

# Targeted consultation on the conditions for the remuneration of certain third country performers and phonogram producers for their phonograms played in the EU

Fields marked with \* are mandatory.

## Why are we consulting

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This targeted consultation follows the [call for evidence](#) published by the Commission on 28 July 2022 concerning the remuneration of music performers and producers from non-EU countries for recorded music played in the EU. In the call for evidence, the Commission announced that it was considering introducing rules for certain non-EU/EEA music performers and phonogram producers, both individuals and companies. The EU/EEA countries are [EU member countries](#) and Norway, Liechtenstein and Iceland. Article 8(2) of the [RLR Directive](#) provides for a right to a single equitable remuneration (SER) for music performers and phonogram producers, irrespective of their nationality, for broadcasting and communicating to the public any phonograms published for commercial purposes.

This article is the means by which the EU implemented its obligations under Article 15(1) of the [WIPO Performances and Phonograms Treaty](#) (WPPT), to which the EU is a contracting party. At the same time, the WPPT allows contracting parties to limit the right to a single equitable remuneration or not to apply the right at all.

Whereas the EU has not used this possibility, several countries outside the EU/EEA have exercised this option. In such cases, the WPPT also allows other contracting parties to reciprocate on the basis of the “material reciprocity” principle. This means that contracting parties are not obliged to grant the right in Article 15 of the WPPT to performers and phonogram producers from countries that have filed any reservation to that Article, in those respects where the reservation has been made.

The aim of this targeted consultation is to gather stakeholder feedback on:

- certain specific aspects of how the right to a single equitable remuneration is applied in different EU countries
- any actual or potential consequences of the judgment by the EU Court of Justice in [case C-265/19 \(the ‘RAAP’ judgment\)](#). This judgment stated that as the EU law stands now, the single equitable remuneration provided under the RLR Directive for the use of recorded music in the EU applies regardless of the nationality of performers and phonogram producers (“national treatment”).

The Commission recently published a [study](#) on this issue, based on market data. This consultation aims to complement the study by targeting a broader range of stakeholders and EU countries.

It covers further elements and offers an additional opportunity to provide direct input to the Commission, including on the possible impacts of a legislative proposal which would establish an EU-level approach based on material reciprocity for remunerating non-EU/EEA music performers and phonogram producers.

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## Important note

### Targeted stakeholders

This consultation seeks contributions from stakeholders affected by the single equitable remuneration provided for in the RLR Directive, such as music performers, phonogram producers and other players within the value chain of the recorded music industry, including collective rights management organisations, as well as commercial users of recorded music such as TV and radio broadcasters, public venues such as bars, restaurants, clubs and hotels or organisations representing their interests.

### Relevance of the questions

You may find certain questions more suitable than others depending on the category you represent. Feel free to skip questions that do not concern you, or which you are not in a position to respond to.

For convenience, questions specifically addressed to certain categories of stakeholders are labelled accordingly, but you may reply to any question regardless of these labels.

### Scope of the consultation

This consultation concerns the single equitable remuneration right under Article 8(2) of the RLR directive. If your input includes **other forms of remuneration** which you are not able to distinguish from the SER, please make it clear in your responses.

### Focused inputs

The content of each individual submission will be aggregated. Please make sure to focus your input on the question being asked. If you want to make additional input that is not addressed in any of the questions, you can add it at the end of the questionnaire.

### Evidence

If possible, please corroborate your answers with evidence and data.

### Privacy

Any input to this consultation is covered by the relevant EU data protection rules and subject to the privacy statement annexed to this consultation.

As a respondent, you may choose to allow your contribution to be published under the organisation name you have given, or else anonymously. You may also choose to keep your input confidential (more information in the relevant section).

## General information concerning the respondent

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Please identify yourself and the category of stakeholder you represent. Any personal information is subject to this privacy statement.

