

## MUSIC CONTRACTS IN THE STREAMING AGE

This book focuses on music industry contracts and the contractual dynamics between composing and/or performing musicians and their primary partners in the digitised music industry, namely music publishers and record companies, taking account of the ubiquitous nature of music streaming. It focuses on the question of how the legal framework intervenes and should intervene in such contracts, both in theory and in practice. Its objective is to contribute to a level playing field that counteracts the imbalance in bargaining power between musicians and their corporate partners in a proportionate way. The book draws upon an analysis of copyright contract law at the European Union and national level, as well as relevant principles of general contract law, competition law and related applicable rules that curb business-to-business contract terms and trade practices characterised as unreasonable. The book studies the applicable legal framework in Belgium, France, Germany, the Netherlands and the United Kingdom. This title is part of the Flip it Open Programme and may also be available Open Access. Check our website Cambridge Core for details.

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# Music Contracts in the Streaming Age

LAW AND POLICY IN THE EUROPEAN UNION AND  
THE UNITED KINGDOM

JOZEFIEN VANHERPE

KU Leuven



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press & Assessment  
978-1-009-39470-3 — Music Contracts in the Streaming Age  
Jozefien Vanherpe  
Frontmatter  
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CAMBRIDGE  
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India  
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Cambridge University Press is part of Cambridge University Press & Assessment,  
a department of the University of Cambridge.

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[www.cambridge.org](http://www.cambridge.org)  
Information on this title: [www.cambridge.org/9781009394703](http://www.cambridge.org/9781009394703)

DOI: 10.1017/9781009394666

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When citing this work, please include a reference to the DOI 10.1017/9781009394666

First published 2024

*A catalogue record for this publication is available from the British Library.*

*A Cataloging-in-Publication data record for this book is available from the Library of Congress*

ISBN 978-1-009-39470-3 Hardback

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Contents

<i>List of Figures and Tables</i>	<i>page</i> ix
<i>Acknowledgements</i>	xi
<i>List of Abbreviations</i>	xiii
<b>1 Prelude</b>	<b>1</b>
1.1 Intro	1
1.2 Methodology	3
1.3 Outro	8
<b>2 The Music Industry in the Streaming Age</b>	<b>9</b>
2.1 Intro	9
2.2 Rights and Interests of the Primary Stakeholders	9
2.2.1 Overview	9
2.2.2 Musicians	10
2.2.3 Corporate Partners	30
2.2.4 Users	37
2.3 The Music Value Chain in the Streaming Age	38
2.3.1 Digitisation in the Music Industry	38
2.3.2 The Majors' Place in the Recorded Music and Music Publishing Sectors	45
2.3.3 The Rise of Independent Music Companies	48
2.3.4 Independent Artists and Artist and Label Services	49
2.4 Remuneration in the Streaming Age	55
2.4.1 Revenue Streams in the Streaming Age	55
2.4.2 Division between Music Value Chain and External Corporate Partners	57
2.4.3 Consumption Shares of Compositions and Phonograms	59

2.4.4	Division between Composition and Phonogram	66
2.4.5	Division between Musicians and Music Industry Corporate Partners	69
2.5	Transparency in the Streaming Age	75
2.6	Bridge	79
<b>3</b>	<b>Law and Policy in the Streaming Age</b>	<b>80</b>
3.1	Intro	80
3.2	Towards a Fair Balance in the Streaming Age	81
3.2.1	Balancing Copyright and Other Fundamental Rights	81
3.2.2	Conceptualising a 'Fair(er) Balance' in the Streaming Age	82
3.3	Typology of the Selected Substantive Legal Regimes	90
3.3.1	General Limitations to Freedom of Contract	90
3.3.2	Scope of Selected Substantive Legal Regimes	92
3.4	Establishing the Appropriate Level(s) and Method(s) of Regulation	116
3.5	Outro	123
<b>4</b>	<b>Negotiation and Formation of the Contract</b>	<b>125</b>
4.1	Intro	125
4.2	Negotiation of the Contract: Precontractual Liability	127
4.3	Formation of the Contract: Requirement of Consent	129
4.3.1	Material Requirements	130
4.3.2	Formal Requirements	136
4.4	Formation of the Contract: Substance of Rights Granted	139
4.4.1	Limitations in Theory	139
4.4.2	Determination in Practice	153
4.5	Formation of the Contract: Secondary Relationships	159
4.6	Outro	163
<b>5</b>	<b>Performance of the Contract</b>	<b>166</b>
5.1	Intro	166
5.2	Exploitation	167
5.2.1	Structure	167
5.2.2	Duty to Exploit	168
5.2.3	Control of Exploitation Activities	194
5.3	Remuneration	197
5.3.1	Structure	197
5.3.2	Fair Remuneration	197
5.3.3	Transparency	237

