House of Commons

Digital, Culture, Media and Sport Committee

Economics of music streaming

Second Report of Session 2021–22

HC 50

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The Digital, Culture, Media and Sport Committee

The Digital, Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Digital, Culture, Media and Sport and its associated public bodies.

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Music streaming intersects two sectors of considerable political, economic and cultural significance to the UK: our world-renowned music industry, which contributes over £5 billion in gross value added (GVA) to our economy, and our dynamic, innovative tech sector, which in 2018 was growing by nearly 8 percent per year and currently creates hundreds of thousands of jobs. Following over a decade of digital piracy, music streaming has returned the recorded music sector to growth and is now the dominant mode of music consumption for consumers in the UK and globally. Real-terms revenues from recorded music, however, are far below the levels seen in previous decades. For consumers, recorded music is now cheaper, more personalised and more readily available than ever before. While in the short term, the pricing structure of the industry, and free availability of such product, may be seen as a good deal for music-lovers, the danger is that without greater levels of revenue, some of the music they love may not be being made in ten years' time.

Despite the streaming boom that has provided a partial economic recovery for the music industry, not all stakeholders have received proportionate benefit. In many instances, companies have leveraged structural advantages to achieve seemingly unassailable positions in their relative markets. Streaming services that host user-generated content (UGC) have significant advantages over other services due to copyright 'safe harbours', which has led to the dominance of services like YouTube. We have been told that the major music companies have experienced historic profit margins, and continue to consolidate their position as the largest asset owners of recording and song rights through mergers, acquisitions, and integration with all aspects of the digital music business.

Meanwhile, performers, songwriters and composers receive only a small portion of revenue due to poor royalty rates and because of the valuation of song writing and composition, relative to the recording. Whilst these issues predate the Covid-19 pandemic, this has been compounded and thrown into sharp relief by the loss of live music, which continues to impact them and the ecosystem that supports them. Poor remuneration risks disincentivising successful, professional musicians and diminishing the UK's ability to support new domestic talent.

We recommend a broad yet comprehensive range of legislative reforms and regulatory interventions to deal with these issues. In order to address artist remuneration and the disparity in power between creators and companies, we recommend that the Government introduce a right to equitable digital music remuneration, a right to recapture the rights to works after a period of time and the right to contract adjustment if their works are successful beyond the remuneration they receive. We have deep concerns about the position of the major music companies and call on the Government to support the independent sector and take advice from the Competition and Markets Authority as to whether competition in the recorded music market is being distorted. We also advise the Government to proactively normalise the requirements on streaming services both within the streaming market and with other modes of music consumption, by placing greater licensing obligations on UGC-hosting services, future-proofing the public service broadcasting prominence regime and addressing 'payola' concerns about algorithms and playlist curators.

1 Introduction

The economics of music streaming

1. Music streaming is the process whereby music multimedia is accessed by consumers over the internet. Streaming has irrevocably changed modern music consumption and, as musicians have been restricted from touring and performing live during the Covid-19 pandemic, they have become solely reliant on revenue from recorded music. Some successful, critically acclaimed artists have found that the earnings from streaming "are not significant enough to keep the wolf away from the door".[1] Some hit songwriters have found that they cannot live off streaming revenue and are "forced to live on universal credit" with the Government "picking up the bill".[2] In response, musicians have mobilised, calling for a review of how recorded music revenues are shared.[3]

The loss of live music income

2. Our decision to examine the economics of music streaming complements our previous work on the broader economic impacts of the Covid-19 pandemic on the digital, culture, media and sport sectors[4] and our recently-Reported inquiry into UK music festivals.[5] Last year, we heard that 90 percent of UK festivals had been cancelled and 93 percent of grassroots music venues faced permanent closure.[6] We also alerted the Government to the fact that a quarter of the music industry workforce, including 42 percent of respondents to a Musicians' Union survey, did not qualify for the Self Employed Income Support Scheme and producers and sound engineers had lost an average of 70 percent of their income.[7] We recommended, in our Report on 'The Impact of COVID-19 on DCMS sectors', that the Government "should investigate how the market for recorded music is operating in the era of streaming to ensure that music creators are receiving a fair reward".[8] The Government's response to our Report stated that it had tasked the Intellectual Property Office (IPO) with supporting an independent qualitative and quantitative research project, jointly funded by Nesta and supported by a coalition of industry bodies, to investigate how music creators earn money from streaming.[9] The project is led by Dr Hyojung Sun, Ulster University, Professor David Hesmondhalgh, University of Leeds and Dr Richard Osborne, Middlesex University, and (at the time of writing) is due to report in the summer 2021.[10]

3. That said, dissatisfaction with music streaming within the music industry predated

1 Q75 [Nadine Shah]
2 Q181 [Fiona Bevan]
3 Ivors Academy of Music Creators, The Ivors Academy and Musicians' Union launch Keep Music Alive campaign to "fix streaming now", accessed 23 March 2021
4 Digital, Culture, Media and Sport Committee, Third Report of the Session 2019–21, Impact of COVID-19 on DCMS sectors: First Report, HC 291
5 Digital, Culture, Media and Sport Committee, First Report of the Session 2021–22, The future of UK music festivals, HC 49
6 Digital, Culture, Media and Sport Committee, Third Report of the Session 2019–21, Impact of COVID-19 on DCMS sectors: First Report, HC 291, paras 43–4
7 Oral evidence taken on 22 April 2020, HC (2019–21) 157, Qq37–39
8 Digital, Culture, Media and Sport Committee, Third Report of the Session 2019–21, Impact of COVID-19 on DCMS sectors: First Report, HC 291, para 44
9 Digital, Culture, Media and Sport Committee, Third Special Report of the Session 2019–21, Impact of Covid-19 on DCMS sectors: First Report: Government Response to Committee's Third Report of Session 2019–21, HC 885, para 10
10 Dr Hyojung Sun, Prof. David Hesmondhalgh and Dr Richard Osborne (EMS0149)

the Covid-19 pandemic. In its 2019 Report on Live Music, our predecessor Committee considered whether existing income streams for musicians are sustainable. It recognised that digital music consumption provided "significant opportunities for artists to distribute their music and reach new audiences" but that "labels and musicians struggle to make sufficient returns from their creative output".[11] Services that host user-generated content (UGC)/user-uploaded content (UUC) in particular were criticised for the "shameful rates" paid to the music industry for digital music consumption.[12] Our predecessor Committee also noted that the Government similarly expressed dissatisfaction with the current rates of remuneration offered to artists through streaming services but did not make any streaming-specific recommendations.[13]

4. The abrupt and enforced loss of live music income for musicians during the pandemic subsequently recontextualised concerns about the economics of music streaming. In March 2020, the #BrokenRecord Campaign, founded by Gomez vocalist, guitarist and songwriter Tom Gray, gained considerable traction on social media, bringing together musicians, industry professionals, fans and other parties dissatisfied with artist remuneration from music streaming in order to agitate for changes to the existing model.[14] Mr Gray has called for "the restoration of a larger, secure, professional class of artist, songwriter and performer" and for "kids to be able to aspire to make a living from original music, not simply huge fame or bust".[15] In May 2020, the Ivors Academy of Music Creators and the Musicians' Union launched the Keep Music Alive campaign to "fix streaming" by starting a petition that called on the Secretary of State for Digital, Culture, Media and Sport, Oliver Dowden MP, to explore regulation and reform of the music streaming market.[16] The public debate provoked by the campaigns was welcomed by Kim Bayley, CEO of the Entertainment Retailers' Association (ERA), a trade organisation representing physical and digital music, video and videogame retailers and wholesalers such as Amazon, SoundCloud, Spotify and YouTube.[17] However, Geoff Taylor, CEO of the British Phonographic Industry Ltd (BPI), a trade association for UK record labels, argued that the industry's "focus should be on growing the streaming pie rather than trying to argue over where that streaming pie should go".[18] The perspectives of creators, the record industry and music streaming services largely consolidated along these lines throughout our inquiry.

Our inquiry

5. We launched our inquiry in October 2020 to consider the impact of music streaming on the creators and companies that comprise the music industry and examine the long-term sustainability of the industry itself. We have received almost 300 pieces of written evidence, organised an engagement event with emerging artists and held seven oral evidence sessions during which we heard from performers, songwriters, composers, music companies, trade bodies, collecting societies, government ministers and, of course,

11 Digital, Culture, Media and Sport Committee, Ninth Report of the Session 2017–19, Live music, HC 733, para 111
12 Digital, Culture, Media and Sport Committee, Ninth Report of the Session 2017–19, Live music, HC 733, para 111
13 Digital, Culture, Media and Sport Committee, Ninth Report of the Session 2017–19, Live music, HC 733, para 112
14 "#BrokenRecord: 'It's about saying we all recognise this is problematic'", Music Ally, 18 May 2020
15 "'I love streaming, I just hate the remuneration system sitting inside it.'", Music Business Worldwide, 23 February 2021
16 Ivors Academy of Music Creators, The Ivors Academy and Musicians' Union launch Keep Music Alive campaign to "fix streaming now", accessed 23 March 2021
17 Entertainment Retailers' Association, ERA CEO welcomes #BrokenRecord and #FixStreaming debates as musicians contend with coronavirus, accessed 23 March 2021
18 "BPI chief Geoff Taylor responds to #BrokenRecord debate", Music Week, 29 May 2020

the streaming services themselves.