### Privacy statement

[2023 Privacy statement targeted consultation.pdf](#)

\* I am responding as:

you can select several categories

- A performer
- A phonogram producer
- A representative of an organisation acting on behalf of phonogram performers
- A representative of an organisation acting on behalf of phonogram producers
- A collective management organisation or an independent management entity
- A user of phonograms as part of my business
- A representative of a national authority
- Other

Please specify your category

Business association for private media (incl. commercial radio broadcasters) in Denmark

\* First name and surname (this will not be published)

Holger Rosendal

\* Email (this will not be published)

hrd@danskemedier.dk

\* Organisation name

Danske Medier

\* Country of residence or principal establishment

DK - Denmark

\* Please indicate your preference for the publication of your response on the Commission's website

- Under the organisation name given:** My responses and all information they contain will be published under the organisation name I have given. I declare that none of this is subject to copyright restrictions that prevent publication.
- Anonymously:** My responses and all information they contain will be published anonymously (the organisation name I gave will not be published, only the respondent type and country). I declare that none of this is subject to copyright restrictions that prevent publication.
- Confidential:** My responses will not be published but will be used by the Commission in its analysis of the data it has collected.

If you are replying on behalf of an organisation, for example a business organisation or an organisation representing a group of stakeholders, is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

- Yes
- No

\* If yes, please indicate your organisation's registration number in the Transparency Register

604819151935-11 (registration pending)

\* Single Choice Question

- I agree with the enclosed privacy statement (submission conditional to ticking this box)

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Please indicate the Member State you will refer to while providing your input to the questionnaire. This might be the country of residence or the place in which the organisation you represent has its seat and/or activities related to the subject matter at hand.

\* My input refers to:

- A specific EU Member State
- The EU as a whole
- A non-EU country

EU member states

DK - Denmark

## Section 1 - National rules on single equitable remuneration for non-EU /EEA phonogram producers and performers

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This section aims to identify the national rules implementing the right to a single equitable remuneration (SER) and, in particular, its application to third country (non-EU/EEA) phonogram producers and performers outside the EU/EEA.

*(mostly relevant for: national authorities, collective management organisations (CMOs), performers, producers)*

Was the single equitable remuneration right applied in your country according to the national treatment (i.e. regardless of the nationality of performers and producers) or the material reciprocity principle before the RAAP judgment? *[Feel free to add any relevant explanation on the rules in your country on remunerating non-EU/EEA phonogram producers and performers]*

The rules regarding SER were based on material reciprocity. In June 2023 The Danish Ministry of Culture adopted legislation aligning with the RAAP-judgement, which is entering into force 1 January 2024.

(Departmental order no. 1001 adopted 23 June 2023) The legislation will disrupt what has been one of the best functioning markets for recorded music since 1967 and upset the SER distribution balance in a small language market where right holders have a relatively hard time breaking through in foreign markets. Since the departmental order has been adopted but is not yet in force we answer “yes” to the following question re. national rules and to the question re. changed collection practices in section 4.

Have the national rules on the right to the SER changed in your country following the RAAP judgment?

- Yes  
 No

Please describe those changes:

The above mentioned departmental order removes provisions re. the principle of material reciprocity in the current departmental order no. 218 adopted 9 March 2010.

What are the eligibility criteria (“points of attachment”) in your country for identifying the phonogram producers and performers entitled to benefit from SER?

- Nationality of the producer  
 Nationality of the performer  
 Place of first publication of the phonogram  
 Place of fixation of the phonogram  
 Residence of the performer  
 Place of establishment of the producer  
 Other criteria (specify)  
 None

Please describe any other criteria applied in your country to qualify for SER:

Place of performers' first performance (in a Rome Convention member state).

Are there any rules regulating cases where performers from outside the EU/EEA perform on the same recording with performers from the EU/EEA?

There are no rules on the matter besides the ones imposing material reciprocity as the determining factor. However, the CMO that is working under a collective licensing scheme - effectively a state-sanctioned monopoly - has bilateral agreements with corresponding CMOs in several territories outside of the EU/EEA, particularly ones in territories that have ratified the WPPT, Canada and Brazil being among the obvious examples.

What are the specific uses of that trigger the payment of the single equitable remuneration by users?

- TV and radio broadcasting  
 Public venues such as bars, restaurants, clubs, and hotels

Non-interactive digital streaming (e.g. webcasting and simulcasting; please note that on-demand streaming is not covered by the single equitable remuneration)

Other

Has your country concluded any bilateral international agreement with non-EU/EEA countries which covers the right to the SER?

Yes

No

## Section 2 - Information about recorded music markets

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This section aims to understand the most relevant recorded music markets both for consumers and for the music industry in Europe. If possible, please indicate the source of the information provided in your reply.

