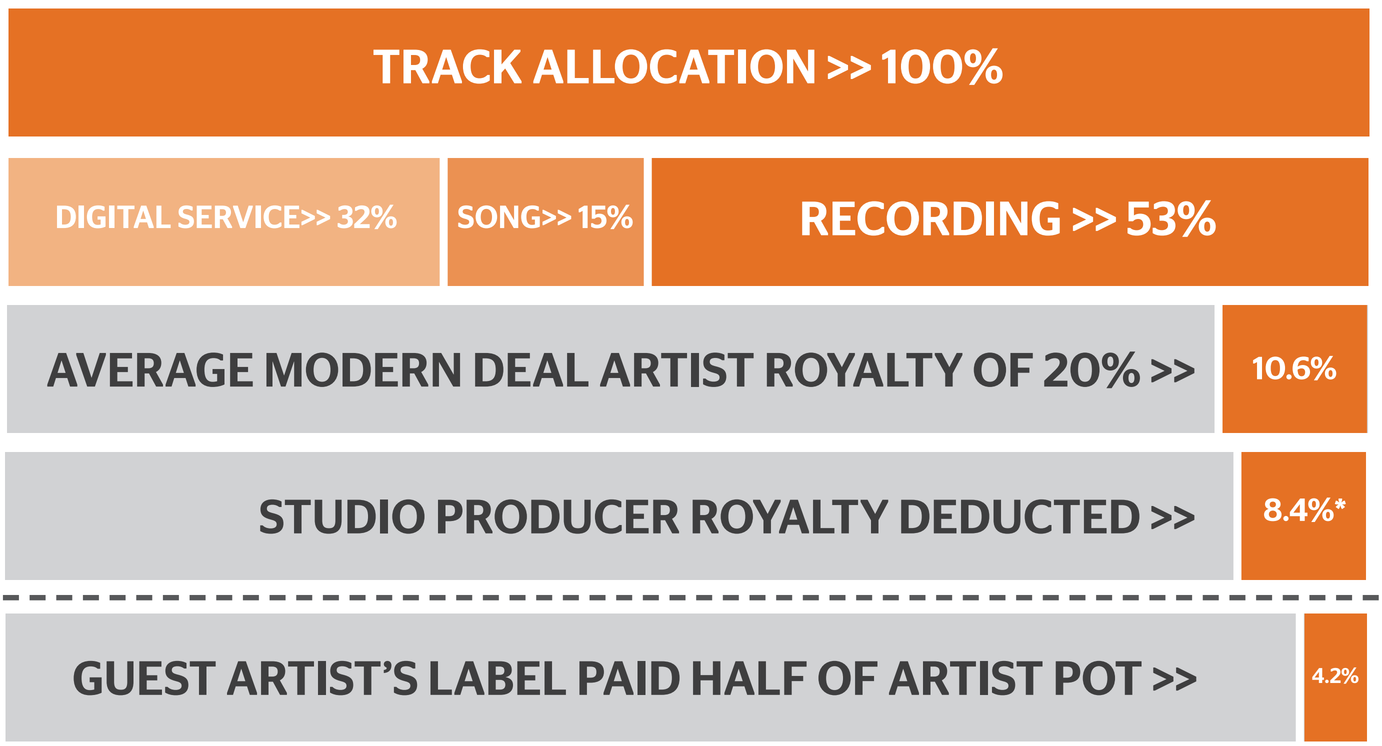
It is also worth noting that life-of-copyright deals are still common in the record industry in most markets – which is to say that many new record deals being signed today are for life-of-copyright, meaning contract terms designed for the current record industry business model will need to be reinterpreted when new business models come online in the future.

Many managers and lawyers argue that a much better approach is deals where rights revert to the artist after a period of time. This means that as music consumption habits evolve, artists can negotiate new deals in the future that include modern royalty rates for newer revenue streams, so that artists aren't losing out to ambiguous terms in old-fashioned contracts.

09: AVERAGE FEATURED ARTIST PAYMENTS

For all the reasons outlined above, it is very hard to calculate an industry-wide average for what share of streaming income any one featured artist will receive because it depends entirely on the specific deal they negotiated. And standard deal terms are very different on modern deals versus old deals. However, the below charts show a reasonable approximation of what you could expect to happen in terms of revenue with an average modern royalty label deal and an average old royalty label deal.