<i>Contents</i>	<i>vii</i>
5.4 Regulation of Secondary Relationships	252
5.4.1 Structure	252
5.4.2 Exploitation	252
5.4.3 Remuneration	254
5.5 Residual Remuneration Right for Streaming	261
5.6 Outro	269
<b>6 Termination of the Contract</b>	<b>270</b>
6.1 Intro	270
6.2 Limitations on Contract Duration	270
6.3 Grounds for Contract Termination	280
6.4 Consequences of Termination	283
6.5 Outro	288
<b>7 Application of the Legal Framework in Practice</b>	<b>290</b>
7.1 Intro	290
7.2 Risk of Contractual Deviations and Qualification as Mandatory Law	290
7.3 Obstacles to Transparency	292
7.4 Lack of Invocation in Practice	297
7.5 Extra-judicial Enforcement	311
7.6 Outro	317
<b>8 Conclusions</b>	<b>319</b>
<i>Select Bibliography</i>	331
<i>Index</i>	351

Figures and Tables

FIGURES

2.1 Global recorded music revenues 2023	<i>page</i> 56
2.2 2023 market share in the recorded music sector	62
2.3 2023 market share in the music publishing sector	62

TABLES

2.1 Typology of musicians	11
3.1 Overview of main legitimate interests	88



## Acknowledgements

To achieve great things, two things are needed:  
a plan and not quite enough time.

—Leonard Bernstein

On a sunny day in May 2018, I got a phone call, out of the blue. Would I be interested in pursuing a PhD in law at KU Leuven? asked the voice at the other side of the phone. I was slightly taken aback, and momentarily – some might say uncharacteristically – lost for words. At the time, I had been an intellectual property (IP) attorney for almost four years and felt quite comfortable in my professional life. Regardless, the seed planted during that brief conversation quickly grew, to such an extent that, after just a few days, it could no longer be ignored. I eventually took the leap, and started my PhD trajectory at the beginning of 2019. Fast forward a few years, and that brings us here today – to me thanking everyone that has provided me with abundant support, love and laughter along the way.

First, I would like to thank my PhD supervisor, Professor Dr Evelyne Terryn. Thank you for writing me a letter of recommendation for the Cambridge LLM, which expanded my world; for the ample opportunities you gave me to write, teach and grow in an independent way; and for showing me what to aspire to, on both a professional and a personal level. My heartfelt thanks also go out to my co-supervisor, Professor Dr Marie-Christine Janssens. Thank you for being a beacon of integrity, intelligence and vision at the Faculty of Law and Criminology at KU Leuven (and beyond) and for challenging me to always do and be better. Thank you, also, to Professors Dr Hendrik Vanhees and Dr Fabienne Brison, for being members of my supervisory committee and PhD jury. I will admit that, ever since I read both of your PhD theses in full, I have unashamedly been a fangirl to you both. Without a doubt, the same is true for Professors Dr Lionel Bently and Dr Séverine Dusollier, whom I thank not only for agreeing to be members of my PhD jury but also for the seminal contributions that they have both made – and are

still making – to an inclusive intellectual property law framework that is fit not only for the digital age but also for the artists that live, create and perform in it. I feel truly honoured to have you on my side.

To the immensely diverse group of people that I get to call my friends, whether met through school in Belgium or abroad, via travel, work, sports or – especially – music: thank you for bringing me joy and ensuring that I always have a place to stay across the globe. I hope you realise how much you inspire me.

Most of all, however, my thanks go out to my family. The Vanherpe name may very well be close to extinction on a global level, but my parents' legacy on that front is undeniable – in both quantity and quality. My parents and all of my siblings give me something to aim for, ranging from an incredible resilience in the face of adversity, over the impressive ability to stay calm and pragmatic when confronted with insurmountable chaos, to the incredible strength of always taking the high road. I am very lucky, and I know it. The greatest luck of all, however, is seeing and experiencing the expansion of our family, with mini versions of the people I love the most. While the past few years have forced us to say an untimely goodbye to a number of valued family members, the future looks bright.