*(mostly relevant for national authorities, CMOs and producers)*

Excluding the EU/EEA countries, what are the top five non-EU/EEA countries where music from your country is played the most in broadcasting and in public venues?

	1	2	3	4	5
Country by rank					

Excluding the EU/EEA countries, what are the top five non-EU/EEA countries whose music is broadcast and played in public venues the most in your country? What are their respective shares of music consumption in your country?

	1	2	3	4	5
Country by rank					



What are the cultural/linguistic ties and market relationships between your country and the non-EU/EEA countries mentioned in your reply to the two previous questions?

### Section 3 - Tariffs for the single equitable remuneration for phonogram producers and performers

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This section aims to collect information and evidence on the tariffs established for the single equitable remuneration right.

*(mostly relevant for: CMOs and users)*

How are tariffs established for those specific users for the payment of the SER right for recorded music?

- Negotiated
- By national legislation

Who are the negotiating/contracting parties, are any national authorities involved in the process?

Danish broadcasters vs. Gramex (Danish CMO administering the financial rights of performing artists and record companies, cf. section 4 below)

What criteria or calculation methods are used for setting the tariffs? In particular, does the origin of repertoire have an impact?

Potential audience, actual audience, percentage of protected music used in the broadcasts and in some instances the broadcaster's revenue.

While the origin of the repertoire determines protection or lack thereof, it usually isn't applied as a criteria in the existing tariffs. However, most agreements concluded by the CMO contain a clause saying something to the effect of: "if the scope of protection is extended considerably, the agreement is to be renegotiated."

Can you explain how the tariff charged for the SER right in your country compares (e.g. in %) with the tariff charged for licences covering authors' rights in phonograms?

Ideally the SER should be roughly 75% of the tariff for the authors' rights. However, the tariffs have developed using slightly different criteria over the course of the last 40 years, which has resulted in the tariffs being close to equal in many cases and with the SER even exceeding the authors' tariffs in some cases.

### Section 4 - Collection of the single equitable remuneration for phonogram producers and performers

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This section aims to collect information and evidence on the management of the single equitable remuneration right, with particular focus on collection practices.

*(mostly relevant for: CMOs, users)*

What are the collective management organisations responsible for collecting and distributing SER in your country? If several CMOs are responsible for or involved in this, how are they organised (organisation schemes, money flows, etc.)?

Gramex is the only CMO in Denmark collecting the SER based on a mandatory collective licensing scheme. Gramex is solely responsible for all the collection, distribution and exchange of remuneration with all the corresponding organisations in foreign territories.

Have the collection practices changed in your country as a result of the RAAP judgment?

- Yes  
 No

To what extent have those practices changed?

We are in a position where the changes in legislation have been adopted but not yet been implemented. We expect negotiations with the CMO, Gramex, in the near future regarding payment for 2024 and onwards.

## Section 5: Distribution of the single equitable remuneration to phonogram producers and performers

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This section aims to collect information and evidence on the management of the single equitable remuneration right, with particular focus on the distribution practices.

*(mostly relevant for CMOs, producers and performers)*

How is the SER that is collected in your country distributed afterwards to EU and non-EU/EEA rightholders? Please outline the main features of the distribution system applied in your country, explaining how the SER is shared between phonogram producers and performers, and whether there is a distinction between EU and non-EU/EEA rightholders.

The SER is collected from broadcasters. The collected SER is split equally between performers and producers in the distribution. If for instance one part of a sound recording is fixated in a protected territory, the track in its entirety will be considered protected and all the rights holders will be remunerated accordingly. Once a track is considered protected there is no distinction between right holders from different territories.

What are the applicable contractual or administrative practices (e.g. membership, affiliation or reciprocal agreement) by which CMOs in your country distribute the SER revenue to non-EU/EEA phonogram producers and performers?

If a track is protected, foreign rights holders may either apply for membership with the local CMO or have their local CMO collect the remuneration via a bilateral agreement. Depending on the status of their local

CMO and legislation, it may prove advantageous to apply for membership in several territories. But if the foreign rights holder's territory has ratified the WPPT, the Danish CMO will typically have bilateral agreements with the corresponding CMO and the flow of remuneration will be pretty much automatic across the borders.

