

FAQ: Fund for Performing Artists



What has changed in the Neighbouring Rights Act (*Wet op de naburige rechten*)?

The term of protection for commercially released titles (referred to in the Act as 'phonograms released for commercial purposes') has been extended from 50 to 70 years. This change was made in accordance with the European Directive (2011/77/EU) that was adopted in 2011, and means that all commercial titles released in 1963 until 1967 are now protected for 70 years.

Which rights holders qualify for an additional 20 years of protection?

All musicians and producers of phonograms will retain their exploitation rights for an additional 20 years and are entitled to Sena payments (from neighbouring rights) for an additional 20 years. This includes musicians who initially transferred their rights to a record company.

How will producers be affected by the legislative change, and why has a Fund for Performing Artists been created?

When the European Directive was drawn up, it was decided that a fund for performing artists was necessary for musicians (including session musicians) who received a one-off payment for their work on a phonogram that now qualifies for extended protection. Producers must report 20% of the income earned (before deduction of costs) from commercially released titles to Sena, for titles that are between 50 and 70 years old. Producers are not obliged to investigate whether (and if so which) session musicians were involved.

Which producers must report income?

Producers are defined as those who fixated the title for the first time (or had it fixated). Those who exploited the phonogram/title in the year of payment (the exclusive licensees) are seen as parties liable to submit payments.

To whom do I report the income?

The 20% income deduction will be deposited into the Fund for Performing Artists. Sena has been appointed as the fund manager, and will collect and issue payments. You do not need to report or pay anything to individual musicians.

What qualifies as income?

Income includes the revenue (before deduction of costs) earned from the reproduction, distribution and making available of the commercially released title, otherwise known as 'primary exploitation'. Income from Sena, the Home Copy Association (*Stichting de Thuis kopie*) and the Public Lending Right Office (*Stichting Leenrecht*) does not count here – musicians have independent rights to this income.

Which year's income must I report?

Income accrued in 2018 from recordings released in 1963 until 1967 must be reported by 1 April 2019. One additional year will be included in each year thereafter, i.e. 1963, 1964, 1965, 1966, 1967 and 1968 will be included in 2020, and so on.

To which repertoire does the fund apply?

You must report income from (commercially released) titles in European countries and from titles that acknowledge neighbouring rights via international treaties, such as the United States. For convenience, you may assume worldwide repertoire. First check your own files for titles that were released in 1963 until 1966. Also refer to the list published annually by Sena, which includes titles applicable to the year that you have to report on. This year, the relevant year is 1963 until 1967. The list includes tracks that are known to Sena – it is not exhaustive, and no rights may be derived from it. Producers are themselves responsible for correct and complete reporting of the repertoire, and for making the associated payments.

Do I need to report income for all of the repertoire in the given year?

The European Directive defines the relevant repertoire as that for which musicians received a one-off payment for their involvement. Dutch law stipulates that musicians are jointly entitled to an annual supplementary payment from the producer. The legislator has decided to first have producers report on the relevant repertoire and deposit money into the fund, after which the musicians can submit claims. Musicians submitting a joint claim must share the payment issued. If no claim is submitted within three years, the producer is entitled to receive a refund unless they decided otherwise.

As a record company, do I need to find out who worked on a recording when it was made?

Record companies are not required to find out which musicians worked on recordings, as the musicians transferred their rights at that time. In most cases, there will no longer be any surviving records. However, if you do have information available on the relevant musicians, it would greatly assist with processing claims if you could share this information with Sena.

What information am I required to supply?

The operating producer/licensee is obliged to report income as described above by 1 April in the year following the year of operation. Income accrued in 2018 from recordings released in 1963 until 1967 must be reported by 1 April 2019. Sena sent you a reporting reminder at 24th of January. Deliberate failure to report or incorrect reporting is a punishable offence under the law. As stated above, producers do not need to find out or state which musicians were involved in recordings.

Who is entitled to payments from the fund?

All musicians who worked on recordings from 1963 (and later) may claim payments from the Fund for Performing Artists. The law states that the musicians and their heirs are entitled to submit claims – provided they supply proof, of course.

How do I report the income?

Producers received an email on 24 January with which they can report their income directly online. Even if you have not accrued income from repertoire from the year 1963 until 1967, we request you to confirm this to us before 1 April 2019 via the link in the e-mail. Can you no longer find the e-mail of 24 January? Then please send an e-mail to fondsuitvoerendekunstenars@sena.nl. Please indicate in the e-mail whether you have accrued income from repertoire of 1963 until 1967.

Did you accrue income from repertoire of the years 1963 until 1967? Then use an Excel sheet to report your income. You can upload the filled Excel file using the link we sent you on 24 January. Can you no longer find the e-mail of 24 January? Then please send the filled Excel file via e-mail to fondsuitvoerendekunstenars@sena.nl. The associated payment must be made to account number NL68ABNA0444974032 (IBAN) under the name Sena in Hilversum, stating *Fonds Uitvoerende Kunstenaars* as payment reference.

In case you had no distribution income from release years 1963-1967 in 2018

Even if you had no income in 2018 from tracks or repertoire that you released in 1963 until 1967, Sena would still like to receive notification of this. Please use the link in the e-mail of 24 January to confirm this to us. Can you no longer find the email of 24 January? Then please send an email to fondsuitvoerendekunstenars@sena.nl, indicating in the e-mail whether or not you accrued income in 2017 from release years 1963 until 1967. Thank you.

Fund for Performing Artists: Key information

1. The extended period of protection applies to all repertoire released on 1 January 1963 or later. One additional year will be added in each year thereafter.
2. Payments are made to Sena, which has been appointed by law to process them.
3. Entitled claimants are all musicians (including session musicians) who worked on the relevant productions, not only in Europe, but also in America, etc. For convenience, you may assume worldwide repertoire.
4. Record companies do not need to find out which musicians were involved. Sena will assist with identifying the relevant repertoire that is subject to income reporting.
5. Musicians have to submit their own substantiated claims to Sena.
6. Producers/operators are obliged to make payments.
7. They pay 20% of the income, not including income from Sena, the Home Copy Association (*Stichting Thuiskopie*) or the Public Lending Right Office (*Stichting Leenrecht*).
8. Producers/operators are obliged to submit income information.