And with that, I close the journey of my PhD research, which started in February 2019, hit a high note with my public defence in March 2022 and has now culminated in this volume. No dazzling grand finale, no encores, no snazzy 500-days-of-Summer-style wrap-up musical number, no mic drop – only my sincere, heartfelt gratitude. As ABBA would say: thank you for the music.

# Abbreviations

A&R	Artist & Repertoire
ACM	<i>Autoriteit Consument en Markt</i> (Authority for Consumers and Markets)
ADAMI	<i>Administration des Droits des Artistes et Musiciens Interprètes</i> (Administration of the Rights of Performing Artists and Musicians)
ADR	alternative dispute resolution
AEPO-ARTIS	Association of European Performers' Organisations
AHRC	Arts and Humanities Research Council
AIE	<i>Artistas Interpretes o Ejecutantes de España</i> (Performing Artists of Spain)
AIMP	Association of Independent Music Publishers
AIPPI	<i>Association Internationale pour la Protection de la Propriété Intellectuelle</i> (Association for the Protection of Intellectual Property)
ALS	artist and label services
AREC	Artists Rights Enforcement Corporation
ARPU	average revenue per user
B2B	business-to-business
B2C	business-to-consumer
BAM	<i>Beroepsvereniging voor Auteur-Muzikanten</i> (Professional Association for Author-Musicians)
BEUC	<i>Bureau Européen des Unions de Consommateurs</i> (European Bureau of Consumer Unions)
BGB	<i>Bürgerliches Gesetzbuch</i>
BGBI	<i>Bundesgesetzblatt</i>
BGH	<i>Bundesgerichtshof</i>
BMAC	Black Music Action Coalition

BRMA	Belgian Recorded Music Association
BS	<i>Belgisch Staatsblad</i>
BSCG	Belgian Screen Composers Guild
BUMA	<i>Bureau voor Muziek-Auteursrechten</i> (Bureau for Music Copyrights)
BVerfG	<i>Bundesverfassungsgericht</i>
BVMI	<i>Bundesverband Musikindustrie</i> (Federal Music Industry Association)
CC	Creative Commons
CCFG	Cultural Creators Friendship Group
CCIs	cultural and creative industries
CEL	Code on Economic Law
CIS	Common Information System
CISAC	<i>Confédération Internationale des Sociétés d'Auteurs et Compositeurs</i> (International Confederation of Societies of Authors and Composers)
CJEU	Court of Justice of the European Union
CMA	Competition and Markets Authority
CMO	collective management organisation
CNM	<i>Centre National de la Musique</i> (National Centre for Music)
CPI	<i>Code de la Propriété Intellectuelle</i>
CRM	collective rights management
CSPLA	<i>Conseil Supérieur de la Propriété Littéraire et Artistique</i> (High Council for Literary and Artistic Property)
D2C	direct-to-consumer
D2F	direct-to-fan
DCFR	Draft Common Frame of Reference
DCMS	Department for Digital, Culture, Media & Sport
DIY	do-it-yourself
DKV	<i>Deutscher Komponistenverband</i> (German Composer Association)
DRM	digital rights management
DSM	Digital Single Market DSP    digital service provider
EC	European Commission
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECSA	European Composer and Songwriter Alliance
EDM	electronic dance music
EEA	European Economic Area
EEC	European Economic Community