Are there any reciprocal agreements between collective management organisations in your country and other non-EU/EEA CMOs that are relevant for the SER?

- Yes  
 No

What are the relevant main rules in such agreements and what are the three most important (in economic terms) non-EU/EEA countries covered by such agreements?

The level of protection in the other territory.  
The most important territories are probably USA, UK and Canada.

What management fees are levied by CMOs in your country and what percentage do these fees constitute in the total SER revenues collected in your country?

N/A

Do CMOs in your country make deductions for social and cultural funding (see Article 12 of [Directive 2014/26/EU](#), the "CRM Directive")?

- Yes  
 No

Please explain how these deductions are regulated, what they are used for and who the beneficiaries are. What are the amounts involved?

The CMO deducts around 10%.

How are the non-distributable royalties stemming from SER (see Article 13 CRM Directive) used? Please explain if specific requirements apply to the use of non-distributable royalties and specify who the beneficiaries are.

After three years the non-distributable royalties are piled on top of the regular distribution cycle.

Inter-company agreements are often concluded within record companies under the same group, to redistribute the SER received from CMOs. If this is the case in your country, please explain the main characteristics of such agreements and how they help distribute the SER among rightholders from different countries?

N/A

## Section 6: Data on the collection and distribution of the single equitable remuneration

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This section aims at gathering data both from users (6a) and from CMOs/rightholders (6b) on the amount of SER collected and distributed in the different EU countries.

### Sub-section 6a - Data from users on the use of recorded music and payment of the single equitable remuneration

*(mostly relevant for: users, e.g. broadcasting organisations, hotels, restaurants, bars, other public venues etc.)*

How much do you pay for using recorded music in your organisation on a yearly basis (covering both licences for authors' rights and SER for phonogram producers and performers)?

*24 character(s) maximum*

Please see next reply

How much do you pay specifically for the remuneration of phonogram producers and performers (SER)? How have the tariffs paid for SER evolved since 2017?

Our association negotiates a broad framework agreement, which is supplemented by bilateral agreements between each broadcaster and the CMO, which corresponds to each commercial radio station's individual needs and the market. These negotiations take place bilaterally between each broadcaster and the CMO.

Does the tariff paid for the SER cover all the music repertoire that you played?

- Yes  
 No

What is the approximate percentage of music from non-EU countries used in your broadcasting programmes/establishment?

*12 character(s) maximum*

What aspects do you take into consideration when choosing the music repertoire to be used in your broadcasting programmes/establishments? For example, is the tariff relevant at all in determining your choice? If so, how would you reconsider your use of music repertoire in case of tariff renegotiation?

Currently, primarily editorial considerations over economical. However, renegotiation of tariffs may force broadcasters to reconsider editorial choices of music.

## Subsection 6b - Data from CMOs/ rightholders on the collection and distribution of the single equitable remuneration

What is the amount of the SER collected and distributed in your country (in EUR)?

*24 character(s) maximum*

What is the estimated share of the SER in the overall revenues of the recorded music market in your country?

What is the breakdown of the SER collected between uses for broadcasting and communication to the public in specific public venues?

How is the SER broken down between music producers and performers in your country?

What is the amount of the SER distributed to non-EU/EEA music producers and performers in your country? (money outflow in EUR)

*12 character(s) maximum*

What is the amount of the SER that CMOs in your country receive from non-EU/EEA countries for using your national recorded music repertoire in those countries? (money inflow in EUR)

*12 character(s) maximum*

If you are not in possession of the data you need to answer questions 1-6, please share with us any other relevant information.

## Section 7: Consequences of amending the single equitable remuneration

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Sections 7.a and 7.b aim to gather stakeholders' views on the consequences (if any) of changes in national systems for collecting and distributing the single equitable remuneration for non-EU/EEA phonogram producers and performers.

Depending on the specific situation in your country (whether it currently applies national treatment or material reciprocity for distributing SER), please provide your input on the scenario most relevant for you. Section 7.a concerns the application of national treatment across the EU, while section 7.b describes a potential shift to material reciprocity across the EU.

*(mostly relevant for: national authorities, CMOs, producers, performers, user)*

## Sub-section 7a – Application of national treatment to the single equitable remuneration of non-EU/EEA country phonogram producers and performers

As the EU Court of Justice clarified in the RAAP judgment, national treatment applies in the EU for SER with regard to non-EU/EEA phonogram producers and performers.