6. However, our inquiry highlighted concerning practices. Participants in our roundtable discussion noted that many emerging artists are afraid to speak out because "they don't want to fall out of favour" with market gatekeepers.[19] Several performers who did give evidence claimed that they and many of their peers were afraid of speaking out against the status quo for fear of losing favour with major record labels and streaming services.[20] As Elbow frontman and BBC 6 Music presenter Guy Garvey argued, "however leaky the boat has become, young musicians still don't want to rock it, and if they don't rock it they can't make ends meet, particularly in genres where how much money you have is part of your lyrics".[21] Furthermore, some potential witnesses privately raised concerns that speaking publicly would bring negative consequences for them. It is, therefore, unsurprising that we received almost eighty confidential submissions to our inquiry. On 1 December 2020, our Chair considered it necessary to make a statement on the issue:

> We have been told from many different sources that some of the people interested in speaking to us in relation to this inquiry have become reluctant to do so, because they fear action may be taken against them if they speak in public. I would like to say, on behalf of the Committee, that we would take a very dim view indeed if we have any evidence of anyone interfering with witnesses to one of our inquiries. No one should suffer any detriment for speaking to a parliamentary Committee, and anyone deliberately causing harm to one of our witnesses will be in danger of being in contempt of this House. This Committee will brook no such interference and will not hesitate to name and shame anyone proven to be involved in such activity. Anyone who wants to come forward to speak on this issue or any other issue should get in touch with the Committee and will be treated in confidence.[22]

Our Report

7. The economics of music streaming is a complex and idiosyncratic object of study. As such, Chapter 2 of this Report will provide an overview of the rise of digital music, including a historical overview of music streaming, its legal underpinnings and the consumer perspective, in order to provide the necessary context to the issues that will subsequently be examined. Our Report will then focus on three broad areas:

- Chapter 3 will evaluate issues regarding performer, songwriter, composer and music publisher remuneration;
- Chapter 4 will consider issues in the recorded music market, such as competition, market domination and transparency; and
- Chapter 5 will discuss issues in the streaming market, including technologies, payment systems and 'safe harbour' provisions that protect services that host user-generated content.

Due to the prevalence of jargon used by industry stakeholders (and therefore used throughout this Report), Annex 1 provides a glossary of relevant terms.

19 Transcripts of roundtables with emerging artists (EMS0293)
20 Qq21, 76, 98–101
21 Q76
22 Oral evidence taken on 1 December 2020, HC (2019–21) 869

2 The dominance of digital music

Significance of the UK market

8. Music streaming intersects two sectors of considerable political, economic and cultural significance to the UK: namely, our historic, world-renowned creative industries and our innovative, flourishing tech industry. Streaming services have provided a new and legitimate mode for people around the world to consume UK music and return the music industry to growth following over a decade devastated by digital piracy.[23] Consumers now have access to more music than ever before at historically cheap prices (if they choose to pay at all).[24] It is estimated that the UK is the largest digital music market in Europe and generated approximately $1 billion in revenue in 2020 alone.[25]

9. Prior to the Covid-19 pandemic, the creative industries added between £110 and £130 billion to the UK economy, supported over two million jobs[26] and, since 2010, grew at nearly twice the rate of the economy as a whole.[27] In terms of music markets, the UK is currently second only to the United States.[28] The UK music industry contributes an estimated £5.2 billion in gross value added (GVA) to the UK economy per year, of which recorded music generates approximately £1.5 billion in retail revenues: a figure that is also growing year-on-year.[29] The industry employs over 200,000 people, ranging from music creators (including over 50,000 UK artists) and their ecosystems, music venue and touring staff and employees of record labels, music publishers, music streaming services and collecting societies, based in every nation and region of the UK, stimulating local economies across the country.[30] Annually, the sector generates £2.7 billion in exports, and recorded music specifically generates £500 million in export revenues.[31] One in every ten tracks streamed globally is by a British artist, which the BPI has noted is four times greater than the UK's share of global GDP.[32] The UK's comparative advantage in global music production is a product of its broader cultural capital and the prevalence of the English language as a first and second language around the world.[33] Many contributors to our inquiry, including the BPI and the International Federation of the Phonographic Industry (IFPI), the worldwide record label trade association, have argued that the music industry is "a powerful component of the UK's 'soft power' on the world stage", whilst others have argued that music has made a significant positive contribution "to the perception of the UK globally".[34]

10. In economic terms at least, the contribution of the creative industries is however rivalled by the UK's tech sector. In 2018, the sector contributed £149 billion, worth more

23 International Federation of Musicians (FIM) (EMS0025); Dr Nicola Searle (EMS0041); Entertainment Retailers Association (EMS0081); Association of Independent Music (EMS0157); PRS for Music (EMS0158)
24 Pete Woodroffe (EMS0018); Dr Nicola Searle (EMS0041); Bournemouth University (EMS0048)
25 Digital Media Association (DiMA) (EMS0233)
26 Dr Nicola Searle (EMS0041); Equity (EMS0173)
27 Equity (EMS0173)
28 Philippe Rixhon (EMS0146); #BrokenRecord Campaign (EMS0218)
29 Julian Henry (EMS0137); Philippe Rixhon (EMS0146); BPI (EMS0208); Digital Media Association (DiMA) (EMS0233)
30 Association of Independent Music (EMS0157); #BrokenRecord Campaign (EMS0218); Digital Media Association (DiMA) (EMS0233)
31 BPI (EMS0208)
32 "One in 10 songs streamed globally are by British artists", NME (4 January 2021)
33 Dr Nicola Searle (EMS0041); Philippe Rixhon (EMS0146)
34 Q8 [Tom Gray]; Julian Henry (EMS0137); Philippe Rixhon (EMS0146); BPI (EMS0208); IFPI (EMS0209); Niall Parker (EMS0267)

than £400 million per day, accounting for 7.7 percent of the UK economy, and was growing by nearly 8 percent per year, six times faster than the economy as a whole.[35] The Internet Association, a worldwide trade body for internet companies, asserts that the internet sector alone contributes $45 billion to the UK economy every year, creating opportunities for approximately 80,000 businesses and 400,000 jobs.[36] The 850 members of techUK, a national trade body for technology companies, collectively employ over 700,000 people.[37] YouTube's submission states that research by Oxford Economics, a forecasting and quantitative analysis outfit, found that the company's "creative ecosystem" alone supports 30,000 full-time equivalent jobs and contributes £1.4 billion to UK GDP.[38] Moreover, UK consumers of all demographics are often early adopters of new technology, making the UK a significant market for tech companies.[39] As such, the Government has stated its desire to "shape a new golden age for tech in the UK"[40] and has declared that the tech sector can be "an engine of job creation kickstarting our economy as we emerge from the pandemic".[41] The Secretary of State for DCMS has, repeatedly throughout his tenure, described himself,[42] the Government[43] and the UK[44] as "unashamedly pro-tech".

11. The UK's tech credentials also extend beyond the private sector. Most prominently, the UK is at the forefront of developing new frameworks for digital competition, age appropriate design, online harms and cybersecurity. The Government has announced that Ofcom will operate as the new regulator of harmful content online in recognition of its global reputation and experience tackling harmful content while supporting freedom of expression in television and radio programming.[45] The Government also intends to establish a Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA) to oversee a new pro-competition regime for tech companies, including an enforceable code of conduct to govern the behaviour of the largest and most powerful companies with 'strategic market status' and pro-competition interventions to tackle the sources of market power, though it has yet to legislate and put the DMU on a statutory footing.[46]

35 "Digital sector worth more than £400 million a day to UK economy", Department for Digital, Culture, Media and Sport, accessed 23 April 2021
36 Internet Association (EMS0164)
37 techUK (EMS0276)
38 YouTube (EMS0144)
39 Digital Media Association (DiMA) (EMS0233)
40 Department for Digital, Culture, Media and Sport, Our 10 Tech Priorities, accessed 23 April 2021
41 "Scotland's tech sector going from strength to strength", Office of the Secretary of State for Scotland and Department for Digital, Culture, Media and Sport, 8 September 2020
42 "New competition regime for tech giants to give consumers more choice and control over their data, and ensure businesses are fairly treated", Department for Business, Energy and Industrial Stategy and Department for Digital, Culture, Media and Sport, 27 November 2020; "UK leads the way in a 'new age of accountability' for social media", Department for Digital, Culture, Media and Sport and Home Office press release, 15 December 2020
43 "New strategy to unleash the transformational power of Artificial Intelligence", Department for Digital, Culture, Media and Sport, Department for Business, Energy and Industrial Strategy and Office for Artificial Intelligence press notice, 12 March 2021
44 "Oliver Dowden: UK can be 'unashamedly pro-tech nation'", Computer Weekly (6 March 2020)
45 Ofcom, Ofcom to regulate harmful content online (15 December 2020)
46 "Digital Markets Unit (non-statutory) - terms of reference", Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport, 7 April 2021

Advent of music streaming

12. To understand the peculiarities of the economics of music streaming (such as the particular legal frameworks, remuneration and licensing arrangements and industry norms that underpin the music streaming economic model) it is necessary to understand the historical context from which it emerged.