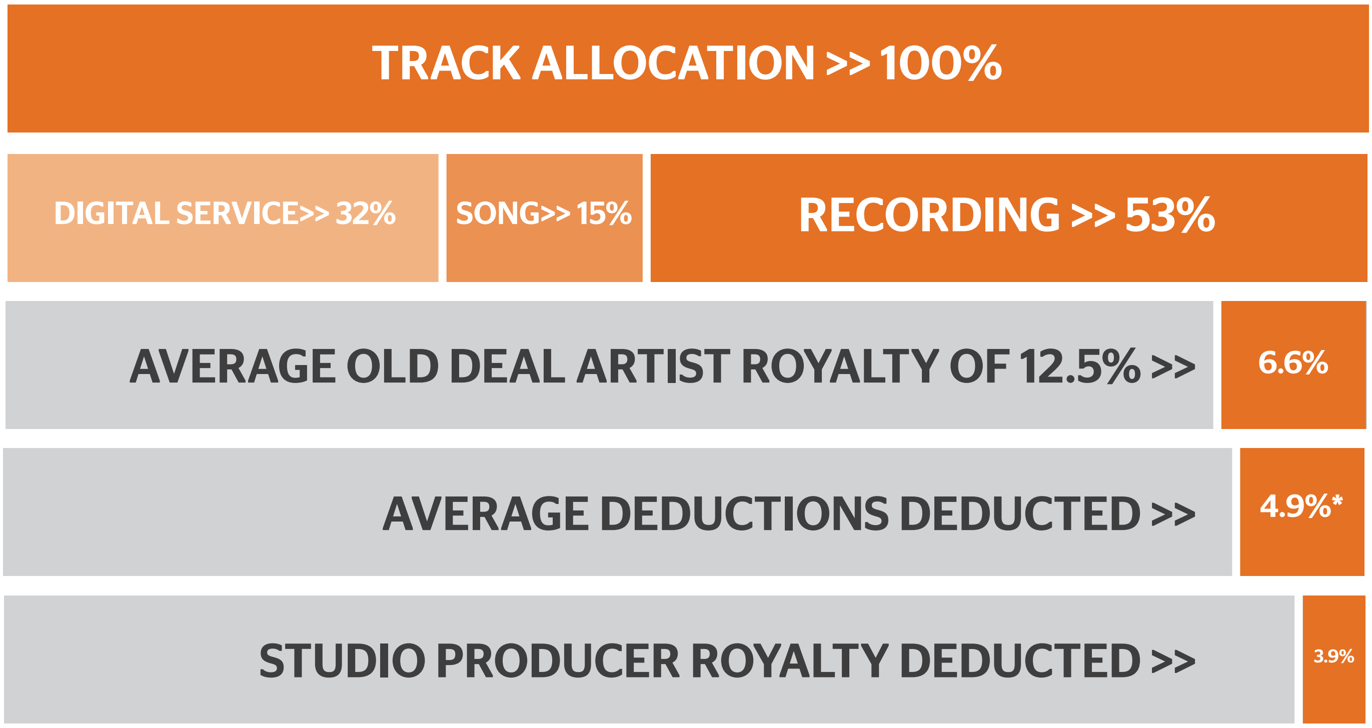
FEATURED ARTIST SHARE ON MODERN RECORD DEALS



***FOR BANDS AND GROUPS – THE 8.4% IS SHARED BETWEEN ALL THE BAND MEMBERS.**

NOTES: Our research suggests that royalty rates on new record deals vary across Europe in a bracket of 15-25%. As of 2021, a basic rate of 20-22% is common – with possibly a slightly lower rate applied to income from some foreign markets. We have taken the average of 20%. A studio producer royalty of approx 4% is then commonly paid out of the artist's share. If a guest artist appears on the recording – as is increasingly common in some genres – that has a further impact.

FEATURED ARTIST SHARE ON OLD RECORD DEALS



***FOR BANDS AND GROUPS – THE 4.9% IS SHARED BETWEEN ALL THE BAND MEMBERS.**

NOTES: The royalty rates on pre-digital deals vary greatly from a few percent to around 15% – as a general rule the older the deal the lower the rate. It is therefore hard to estimate an average for all old deals – we have opted for a rate at the upper end of the bracket of 12.5%. Deductions also vary greatly – and can include packaging, marketing and international deductions – we have estimated an average deduction of 25%. A studio producer royalty may also be due – we have applied a royalty of 2.5%. Some independent labels pay modern royalty rates on old contracts, so those artists would receive a modern deal share of revenue.