This section aims to gather stakeholders' views about the effects of the change from material reciprocity to national treatment, if it happened in your country.

How have/will the tariffs paid by broadcasters or public venues playing recorded music changed/change as a result of applying national treatment to the SER?

The CMO has indicated that they would expect an increase in the tariffs corresponding to the individual broadcasters' share of currently unprotected repertoire. For some broadcasters that share is relatively low, while others have played significant amounts of especially US repertoire and are expecting the CMO to set forth demands for very substantial increases in remuneration.

It is worth noting that the remuneration rates in the Nordic countries already is a lot higher than in most other countries. A substantial increase of protected repertoire could lead to increased financial burden for the broadcasters in an already very heavily burdened market.

How are the practices and revenues of CMOs expected to change as a result of applying national treatment to the SER?

All licenses to be renegotiated due to significantly larger volumes in protected repertoire. Demands for significantly higher remuneration expected.

How are the revenues of national and EU/EEA phonogram performers and producers expected to change as a result of applying national treatment to the SER?

If the local CMO fails to increase its tariffs in a scale and margin corresponding to the share of currently unprotected repertoire, local performers and producers will suffer as the pool of right holders to share the collected remuneration will be increased tremendously. Especially the share of US repertoire will in itself eat away at the share of everyone else's remuneration. And especially the US-based major labels will take away from the share of the smaller local producers.

What is the expected impact of applying national treatment to the contributions made by CMOs to cultural and social funds?

None

Do you expect any impacts on national/EU music markets or cultural diversity?

The performers and producers in the affected smaller markets will absolutely feel that their share of the collected remuneration is reduced. The larger artists locally will not be as affected as the smaller ones. But the smaller ones and the up and coming ones will have an even harder time making a living of their music if national treatment is rolled out without the possibility for member states to apply material reciprocity.

Are there/will there be any other consequences from applying national treatment?

How could the effects mentioned above be mitigated to contribute positively to the EU music market?

The above described effects could be mitigated by allowing EU member states to apply national treatment as a criteria for protection (as an option). This would allow for the already well functioning markets to continue as they have for decades. National treatment as an option (rather than mandatory) allows the individual member state to assess whether they are to continue as hitherto (keep the status quo) or whether they should adopt national treatment with all the ramifications that a change like that would entail.

## Section 7b – Possible consequences of applying material reciprocity to the single equitable remuneration of non-EU/EEA phonogram producers and performers

In its 2022 call for evidence the Commission announced it was considering an initiative aimed at amending the scope of Article 8(2) of the RLR Directive to introduce material reciprocity in EU law.

This section aims to gather stakeholders' views about the possible effects of introducing material reciprocity in EU law for the collection and distribution of the SER.

How would the tariffs paid by broadcasters or public venues playing recorded music change as a result of applying material reciprocity to the SER?

No changes in Denmark, as material reciprocity as a criterion for protection is in effect (at least until January 2024).

How would the practices and revenues of CMOs change as a result of applying material reciprocity to the SER?

How would the revenues of national and EU/EEA phonogram performers and producers change as a result of applying material reciprocity to the SER?

How would the contributions made by CMOs to cultural and social funds change as a result of applying material reciprocity to the SER?

Would there be any impacts on national/EU music markets or cultural diversity?

Would there be any other consequences?

How could the effects mentioned above be mitigated so as to contribute positively to the EU music market?

The above described effects could be mitigated by allowing EU members states to apply material reciprocity as a criteria for protection (as an option). This would allow for the already well functioning markets to continue as they have for decades. Material reciprocity as an option (rather than mandatory) allows the individual member state to assess whether they are to continue as hitherto (keep the status quo as before the RAAP-judgment) or whether they should adopt material reciprocity with all the ramifications that a change like that would entail.

## Section 8 – Other remarks

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Do you have further comments to share on the application of the single equitable remuneration and on the possible consequences of regulatory changes?

We strongly advice for allowing Member States to adopt the option best suited to keep the status quo of each Member State as before the RAAP-judgment. Forcing either material reciprocity or national treatment as the only option may be detrimental to the diverse and delicate creative and economical systems in each Member State.



## Contact

[Contact Form](#)