13. Whilst music piracy naturally predates the digital age, the technologies that emerged and became increasingly widespread from the mid-90s onwards posed a unique threat to the music industry. The music industry's move from cassette tapes and vinyl to CDs meant that music was sold in a readily digitised format, whilst the presence of CD drives on personal computers enabled more efficient (and higher quality) pirating of recorded music than was possible using tapes in the 1980s.[47] The creation of new audio compression formats, such as the MP3 format in 1993,[48] which allowed audio files to be compressed with relatively little loss of sound quality, prompted the development of portable MP3 players such as the iPod in 2001,[49] and provided an alternative to portable CD and cassette players. Finally, the maturation of internet technologies and everyday use of the World Wide Web enabled a mass adoption of peer-to-peer (P2P) file sharing platforms that allowed users to share MP3s of recorded music with relative ease on an industrial scale at next to no cost. This effectively removed the physical limitations inherent to previous forms of piracy, such as the physical replication and distribution of pirated music. Napster, launched in 1999, was the first P2P file sharing platform to focus primarily on sharing recorded music.[50] It was followed by Limewire, Kazaa, Pirate Bay[51] and various other services throughout the following decade.[52]

14. The legal tension caused by the emergence of new modes of music consumption was not unforeseen by the industry or policymakers.[53] Calls to address the challenges of unauthorised access to copyrighted works through internet and digital networking technologies led to the World Intellectual Property Organisation (WIPO) creating provisions in international law through the WIPO Internet Treaties,[54] of which the WIPO Copyright Treaty (WCT) was signed by member states in December 1996.[55] The WCT catalysed national copyright legislation for digital music consumption and mandated, amongst other things, that performers' record labels "shall enjoy the exclusive rights of authorising the making available to the public of their phonograms by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them".[56] Dr Hayleigh Bosher notes that this 'exclusive right to make available' (the so-called 'exclusive right' or 'making available right') was deliberately made 'technology-neutral', "where the technical means by which the communication was made was irrelevant, in order that any future technical development be included within the provision".[57] The making available right was adopted by EU member states (including the

47 "Trends: Online music piracy – past, present and future", Complete Music Update (22 December 2017)
48 The Ivors Academy of Music Creators (EMS0197)
49 The Ivors Academy of Music Creators (EMS0197)
50 "The Piracy Sites That Nearly Destroyed The Music Industry: What Happened To Napster", Forbes (21 March 2018)
51 Q221
52 "Trends: Online music piracy – past, present and future", Complete Music Update (22 December 2017)
53 CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)
54 WIPO, WIPO Internet Treaties, accessed 27 May 2021
55 CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)
56 CC Young & Co Limited (EMS0077)
57 Dr Hayleigh Bosher (EMS0254)

UK) in 2002, through Article 3 of the Information Society Directive (Directive 2001/29/EC of the European Parliament and of the Council).[58] The UK Government of the day chose to enact the making available right as a subset of performance rights provided by the 1988 Copyright, Designs and Patents Act through the Copyright and Related Rights Regulations, commenced in October 2003.[59]

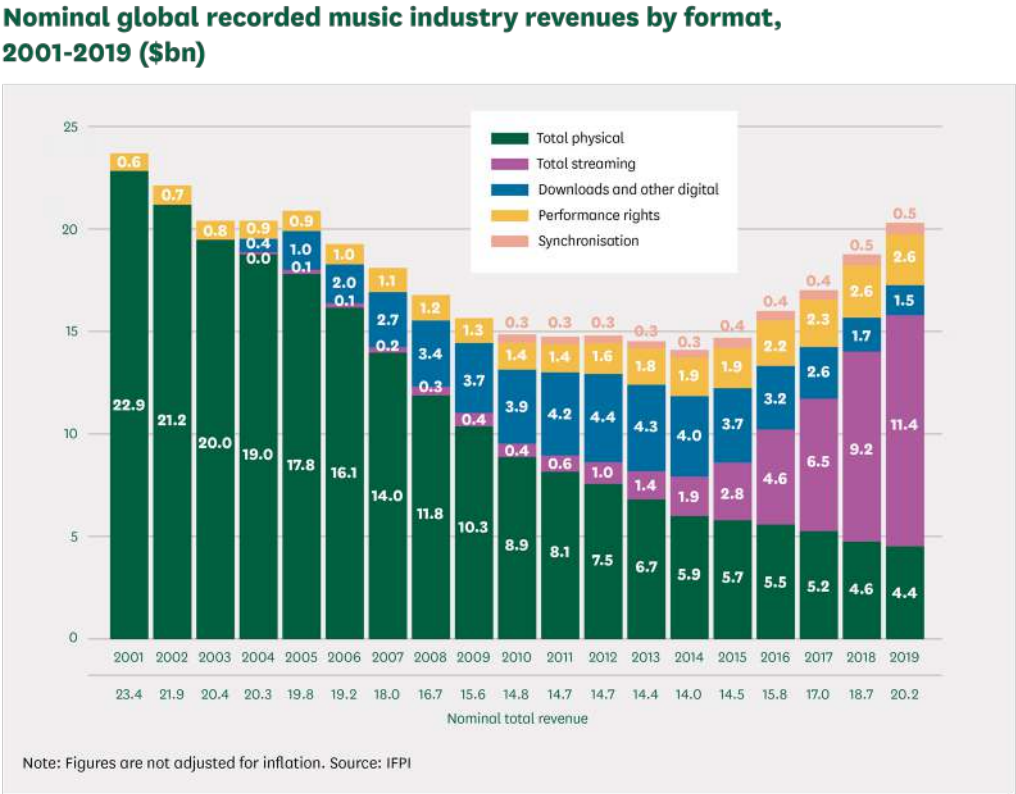
15. However, despite new modes of music distribution and consumption emerging throughout the 90s, the music industry was slow to develop a viable digital music business strategy and provide consumers with legitimate digital music products.[60] In 2001, the market for recorded music reached its historical peak at $23 billion worldwide (equivalent to $33 billion in current prices).[61] At the time, record label revenue exceeded £1.2 billion per year[62] (approximately equivalent to over £2 billion in current prices), but record labels themselves remained committed to CD sales,[63] which also peaked in 2001.[64] However, between 2002 and 2015, worldwide recorded music revenues fell by 40 percent as consumers switched to digitally pirated music or to music made available by UGC-hosting sites. In 2006, one music industry report stated that 20 billion tracks had been downloaded illegally in the year prior.[65] In 2008, the BBC reported that 20 percent of Europeans were using file sharing networks compared to just 10 percent using legitimate digital services such as iTunes,[66] whilst the IFPI claimed that piracy accounted for 95 percent of music consumption.[67]

16. The music industry, for its part, did eventually attempt to respond to the growing prevalence of digital piracy. Ventures into the digital downloads market by the major record labels, namely through the PressPlay and MusicNet apps, ended in failure, with PC World commenting at the time that "the services' stunningly brain-dead features showed that the record companies still didn't get it".[68] Through its trade associations, the industry began to take legal action against individuals for illegal file sharing,[69] which proved to be both financially costly and a source of negative PR.[70] Moreover, such was the role of CDs in facilitating digital piracy that in one particular case a major record label was found to be secretly installing rootkit and copy protection software onto their CDs for general sale that left customers exposed to hacking attempts (eventually having to settle several lawsuits).[71] However, there were some successes. Through various legal battles, record labels successfully managed to close P2P file sharing platforms Napster[72] and Limewire,[73]

58 Robin Firman (EMS0017); Directive 2001/29/EC, Article 3
59 The Copyright and Related Rights Regulations 2003, regulation 7; Copyright, Designs and Patents Act 1988, section 182CA
60 Ali Gavan (EMS0026); MIDiA Research (EMS0073); The Ivors Academy of Music Creators (EMS0197)
61 Q221
62 BPI (EMS0208)
63 BMG (EMS0207)
64 Entertainment Retailers Association (EMS0081)
65 "Kazaa site becomes legal service", BBC News (27 July 2006)
66 "Warning letters to 'file-sharers'", BBC News (3 July 2008)
67 Entertainment Retailers Association (EMS0081)
68 BMG (EMS0207)
69 BMG (EMS0207)
70 "Behind the music: Mystery of the filesharing windfalls", The Guardian (30 July 2009)
71 "Inside the Spyware Scandal", MIT Technology Review (1 May 2006)
72 "The Piracy Sites That Nearly Destroyed The Music Industry: What Happened To Napster", Forbes (21 March 2018)
73 "The Piracy Sites That Nearly Destroyed The Music Industry: What Happened To Limewire", Forbes (21 March 2018)

and force Kazaa to become a legitimate service;[74] Limewire and Kazaa were required to pay $100 million in damages to record labels, whilst the Napster brand was acquired after the company went bankrupt and has since become a legitimate music streaming service. From 2012, on behalf of record labels, the BPI's Content Protection Unit (CPU) began submitting millions of URLs to search engine providers for delisting and blocking hundreds popular pirate domains through internet service providers through High Court litigation.[75] Yet, despite these efforts, industry revenues continued to decline; by 2015, record label revenue had fallen to less than £800 million[76] (approximately equivalent to £900 million today).

Nominal global recorded music industry revenues by format, 2001–2019 ($bn)

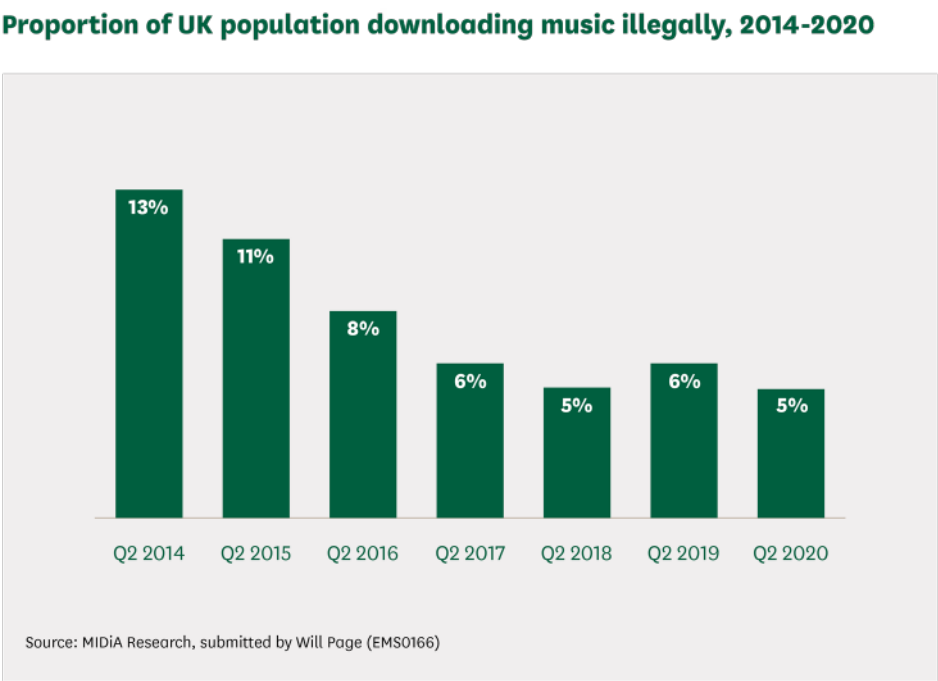


17. In the mid-2010s, the situation began to change. Spotify, the first mainstream subscription music streaming service, was launched in late 2008, seven years after CD sales had peaked.[77] Our written evidence demonstrates a clear and broad consensus across the sector that streaming has been the biggest contributor to the decline of digital piracy of recorded music and the return to revenue growth for the music industry.[78] Studies found that even in the early days of streaming, legitimate music streaming services were helping to incentivise people to move away from illegal platforms. One study in