10: SESSION MUSICIAN PAYMENTS

It is pretty much standard across the record industry that session musicians are paid a fixed fee for their time and then receive no additional royalties directly from the label. Therefore session musicians will only receive additional payments in those scenarios where they have statutory remuneration rights (often referred to as ‘performer equitable remuneration’), such as when recorded music is broadcast or performed in public. Those payments are managed by performer CMOs.

In some countries session musicians might retain some control over recordings on which they appear through contract – for example, requiring bespoke approval if their music is synchronised into a movie, game or advert – and thus earn additional royalties if and when their recordings are used in this way, directly from the licensee. However, in the vast majority of countries neither the statutory remuneration rights nor the controls retained under contract apply to streaming. Therefore session musicians do not earn any additional royalties when their music is streamed.

Most session musicians do not have retained management or legal representation (in many cases because their earnings are not sufficient to justify such representation). Therefore in most countries they rely on union representation to negotiate industry standard rates for their work, with the unions usually negotiating with trade organisations representing record labels.

The rates paid to most session musicians remain quite low in most countries, with a rate of €100-200 for a half-day recording session quite common. Pretty much everyone we spoke to as part of this study agreed that average session rates remain too low.

CONCLUSION

While the rise of multi-territory subscription streaming services has driven growth in both the audio-visual and recorded music sectors in the last decade – and greatly boosted the value of the archives and catalogues controlled by the film, TV and record industries – the degree to which performers have benefited from that growth is usually entirely dependent on their contractual relationships with the producers, studios, broadcasters and record labels that own the copyright in the content.

In the case of session musicians in the music industry – and in most countries most actors working in TV and film – those contracts rarely provide subsequent payments for the future exploitation of those performers' work. This means performers rarely see a direct benefit when streaming services allow copyright owners to generate new revenues from their catalogues, nor from the continued streaming and exploitation of their new productions.

Featured artists in the music industry are usually paid royalties when their recordings are exploited, though how that works depends on each specific deal negotiated between a record label and the artist. Labels can also usually recoup some of their upfront costs from future income, meaning sometimes these future royalties are actually used to set off old costs.

Modern record deals will usually pay a featured artist 15-25% of any monies directly attributed to their recordings, though the studio producer may also be due a cut of that money. Older record deals – especially those negotiated when the record industry mainly sold physical discs – will often pay a featured artist a much lower royalty rate even on streaming income, plus additional deductions may be applied. The royalty rates and deductions on these deals vary hugely and it's not always entirely clear what deductions are being made. Studio producers are also again often due a royalty, which is paid out of the artist's royalty.

Music streaming services allocate monies to each track each month based on consumption share and then pay approximately 53% of that allocation to the label.

With a modern deal, based on an average royalty rate of 20%, that means a featured artist is likely seeing approximately 8.4% of any revenue allocated to their recordings, once a studio producer has been paid. With an old deal, based on an average royalty rate of 12.5% and common deductions, on average artists are likely seeing about 4.9% of any revenue allocated to their recordings, even before any studio producer has been paid. Where a featured artist is a band or group, they share those royalties.

There are various reasons why newer label deals are better than older label deals, including the reduced risks the label incurs as a result of not needing to produce physical product and artists having more options when picking a business partner today. Labels also often sign artists slightly later, with the artist initially acting as their own label, investing themselves in their recorded music at the earliest stage.

The terms of every deal are, of course, different, and how good those terms actually are depends entirely on the negotiating power of the artist when the deal is done and how big an investment they have already made in their recorded music. And where a label owns the copyright in any recordings for life of copyright – which is still common – today's deals may also seem bad in the context of future industry developments.

Meanwhile, for session musicians, actors and those featured artists on less favourable old deals, it is very difficult for all but the biggest stars to renegotiate old contracts with the producers, studios, broadcasters and labels they worked with years, if not decades, ago. And in most countries there is currently no framework to negotiate industry-wide solutions, either with copyright owners or the streaming services directly. Which makes it much harder for those performers to directly benefit from the streaming revolution.

METHODOLOGY

This report is based on a series of in-depth conversations with managers, lawyers and accountants who represent both new and established performers in seven European markets conducted in spring 2021, as well as additional insights gathered from performer unions and CMOs in countries across Europe. We also reviewed a number of recent papers and reports on the audio-visual and recorded music markets, trends in record deals and artist royalties, and submissions made to the 'Economics Of Streaming' Inquiry in the UK Parliament.

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PERFORMER PAYMENTS FROM STREAMING