## List of Abbreviations

xv

EMMA	European Music Managers Alliance
ER	equitable remuneration
EU	European Union
FAC	Featured Artists Coalition
FACIR	<i>Fédération des Auteur-rices, Compositeur-rices et Interprètes Réuni-es</i> (Federation of Authors, Composers and Performers United)
FIM	<i>Fédération Internationale des Musiciens</i> (International Federation of Musicians)
GALM	<i>Genootschap Artiësten Lichte Muziek</i> (Society of Light Music Artists, now ‘de Muziekgilde’)
GDPR	General Data Protection Regulation
GEMA	<i>Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte</i> (Society for Musical Performance and Mechanical Reproduction Rights)
GESAC	<i>Groupement Européen des Sociétés d'Auteurs et Compositeurs</i> (European Grouping of Societies of Authors and Composers)
GRD	Global Repertoire Database
GVL	<i>Gesellschaft zur Verwertung von Leistungsschutzrechten</i> (Society for the Exploitation of Neighbouring Rights)
IAO	International Artists Organisation
ICMP	International Confederation of Music Publishers
IFPI	International Federation of the Phonographic Industry
ILO	International Labour Organization
IMMF	International Music Managers Forum
IMPEL	Independent Music Publishers European Licensing
IMPF	Independent Music Publishers International Forum
IMPALA	Independent Music Companies Association (originally: Independent Music Publishers and Labels Association)
INA	<i>Institut national de l'audiovisuel</i> (National Audio-Visual Institute)
IP	intellectual property
IPRs	intellectual property rights
IPRED	Intellectual Property Rights Enforcement Directive
ISPs	internet service providers
ISRC	International Standard Recording Code
ISWC	International Standard Musical Work Code
JORF	<i>Journal Officiel de la République Française</i>
M&A	mergers and acquisitions
MLC	Mechanical Licensing Collective

MMA	Music Modernization Act
MME	Music Moves Europe
MMF	Music Managers Forum
NDA	non-disclosure agreement
NMPA	National Music Publishers Association
NMUv	<i>Nederlandse Muziek Uitgevers Vereniging</i> (Dutch Music Publishers Association)
NORMA	<i>Naburige Rechtenorganisatie voor Musici en Acteurs</i> (Neighbouring Rights Organisation for Musicians and Actors)
NVPI	<i>Nederlandse Vereniging van Producenten en Importeurs van beeld- en geluidsdragers</i> (Dutch Association of Producers and Importers of Image and Sound Carriers)
OCSSP	online content-sharing service provider
OECD	Organisation for Economic Co-operation and Development
P2P	peer-to-peer
PALM	<i>Professionele Auteurs Lichte Muziek</i> (Professional Authors Light Music)
PEC	AHRC Creative Industries Policy & Evidence Centre
PECL	Principles of European Contract Law
PICC	Principles of International Commercial Contracts
PPD	published price to dealer
PPL	Phonographic Performance Limited
RAAP	Recorded Artists Actors Performers
RIAA	Recording Industry Association of America
RRP	recommended retail price
SABAM	<i>Société d'Auteurs Belge – Belgische Auteurs Maatschappij</i> (Belgian Authors Society)
SACEM	<i>Société des Auteurs, Compositeurs et Éditeurs de Musique</i> (Society of Authors, Composers and Music Publishers)
SAI	<i>Société des Artistes Interprètes</i> (Society of Performing Artists)
SENA	<i>Stichting ter Exploitatie van Naburige Rechten</i> (Foundation for the Exploitation of Neighbouring Rights)
SLRP	suggested retail list price
SMEs	small and medium-sized enterprises
SNEP	<i>Syndicat National de l'Édition Phonographique</i> (National Union of Phonographic Publishing)

## List of Abbreviations

xvii

SPEDIDAM	<i>Société de Perception et de Distribution des Droits des Artistes-Interprètes</i> (Collecting and Distributing Society for the Rights of Performing Artists)
Stb	<i>Staatsblad</i>
STEMRA	<i>Stichting tot Exploitatie van Mechanische Reproductierechten voor Auteurs</i> (Union for the Exploitation of Reproduction Rights for Authors)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UrhG	<i>Urheberrechtsgesetz</i>
UCC	Universal Copyright Convention
UCPS	User-Centric Payment System
UDHR	Universal Declaration of Human Rights
UGC	user-generated content
UKIPO	UK Intellectual Property Office
UNAC	<i>Union Nationale des Auteurs et des Compositeurs</i> (National Union of Authors and Composers)
UNESCO	United Nations Educational, Scientific and Cultural Organization
UrhDaG	<i>Urheberrechts-Diensteanbieter-Gesetz</i>
UWG	<i>Gesetz gegen den unlauteren Wettbewerb</i>
VAT	value-added tax
VGG	<i>Verwertungsgesellschaftengesetz</i>
WIN	Worldwide Independent Network
WIPO	World Intellectual Property Organization
WPPT	WIPO Performances and Phonograms Treaty
WTO	World Trade Organization