74 "The Piracy Sites That Nearly Destroyed The Music Industry: What Happened To Kazaa", Forbes (21 March 2018)
75 BPI (EMS0208)
76 BPI (EMS0208)
77 Entertainment Retailers Association (EMS0081)
78 Qq73–5 [Ed O'Brien, Guy Garvey]; Qq111 [Maria Forte], 113 [Kwame Kwaten], 128, 130, 194 [Soweto Kinch]; Q389 [Yvette Griffith]; Qq586 [Horacio Gutierrez], 600 [Paul Firth]; International Federation of Musicians (FIM) (EMS0025); Entertainment Retailers Association (EMS0081); Association of Independent Music (EMS0157); PRS for Music (EMS0158)

Sweden found that between 2009 and 2011, once streaming services became available, the number of people pirating music fell by a quarter.[79] According to the 2018 *YouGov Music Report*, the number of people illegally downloading music fell from 18 percent in 2013 to ten percent in 2018 and that 63 percent of those who had stopped using illegal sites were instead using streaming services.[80] Since 2014, the recorded music industry has experienced year-on-year growth each year.[81] The ERA argues that between 2015 and 2019 streaming increased the value of the UK recorded music market by 38 percent.[82] In 2019, global streaming revenue grew by 23 percent and accounted for 56 percent of total global recorded music revenue, marking the first time streaming contributed to majority share of music consumption.[83] In fact, in the United States, 2019 music streaming revenues alone exceeded the total recorded music market for 2017.[84] Streaming now makes up more than 70 percent of UK recorded music revenues and since 2009 has generated new revenues of £3.5 billion for the UK recorded music industry to date.[85] Undoubtedly, the dominant music streaming services have underpinned a fundamental shift away from an acquisition model of music consumption towards a model based on all-you-can-eat access.[86]

Proportion of UK population downloading music illegally, 2001–2019



18. This had led several people to assert that the threat of piracy is largely over. Will Page, former chief economist at Spotify, argues that "the problem of piracy has been 'old news'

79 Will Page (EMS0166)
80 Musicians' Union (EMS0080); Entertainment Retailers Association (EMS0081); Internet Association (EMS0164)
81 Entertainment Retailers Association (EMS0081)
82 Entertainment Retailers Association (EMS0081)
83 YouTube (EMS0144)
84 International Federation of Musicians (FIM) (EMS0025)
85 Entertainment Retailers Association (EMS0081)
86 PRS for Music (EMS0158)

for quite some time" due to the "frictionless and free entry point into legal streaming" that legitimate free-to-access models in particular offer to consumers (see paragraph 22 and Annex 2 for more detail).[87] MIDiA Research claims that, currently, only 2.9 percent of UK consumers use P2P music platforms regularly and argues that whilst piracy still needs to be addressed, "the scale of the threat is now small in terms of both audience size and volume of files".[88]

19. However, industry bodies have argued copyright infringement remains prevalent and is adapting to the streaming economy.[89] Piracy continues to deprive the industry of nearly £200 million in estimated revenues, which would otherwise benefit both the corporate and creative ecosystems, as well as the taxpayer through lost VAT revenue.[90] One such form of piracy that has emerged in the wake of streaming is 'stream-ripping', where pirates record and distribute streamed content for illegitimate streaming or download.[91] Research conducted by PRS for Music Limited, a copyright collective made up of the Performing Right Society (PRS) and MCPS (Mechanical-Copyright Protection Society), in partnership with the IPO, in 2017 found that streaming ripping was the fast-growing part of the piracy landscape.[92] IFPI estimates that 23 percent of people have used illegal stream-ripping services,[93] whilst a recent study by IPSOS on behalf of Creative Content UK found that 35 percent of internet users are stream ripping.[94] The same IPSOS study found also that stream-ripping was particularly prevalent amongst young people, with 53 percent of 16- to 24-year-olds admitting to pirating music and predominantly through stream-ripping services.[95] PRS for Music notes that between 2016 and 2019, YouTube was the most likely service to have content ripped from it (though similar practices were increasing occurring on Spotify).[96] YouTube contends that it has continuously invested in action against stream rippers, including through technical improvements to its services, legal interventions and collaboration with third parties.[97] Stream ripping apps are also available through app stores, which have necessitated continued action by PRS for Music and other industry bodies.[98]

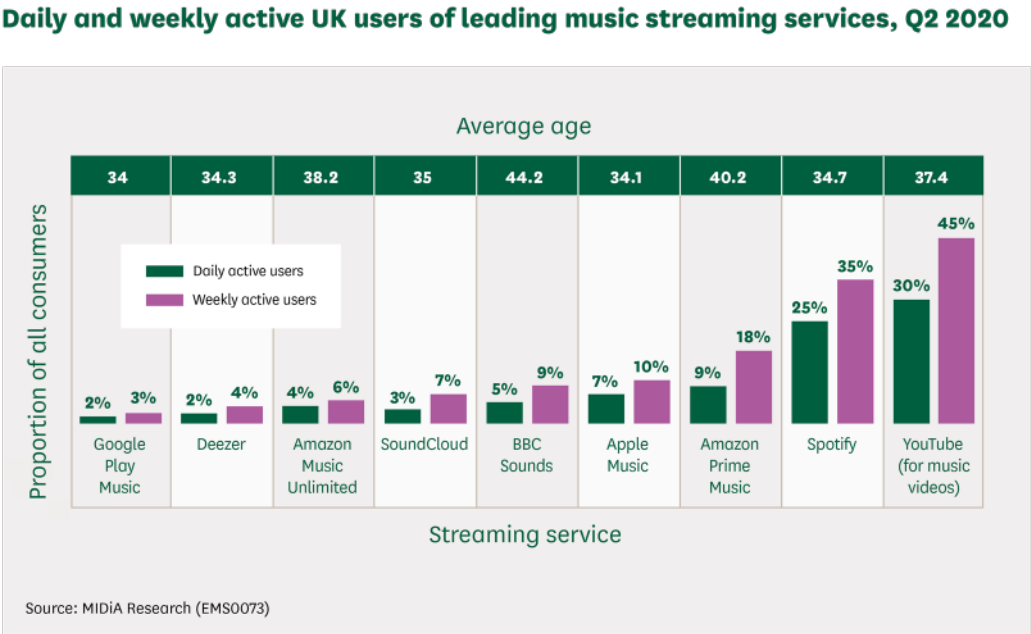
20. Beyond stream ripping, other forms of piracy include using illegitimate, unlicensed music player apps and sites,[99] account-sharing on legitimate apps[100] and accessing legitimately-licensed free music ad-free.[101] Contemporary digital piracy is often enabled by search engines and other digital intermediaries, due to a lack of clear legal liability in doing so.[102] IFPI has elsewhere argued that "54% of those downloading unlicensed music also use Google to find unlicensed music".[103] Furthermore, leaked releases, often obtained via hacking, continue to deprive the industry of revenue whilst taking advantage of pre-

87 Will Page (EMS0166)
88 MIDiA Research (EMS0073)
89 One Media iP Group PLC (EMS0182)
90 BPI (EMS0208)
91 Dr Nicola Searle (EMS0041)
92 PRS for Music (EMS0158); see also All Party Parliamentary Jazz Appreciation Group (EMS0161)
93 techUK (EMS0276)
94 All Party Parliamentary Jazz Appreciation Group (EMS0161)
95 All Party Parliamentary Jazz Appreciation Group (EMS0161); BPI (EMS0208)
96 British Copyright Council (EMS0139)
97 YouTube (EMS0144)
98 PRS for Music (EMS0158)
99 AEPO-ARTIS (EMS0051); PRS for Music (EMS0158)
100 Will Page (EMS0166)
101 The Ivors Academy of Music Creators (EMS0197)
102 BPI (EMS0208); Bucks Music Group Ltd (EMS0269)
103 All Party Parliamentary Jazz Appreciation Group (EMS0161)

release promotions.[104] Finally, the music industry has noted that legitimate streaming services often host unauthorised uploads that are monetised by pirates, which deprives rightsholders of income and forces these rightsholders to devote resources to monitoring services for unauthorised usage.[105]

Music streaming service models

Daily and weekly active UK users of leading music streaming services, Q2 2020



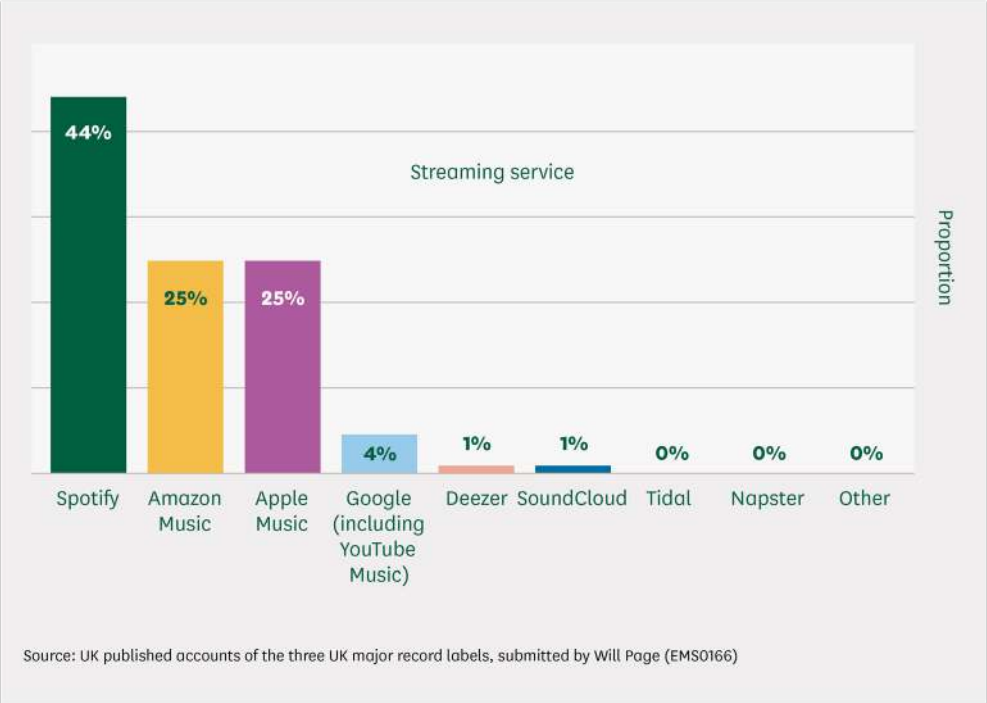
21. Music streaming services are provided by the platforms of tech companies either as their core function or as a secondary service. Within the music industry, streaming services are often referred to as digital service providers (DSPs). However, we note that in common parlance this term may also refer to a range of businesses including search engines, online marketplaces, or cloud computing providers, and as such refer to them as music streaming services throughout this Report.

