



## The Artist's Agreement compared with the Publishing Agreement

The economic producer (a label, for example) finances the production of sound recordings containing performances by performers with the intent to subsequently promote and exploit the recording. The agreement regulates the resulting rights between the performer and the producer. The artist's agreement is often confused with the publishing agreement. An overview of the differences

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*The artist's agreement regulates the performer's rights to their performance; the publishing agreement on the other hand regulates the exclusive rights of the composer and the lyricist in their work. (Photo: Tabea Hüberli)*

An artist's agreement between a performer and an economic producer (a label, for example) can be defined as the transfer by the performer of their performance rights to the producer for the purpose of recording.

### Transfer of the artist's rights

The neighbouring rights transferred by the performer (performance rights) to the producer are the performer's exclusive rights in their performance. These include the exclusive right:

- to fix their performance on blank media and to reproduce such fixations (mechanical rights);
- to offer, transfer or otherwise distribute copies of their performance; (right to market or distribution right);
- to make their performance perceptible in some place other than that in which it was performed, either directly or through any kind of medium, in such a way that persons may access it from a place other than that in which it was performed (the right of recitation, presentation and performance, and the right to make available);
- to broadcast their performance by radio, television or similar method, including by wire, as well as to retransmit the broadcast performance by means of technical equipment, the provider of which organization, and to make their performance perceptible when they are broadcast, retransmitted or made available to the public (broadcasting right).

### Obligations of the producer

The producer's function is to produce, at their own expense, a recording containing the artist's performance, and to promote and exploit the recording. The producer is responsible for promoting the recording.

## Royalties

In consideration of the transfer of the performer's rights, the producer is required to pay a fee for each recording sold. The fee is calculated on the wholesale price of every sound recording sold, at varying rates depending on the type of recording. For recordings sold in retail outlets (physical distribution), the rate is generally 8%, but it may go up to 12%. For online sales (internet and other), rates are usually between 15% and 30%. For other uses (e.g. for the performer is generally 50% of the amount received by the producer of the sound recording.

## Comparison with the publishing agreement

A publishing agreement between an author and a publisher can be defined as the transfer by the author (composer, lyricist, arranger) to the publisher of the rights in the author's work with a view to its

### Transfer of the author's rights

The author's rights transferred to the publisher are the author's exclusive rights in their work (i.e. in the composition and lyrics). These rights include:

- the right to produce copies of the work, particularly in printed form, or as sound recordings, audiovisual recordings or on other media carriers (mechanical rights);
- the right to offer to the public, to sell or otherwise distribute copies of the work (right to market or distribution right);
- the right to recite, present or perform the work, or enable it to be viewed or heard in a place other than that where the work was presented, and to make it available (the right of recitation, present make available);
- the right to broadcast the work via radio or television (broadcasting right).

Other rights may also be transferred by the author, i.e. remuneration claims managed by collecting societies (uses for teaching purposes, for example), graphic rights (the right to publish sheet music on the work), arrangement rights (remixes, arrangement of a work), synchronisation rights (the right to combine the work with works of other genres, in particular with films or video games), or the advertising purposes).

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### For your information

Publishing agreement: "[Publishing agreements: What do I need to consider?](#)" (SUISAblog)

For more about music and films: [SUISAinfo 2.09](#) (PDF, in German)

For more about arrangements: "[Arranging works protected by copyright](#)", "[Setting to music](#)" as well as "[Sampling and Remixes](#)" (SUISAblog)

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### Obligations of the publisher

The function of the publisher is to publish, reproduce, and distribute the author's work, to mediate it, combine it with other works (in an arrangement, film or commercial), present it to the public (inter conclude contracts with sub-publishers for the publication of the work in other countries.

## Royalties

The remuneration for the exclusive rights and for the compensation claims managed by collecting societies are split between the author and the publisher following the distribution key of the competent agreement. According to SUIA's Distribution Rules, the publisher's share of performance and broadcasting rights may not exceed 33.33%. There is no cap on the publisher's share of the mechanical right management of the other rights is shared between the parties as provided in the publishing contract. As a rule, the remuneration is split on an equal 50: 50 basis. For sheet music, the author is entitled to

## In a nutshell

The artist's agreement is different to the publisher's agreement. The artist's agreement applies to a performer while the publishing agreement concerns the author (composer, lyricist, arranger). In the artist's agreement, the author transfers their neighbouring rights (performance rights) in their performance whereas in the publishing agreement, the author transfers the copyrights in their work. Lastly, the producer and the publisher do not have a contractual relationship, and the remuneration deriving from the artist's agreement and the publishing agreement is specific to each. For example, if a film producer wishes to use a piece of music in a film, they must obtain the rights from the label (which obtained them from the performer under the artist's agreements) and the copyrights in the work (composition and lyrics) from the publisher (who obtained them from the author).

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### For your information

Specimens of publishing and sub-publishing agreements are available on SUIA's website. The main points of these agreements are presented in a commented version. [www.suisa.ch/en/members/publishers/publishing-agreements](http://www.suisa.ch/en/members/publishers/publishing-agreements)

SUIA manages authors' rights for authors and publishers. Swissperform manages the neighbouring rights of performers and producers in their recordings.

"[Why SUIA members should also consider joining SWISSPERFORM](#)" (SUISAblog)

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### Related articles

**Publishing agreements: What do I need to consider?** – Publishing agreements in Switzerland are governed by the Swiss Code of Obligations (OR) The respective statutory provisions on it are, however, not very detailed. In the case of music publishing agreements in particular, you cannot simply rely on the law. Besides, the contractual parties may also stipulate their own arrangements in the agreement. So what do you have to be aware of with respect to publishing agreements? [Read more](#)

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**SUIA membership in numbers** – More than 38,000 authors and publishers have instructed SUIA with the management of their rights. Where are they from, how old are they and are there more men or women who are active in the music industry? Figures and graphics below provide an insight into SUIA's membership structure. [Read more](#)

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**SUIA remuneration is subject to AHV (pension) contributions** – Copyright royalties paid out by SUIA are deemed as earned income from independent activities and therefore have to be taken into consideration for the Swiss Compensation Office (pension funds). That way, later claims and pension reductions at a later stage in life can be avoided. [Read more](#)



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Acquisition date: 05.03.2020 [<https://blog.suisa.ch/en/the-artists-agreement-compared-with-the-publishing-agreement/>] by Manu Leuenberger