22. There are many ways that music streaming services can be categorised, including by pricing strategy, service offering and payment model (we provide a fuller description of these in Annex 2). The largest services currently operate on either a premium or free-to-access model or a combination of the two known as 'freemium' (though several start-ups, such as the Resonate Co-operative and Sonstream, offer interesting alternatives to this through micropayment models). Premium services are funded through monthly subscriptions (with a current benchmark of £9.99 per month), whilst free services are funded by advertising revenue—or, in the case of Amazon, bundled with a video and goods-delivery subscription. These revenues are then divided between the service and music industry according to pre-determined, negotiated agreements with the music industry (described in paragraphs 24–33 in Chapter 2). Most services then allocate revenue

104 BPI (EMS0208); Matthew Tong (EMS0155)
105 BPI (EMS0208); Bucks Music Group Ltd (EMS0269)

to individual tracks (and therefore rightsholders) according to a 'pro-rata' model, where the total revenue for each income stream is added up and then distributed to rightsholders according to each track's proportion of total streams. However, some services are experimenting with alternative models: SoundCloud, for instance, is currently trialling a 'user-centric' payment system for independent artists, where each user's subscription is paid according to the tracks they listen to rather than the aggregate listening of all users (whilst services like Resonate and Sonstream's systems are user-centric by design).

Proportion of the 22.6m UK music premium subscription accounts by streaming service, Q1 2020



23. Another significant way that streaming services are categorised is based on content hosting. Most music streaming services, such as Spotify, Amazon Music and Apple Music, license music from the music industry. Some services, such as YouTube or SoundCloud, exclusively or additionally host UGC/UUC directly to their sites. Services that host UGC are exempted from legal liability for copyright infringement (among other things) unless and until they obtain "actual knowledge" of infringing activity, after which they must act expeditiously to remove or to disable access to the information.[106] These exemptions of liability are referred to by the tech and music industry as 'safe harbour', and have already been transposed into UK law from European Union's E-Commerce Directive (meaning they remain in UK law even after the UK's withdrawal from the European Union).[107] However, it should be noted that UGC-hosting streaming services, along with social media companies and other sites that host UGC, will soon acquire new obligations regarding copyright infringement in EU member-states under the new Directive on Copyright

106 SCRIPT (EMS0205)
107 Directive 2000/31/EC

in the Digital Single Market (which will be discussed below in paragraphs 173–178 in Chapter 5).[108]

Copyright and remuneration from music streaming

When music is streamed

24. There are two distinct bundles of rights that are exploited when music is streamed: the copyright in the song lyrics and music (sometimes referred to in evidence we received as "the song" or "song rights"), and the copyright in the performance (referred to as "the recording/master" or "recording/master rights"). A song can often benefit from being performed and recorded multiple times by different artists over time.[109] Though many creators may be involved with both composing and recording music in some fashion when creating a track, they may work with different companies in either process (assuming they do not decide to retain their rights and distribute their music as self-releasing artists).[110] Songwriters and composers work with music publishing companies to exploit song rights, whilst performers work with record labels to exploit recording rights. Recording rights are licensed directly to streaming services by record labels or aggregators and distributors, whilst song rights are licensed collectively through collecting societies, which are bodies that license copyrighted works on behalf of rightsholders and ensure these rightsholders are remunerated for such usage in return for administrative fees.

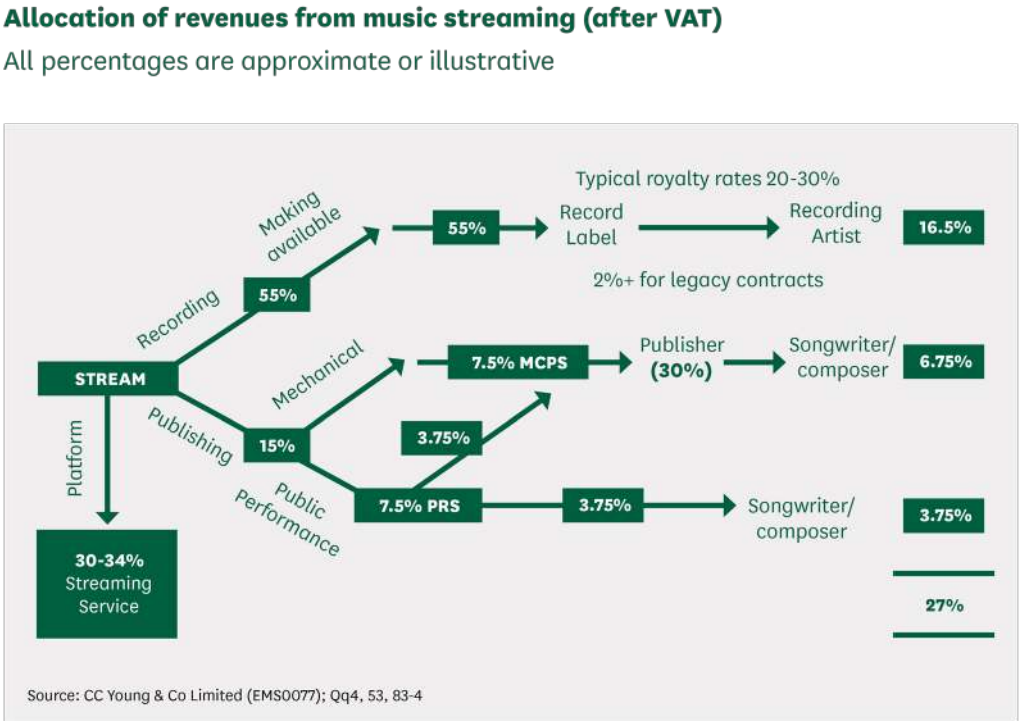
25. Whilst many music companies may have both publishing and recording operations, they are usually organised as autonomous entities, meaning that any service that wishes to use recorded music (such as radio or streaming services) will need to license the song and recording rights separately. Record labels may each license their catalogues of recording rights directly with the music streaming companies, particularly if they have large catalogues.[111] Otherwise, smaller labels (and self-releasing artists) can go through a music distributor who, in this context, acts as the middleman between rightsholders and music streaming services.[112] Distributors range from small-scale boutique services to collectives like Merlin, a third-party licensing hub set up by independent record labels to leverage their aggregated market share.[113] Song rights, on the other hand, are negotiated and licensed collectively on behalf of songwriters, composers and publishers by PRS for Music.[114]

26. The complex underlying intricacies of rights, licensing negotiations and corporate/creator agreements have important repercussions for how parties are remunerated from music streaming. Before streaming income is divided amongst licensees and rightsholders, the Government receives revenue from music streaming subscriptions in the form of value-added tax (VAT), which is an indirect tax levied on most goods and services in the UK, at the standard rate of 20 percent of the gross margin. From a standard £9.99 subscription, this amounts to £1.67 per subscription.[115] From the remainder, known as the gross revenue pot, the music streaming services then receive their share of revenues.

108 Directive (EU) 2019/790, Article 17; see also CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)
109 Association of Independent Music (EMS0157)
110 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020)
111 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020)
112 Association of Independent Music (EMS0157)
113 Association of Independent Music (EMS0157)
114 CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)
115 Entertainment Retailers Association (EMS0081); Anthony Hamer-Hodges (EMS0206); BPI (EMS0208)

From a standard subscription and from advertising revenue, this is generally assumed to be 30 percent,[116] though the Association of Independent Music (AIM), a trade body for independent record labels, has posited that the figure is actually closer to 35 percent.[117] The remaining share, which goes to industry, is known as the royalty pot.[118] From the royalty pot, the majority of revenue goes to the master rightsholders, who receive approximately 55 percent of the gross revenue pot. Song rightsholders therefore receive the remainder, amounting to approximately 15 percent of the gross revenue pot. Put in terms of the royalty pot, the master rightsholders therefore receive approximately 78.5 percent of the revenues that accrue to the music industry rightsholders, whereas song rightsholders receive approximately 21.5 percent.

Allocation of revenues from music streaming (after VAT)



All percentages are approximate or illustrative

How rights are exploited

27. UK copyright law provides specific rights for the owners of copyrights and for performers that control how music is consumed. The Copyright, Designs and Patents Act 1988 ('the Act') provides the owner of copyright with the exclusive right for certain acts. When music is consumed (either legitimately or illegitimately), it will involve one or more of these acts. These acts include copying, issuing, renting or lending[119] copies of a

116 Entertainment Retailers Association (EMS0081); CC Young & Co Limited (EMS0077)
117 Association of Independent Music (EMS0157)
118 BPI (EMS0208)
119 The Copyright, Designs and Patents Act 1988 defines rental as making a copy available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, whilst it defines lending as making a copy available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage.

work, performing in public, communicating to the public (e.g. broadcast) and/or making an adaptation of a work.[120] Copyright is infringed where someone does, or authorises someone else to do, any of these acts without licence from the copyright owner,[121] albeit with certain permitted exceptions, which include use for purposes of research, critique, reporting and parody, caricature or pastiche.[122]

28. Regulations made under the Act also confer several rights on performers. Since 1996, the 'reproduction right', 'distribution right', 'rental right' and 'lending right', for example, provide performers with the right to authorise or prohibit the making, issuing, renting and lending of copies to the public respectively.[123] Pertinent to this inquiry, since 1996 these regulations also provide performers with a unalienable, unassignable 'right to equitable remuneration' (known as the 'remuneration right') where a commercially published sound recording is played in public, communicated to the public or (when a performer transfers their rental right to a record or film producer) rented to the public.[124] The precise rate of equitable remuneration is not enshrined within UK law, but current industry norms dictate that the corporate and creative partners divide this revenue half each.[125] Finally, and equally pertinent, since 2003, regulations also provide performers with the making available right, whereby their rights "are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them".[126] The making available right therefore means, for example, that someone infringes on the rights of a performer under UK law if they enable others to make copies of a copyrighted work, even if they themselves do not issue the copies. As noted by prominent streaming auditor and accountant Colin Young, the Copyright, Designs and Patents Act does not extend the right to equitable remuneration where a work exploits the making available right.[127]

29. Music streaming is a particularly complex case in terms of the rights that are exploited when a track is consumed via a streaming service. Although both the song and recording rights of a single track are exploited simultaneously, each falls under a distinct legal characterisation.[128] On the one hand, the streaming of a recording is treated as 'making available'. On the other hand, the song rights are treated as both a 'public performance' communication to the public of a work and a 'mechanical' reproduction thereof. As discussed, where a communication to the public occurs (except by 'making available'), all parties are remunerated equitably. Where music consumption is classified as a 'mechanical' or 'making available', the creators are remunerated in accordance with the terms of their publishing or recording deals respectively by the companies that their rights are assigned to, licensed by or distributed with.

120 Copyright, Designs and Patents Act 1988, section 16
121 Copyright, Designs and Patents Act 1988, sections 17–21
122 Copyright, Designs and Patents Act 1988, sections 29–30A
123 The Copyright and Related Rights Regulations 1996, section 21; Copyright, Designs and Patents Act 1988, sections 182A-C
124 The Copyright and Related Rights Regulations 1996, sections 21–2; Copyright, Designs and Patents Act 1988, sections 182D, 191F-G
125 International Federation of Musicians (FIM) (EMS0025)
126 The Copyright and Related Rights Regulations 2003, section 7; Copyright, Designs and Patents Act 1988, section 182CA
127 The Copyright and Related Rights Regulations 2003, section 7; Copyright, Designs and Patents Act 1988, section 182D; CC Young & Co Limited (EMS0077)
128 CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)

How rightsholders are remunerated

Performers and record labels

30. Relatively speaking, performer remuneration is a straightforward process. First, the record label or distributor receives revenues for the recording (i.e. 55 percent of the gross revenue pot, or approximately 80 percent of the royalty pot). Next, the label or distributor pays the performer according to the terms of their contract. Though record deals are individually negotiated between the relevant creative and corporate parties, there are several broad types of agreement a recording artist might negotiate with a record label: a traditional recording agreement, a distribution deal or a label services deal (though labels and artists may negotiate a range of terms).[129]

31. Under a traditional recording agreement, an artist will assign their rights to the recordings produced under the terms of the deal exclusively to the record label, in exchange for an advance (i.e. an up-front fee) and either royalties (once certain costs have been 'recouped') or a share of the profits. These are known as 'advance and royalties' and 'advance and profit share' deals respectively.[130] In terms of the monetary split, an 'advance and royalties' deal will favour the record label, with the performer receiving between 12 and 30 percent depending on when they signed and their prior popularity and success.[131] These deals are most often offered by the major record labels.[132] Under a distribution deal, the record label agrees to distribute recordings to music streaming services on behalf of an artist for a distribution fee of approximately 15–20 percent of revenues. Under a label services deal, the label provides the services of a distribution deal alongside marketing and promotional services for a slightly higher fee (of roughly 25–30 percent). Alternatively, a label may exclusively license finished recordings for a short period from a third party on the terms of a traditional agreement (albeit with a higher advance and royalty rate, as the third party must subsequently pay the artist that it in turn has acquired the rights from).[133] Otherwise, an artist may decide to self-release altogether. To do this, they must release their music through a distributor or aggregator to upload their music onto streaming services in return for a flat fee per track, but without the services associated with a record label, such as promotion, marketing and data insights.[134]

Songwriters, composers and music publishers

32. For the song rights, the process is much more complex. First, the song revenues (i.e. 15 percent of the gross revenue pot, or approximately 20 percent of the royalty pot) are split evenly between the mechanical and public performance. For the public performance, both the publisher and songwriters and/or composers split the revenues equally due to the right to equitable remuneration. The revenue is paid to their collecting society, who then pays the rightsholders accordingly.

33. For the mechanical, the publisher and songwriters and/or composers are paid according to the terms of their deals. Unlike record deals, publishing deals between music publishers and songwriters are often more generous (albeit at face value, given that the song receives a much smaller percentage of streaming revenues).[135] The most common

129 BPI (EMS0208)
130 BPI (EMS0208)
131 Q84; BPI (EMS0208)
132 Q2
133 BPI (EMS0208)
134 BPI (EMS0208)
135 Music Managers Forum and Featured Artists Coalition (EMS0128)

types of deal are individual song agreements, where a songwriter assigns their rights in specific works to a publisher in exchange for a portion of revenue, and exclusive songwriter agreements, where a songwriter assigns all works created during a specific time in exchange for a share of generated income and monthly or termly payments that are treated as recoupable advances. Other types of agreement are co-publishing agreements (where songwriter and publisher co-own the copyright and the songwriter also takes a share of the publisher's income), participation agreements (which are similar to co-publishing but without co-ownership), and administration agreements (which allow publishers to license a song for a period of time for an administration fee).

The consumer experience

Consumer benefits from streaming

34. There is a wide-ranging consensus that the consumer benefits significantly from (and therefore values[136]) the current music streaming model. There are two (related) reasons for this: price and service offering. For relatively cheap monthly price plans, consumers generally receive an 'all-you-can-eat' service,[137] where they can stream any track in their service's catalogue as often as possible (though some freemium streaming service providers, such as Spotify and Amazon, typically restrict access to some or all on-demand tracks to premium users only to incentivise their premium services). Professor Ruth Towse argued that "the subscription fee is set not with respect to the market for recorded music but in relation to those by competing platforms" and that "so far there has been no price war between music streaming services".[138] As the nominal prices of streaming subscriptions have been fixed at the aforementioned price plans for over a decade, which means that the consumer has experienced a fall in price in real terms amounting to 26 percent in total over the same period when the nominal price is considered against inflation.[139] Prices are also set at the same nominal price in most currencies (i.e. individuals pay £9.99 in the UK, €9.99 in the Eurozone and $9.99 in the United States),[140] demonstrating a lack of price parity for streaming services for consumers in different countries. As a result, UK consumers spent just over £1 billion on music streaming subscriptions in 2019, up from £812 million in 2018.[141] Furthermore, streaming has again made tracks available to consumers that record labels previously no longer considered economically viable to continue pressing and releasing.[142] As such, more legitimately licensed music is now available to consumers and for cheaper prices, if consumers pay at all. As legendary musician and three-time Grammy Award winner Nile Rodgers told us, "if I were a young person coming up right now, I now have access to more music than I ever had before".[143]

35. Conversely, if consumers still find these services prohibitively priced then they can instead stream in the same 'all-you-can-eat' fashion via YouTube's free, ad-funded, user-uploaded video-sharing service. Though YouTube does impose some friction on the consumer, such as advertising and online-only playback (like other free services) and no background playback for mobile users, it is the dominant music streaming service.[144]

136 Dr Nicola Searle (EMS0041)
137 Dr Nicola Searle (EMS0041)
138 Bournemouth University (EMS0048)
139 Q18; Association of Independent Music (EMS0157)
140 Bournemouth University (EMS0048)
141 Internet Association (EMS0164)
142 Q513 [Horace Trubridge]
143 Q197
144 "YouTube is the no.1 music streaming platform - and getting bigger", Music Business Worldwide, 6 July 2015

In 2017, for example, a consumer insight report by the IFPI found that YouTube was responsible for 46 percent of all on-demand music streaming time, which was more than Spotify, Apple, Tidal, Deezer and Napster combined,[145] whilst data from the Recording Industry Association of America (RIAA) showed that that YouTube commands at least a 51 percent global market share in terms of streams.[146] In 2018, a subsequent IFPI report stated that as many as 35 percent of music streaming consumers cited user uploaded services like YouTube as the foremost reason why they do not acquire a premium subscription.[147] Polling in 2020 found that user-uploaded video-sharing sites were the service of choice for younger demographics in particular, with 70 percent of American 12 to 34-year olds responding that they used YouTube for music or music videos (compared to 50 percent of all American respondents) whilst 56 percent of UK 8 to 15-year olds used YouTube and Vimeo for the same purpose.[148]

Changing consumption habits

36. Consumer habits are changing in response to the advent of music streaming, and successful music industry actors have responded. UK consumers streamed recorded music 114 billion times via audio-only subscription services (i.e not YouTube and other video streaming services) in 2019 alone, which marked the first time streaming exceeded 100 billion plays.[149] Streaming is also growing contemporaneously to a decline in physical revenue, which fell by over 5 percent between 2018 and 2019.[150] Meanwhile, streaming is also cannibalising radio listening, particularly amongst younger audiences: one study in 2016 found that millennials only listened to the radio 12 percent of the time on average compared to 35 percent for the general population, but used on-demand streaming services 51 percent of the time on average compared to 24 percent for the general population.[151] Written evidence from the IFPI asserts that, globally: 89 percent of consumers now access their music through on-demand streaming; 83 percent of 16 to 24-year olds use audio streaming platforms; and 47 percent of consumers said streaming was the most convenient way to access music.[152] Research has also found that music streaming consumers have differing tastes on aggregate relative to the tastes of the broader UK population: rock music, for example, tends to be underrepresented on streaming services' top 50 songs whilst hip-hop tends to be overrepresented.[153] Moreover, research has suggested that music consumption has become more task- and mood-centric, which creates additional signals for marketers to base targeted advertising on.[154] The influence of this approach can be seen on the BBC Sounds app, which itself offers human-curated "music mixes" around topics centred on specific artists, events or moods.[155]

37. Underpinning this convenience and change in habits and tastes are new forms of music curation, such as playlists. The International Federation of Musicians (FIM) argues that:

145 "Report: YouTube Is The Most Popular Site For On-Demand Music Streaming", Forbes, 27 September 2017
146 Q44; Sonstream Ltd (EMS0154); Kirstian Taylor (EMS0198); Isaac Neilson (EMS0201)
147 Pete Woodroffe (EMS0018)
148 Musicians' Union (EMS0080)
149 Internet Association (EMS0164)
150 Internet Association (EMS0164)
151 "Millennials Aren't Very Interested In Traditional Radio Any More", Forbes (12 July 2016)
152 IFPI (EMS0209)
153 MIDiA Research (EMS0073)
154 Dr Gary Sinclair (EMS0019); International Federation of Musicians (FIM) (EMS0025)
155 BBC (EMS0227)

> For consumers, curated playlists have gradually replaced thematic broadcasts. There is one playlist for each moment of the day: wake-up, breakfast, work-out, relaxation, meditation, running, partying etc. One single click of a button and music is on for the next 30 minutes or the entire evening or night. No further action is necessary: the tracks that fit your taste or mood are selected for you by a third party and pushed to your device—whether a phone, a smart speaker or hi-fi gear.[156]

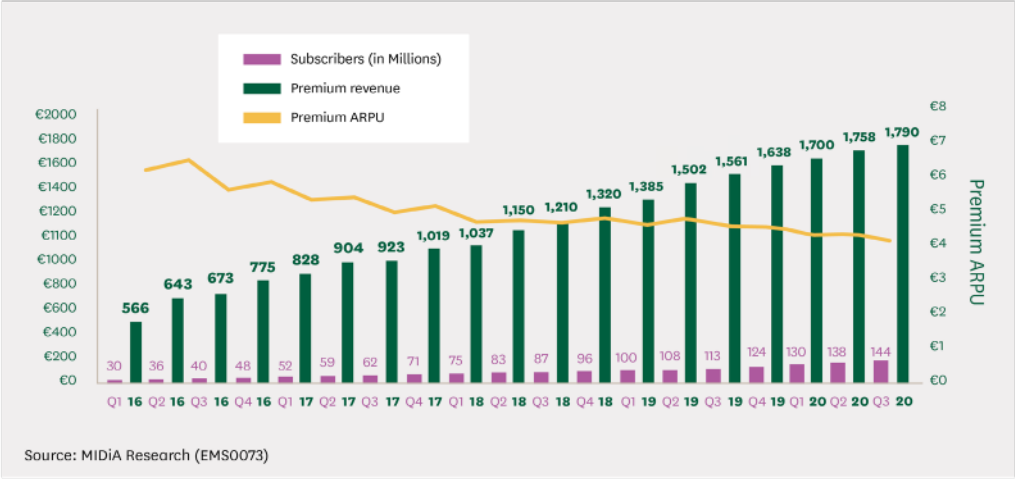
There are three types of playlist as pertains to streaming. User-created playlists are discrete series of tracks, played sequentially, shuffled or skipped through, curated by individual users according to their own preferences.[157] Editorial playlists are those created by music streaming services' own teams or by high-profile affiliated curators.[158] Finally, algorithmic playlists are those generated by streaming services' automated recommendation systems, which approximate user preferences through a Bayesian machine learning paradigm based on big data derived from signals such as a user's previous listening patterns, manual searches and the listening patterns of other users. In other words, streaming services use machine learning to create personalised playlists by continually learning about a user's preferences from their streaming history, which is gathered and used continuously by the system. This individualised user experience sets streaming services apart from pre-existing one-to-many music broadcasts such as radio. Playlists, alongside user experience, is one of the key means by which streaming services differentiate themselves from others in the market.

156 International Federation of Musicians (FIM) (EMS0025)
157 BPI (EMS0208)
158 BPI (EMS0208)

Potential consequences of current trends

Average revenue per user

Spotify's global premium revenue, number of subscribers and average revenue per user (ARPU), 2016–2020

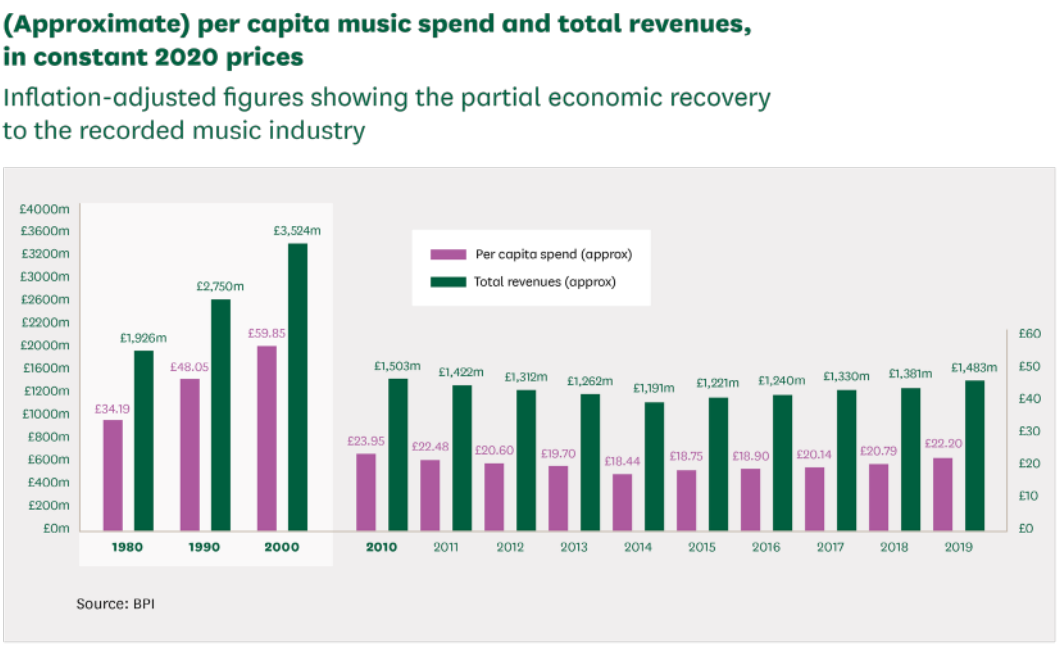


38. Though streaming has realised price and convenience benefits for recorded music consumers, there are potential consequences for them too if the issues with streaming continue. Several submissions have noted that there has been a continuous fall in average revenue per user (ARPU) for streaming services and therefore, by virtue of the revenue-share model described above (see paragraphs 24–33), the music industry. Spotify recently reported that, between 2016 and 2020, ARPU has fallen by €6,38 to €4.19, equivalent to 34 percent.[159] This has been driven by several factors, including a rapid growth in subscribers, increased intensity of consumer usage, real-term price decreases, the growth of free trials, bundles, discounted tiers and multi-user plans and lower ARPU in emerging markets.[160] This may be exacerbated by the recent announcements by Spotify and Apple that the services will offer lossless audio streaming with standard subscriptions (as opposed to services like Tidal who offer high-fidelity audio at a higher price).[161] There are some causes for optimism (from an industry standpoint) however. Will Page notes that consumers have more money to spend and are spending more of it on music, asserting that, since 2014, "gross disposable income has increased by 20 percent, whereas music's share of wallet has increased by 25 percent".[162] But this is a relatively short-term view, set against the legitimate industry's nadir when piracy was at its height. Recorded music revenues

159 MIDiA Research (EMS0073); Helienne Lindvall (EMS0112); Aubrey Brocklebank (EMS0211)
160 MIDiA Research (EMS0073); Association of Independent Music (EMS0157); PRS for Music (EMS0158); BPI (EMS0208)
161 "Spotify and Apple Music will offer lossless audio. Here's what you need to know.", Mashable UK (28 May 2021)
162 Will Page (EMS0166)

remain much lower in real terms than they were 20 or 30 years ago, but have been rising since 2014. MIDiA Research argues that there are indications of consumer tolerance for higher prices[163] though the #BrokenRecord campaign says that this is dependent on how this money is distributed.[164]

(Approximate) per capita music spend and total revenues, in constant 2020 prices



Social trends

39. This may subsequently impact the long-term creation of music. Academics Peter Ormosi and Franco Mariuzzo hypothesise that, although consumers "have low-price access to an unprecedented selection of music, the long term damage can be more severe if the current revenue structure leads to a loss in music variety, as independent artists cannot recoup their investment because they are being foreclosed from receiving revenue from online streaming".[165] The BPI similarly warns that editorial and algorithmic curation could "lead to overly narrow music recommendations being made and trap users in the 'echo chamber' of their pre-existing tastes".[166] Indeed, academic evidence already suggests that streaming has exacerbated the "hits-driven preferences of consumers".[167] Soweto Kinch, a successful jazz saxophonist, composer and MC, told us that streaming had defunded jazz music by approximately 3 to 6 percent because of the 'winner-takes-all' approach to revenue splits, despite the genre demanding greater relative production costs due to greater composition and recording time and the costs of remunerating big band musicians.[168]

163 MIDiA Research (EMS0073)
164 Qq18–9 [Tom Gray]
165 Dr Peter Ormosi and Dr Franco Mariuzzo (EMS0076)
166 BPI (EMS0208)
167 Dr Nicola Searle (EMS0041)
168 Q193

Consumer awareness

40. There appears to be little consumer awareness about the debates that currently rage within the music industry. Academic research has found that the majority of consumers do not understand how artists are compensated when their music is streamed and do not factor in or prioritise ethical artist compensation into their decision-making processes; this was speculated to be a consequence of the lack of media coverage regarding the low artist remuneration at the time of research[169] (though it should be noted that we have observed significant media interest in this subject both before and throughout our inquiry). However, where there is awareness, the public appears to support the creators' perspective. A recent YouGov survey, commissioned by the #BrokenRecord Campaign, found that the overwhelming majority of surveyed music streaming service subscribers felt that artists and songwriters are underpaid, record labels and streaming service providers are overpaid, and that session musicians should receive some form of compensation from streaming.[170] It also found that whilst the majority (61 percent) of respondents said that they would not be willing to pay more for music streaming under current remuneration arrangements, approximately half of these same respondents stated that they would pay more if an increase in their subscription went directly to the writers and artists they listen too.[171] Evidence from Patreon, a digital platform where users can pay a monthly or annual subscription to creators they follow, supports this sentiment, claiming that the number of musicians on their platform and the total revenue generated for musicians through its service doubled between October 2019 and 2020.[172] It should, however, be noted that conclusions drawn from polling or Patreon's own performance does not account for factors on consumer tolerance of price, such as the price of competing services, consumer income, and so on, or qualitative analysis as to whether Patreon users could be considered atypical 'superfans' willing to spend more on particular artists than music casual fans.

41. **Streaming has undoubtedly helped save the music industry following two decades of digital piracy but it is clear that what has been saved does not work for everyone. The issues ostensibly created by streaming simply reflect more fundamental, structural problems within the recorded music industry. Streaming needs a complete reset.**

169 Dr Gary Sinclair (EMS0019)
170 #BrokenRecord Campaign (EMS0218)
171 The Ivors Academy of Music Creators (EMS0197)
172 Patreon, Inc. (EMS0110)

3 Creator remuneration

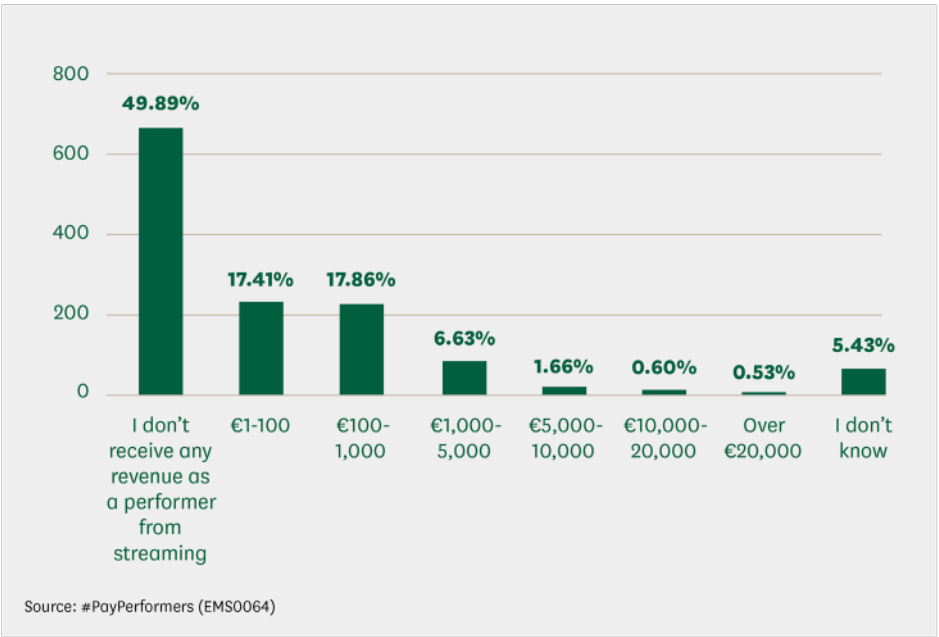
42. Creator remuneration was the fundamental issue raised by our inquiry and this chapter will consider how revenues flow from streaming platforms to the music industry. Will Page, visiting fellow at the London School of Economics and former chief economist at Spotify, argues that whilst streaming has returned the recorded music industry to profit, music creators—that is, performers, songwriters and composers—have not proportionately shared this benefit.[173] Mr Page observes that:

> For labels, the music industry is thriving. Between 2015 and 2019, the streaming-led recovery boosted UK major label turnover by 21 percent and operating profit margin increased from 8.7 percent to 11.8 percent. The recorded music business not only got bigger, but also much more profitable for record labels. Artists, however, have not received proportional benefit.[174]

Whilst commercial music creation is intensely competitive, it is reasonable to expect that at least professional musicians, who otherwise are able to support their livelihood with live music income, are similarly participating in this recovery. Instead, income from recorded music is meagre. One illustrative member survey by the Ivors Academy and Musicians' Union, for example, found that in 2019, 82 percent of professional musicians made less than £200 from streaming, whilst only seven percent made more than £1,000.[175] Furthermore, 91 percent of respondents stated that they earned less than £200 from their most played track across all platforms in 2019.[176] In the context of the Covid-19 pandemic, where other income streams have necessarily dried up, this situation has become untenable.

173 Will Page (EMS0166)
174 Will Page (EMS0166)
175 The Ivors Academy of Music Creators (EMS0197); see also Q165–6, 171 [Fiona Bevan], 194 [Soweto Kinch]
176 The Ivors Academy of Music Creators (EMS0197)

#PayPerformers Campaign survey results regarding remuneration from streaming from UK performers, 2020



43. First, this Chapter will consider the impact of the terms under which rightsholders are remunerated that were set out in Chapter 2: that is, how streaming revenue is allocated between the rights in the song and recording, and similarly how these revenues are divided between the creative and corporate partners. On the song side, issues with income are caused by the way in which industry revenues are initially divided; this has repercussions for songwriters and composers, as well as music publishers. On the recording side, creator remuneration is due to the terms under which performers are paid; this Chapter will consider the impact of this on creators and their dependent creative ecosystems, as well as some solutions. Finally, this Chapter will examine technical barriers to creator remuneration: specifically, issues with the metadata and songwriting royalty chains, which compound with issues of rightsholders' remuneration.

Remuneration of recording rightsholders

Impact on performers

Artists on record deals

44. Because streaming is exploited by the 'making available' right under UK copyright law, performers who are signed to a record deal are paid according to the terms of their contract with their record label from streaming revenue. This differs from other forms of music consumption, such as a rental, license, or broadcast. A typical record contract will

make several stipulations, such as the minimum number of recordings per period (usually one album), the number of options to extend the agreement (usually three or four) and the length of time a performer assigns the rights to the music they create, which is typically the 'life of copyright' (which in the UK is 70 years).[177] Importantly, the contract will also set the performer's royalty rate. Performers signed with independent record labels are sometimes signed to 'advance and profit share' deals, where the performer and label share the profits from a recording according to an agreed proportion (usually 50:50).[178] However, for an emerging performer on an 'advance and royalty' deal (commonly known as the 'standard record deal'), which is the predominant type of deal for a performer signed to a major record label (who, as will be discussed in Chapter 4, dominate the market for recording rights), this is likely to be between 20 to 24 percent of recording revenues (minus fees for the record producer), with the rest accruing to the label.[179] For more established performers who are out-of-contract or renegotiating, this might rise to 25 to 30 percent, depending on their career success.[180] Historically, royalty rates for performers with pre-digital 'legacy contracts' have been even worse: in the early 1960s, established bands were only receiving royalties of between two and four percent, whilst musician, songwriter and Rock and Roll Hall of Famer Ed O'Brien told us that Radiohead's deal, signed in 1991, put the band on a 12 percent royalty.[181]

45. Moreover, a contract will also establish which costs of production are to be covered by the record label (such as manufacturing, packaging, distribution, marketing and touring) and which costs are recoupable against future revenues.[182] Under an 'advance and profit share' deal, recoupable costs are earned out from total revenues (which effectively means that they are recouped from both the performer and label's share of the revenues until the recording becomes profitable).[183] Under an 'advance and royalty' deal, however, the performer's advance and any negotiated recoupable costs are earned out from the performer's royalties only. Colin Young described the challenges facing performers to recoup on their deals:

> The challenge is to recoup that within the cycle, because you have a two-year period, in essence, you have to recoup it by, before the next advance is given and the next recording costs. The costs are immediate on to the ledger; the income is delayed. The domestic income will appear there in the period January to June, July to December, but the overseas will be delayed by six months. That is the challenge: 20 percent of the income, 100 percent of the costs and you only have a limited window to recoup it in. That is difficult.[184]

These types of deal also pose the obvious and highly questionable dilemma whereby, because the costs are recouped against a minority of the income, a recording's total revenue might have in actuality exceeded the total costs of production and the performer's advance well before the label has theoretically recouped under the terms of the contract and begins paying royalties to the performer. For example, taking a simple model to illustrate and

177 BPI (EMS0208)
178 Verity Susman (EMS0136); Association of Independent Music (EMS0157); BPI (EMS0208); Q3
179 Qq4 [Colin Young], 53 [Tom Frederikse, Colin Young]
180 Q53 [Tom Frederikse, Colin Young]
181 Qq53 [Tom Frederikse], 83–4
182 BPI (EMS0208)
183 Q3
184 Q4

assuming recoupable costs of £10,000 and a royalty rate of 25 percent, total revenue would have to exceed £40,000 (of which £30,000 would accrue to the label in profit, minus any non-recoupable costs) before the performer would receive any royalty payments. As Nile Rodgers mused:

> The running joke in the music business, ever since I have been in it, all my life—I am 68 years old—is that the music business is the only business where after you pay off the mortgage on the house they still own the house. It does not make any sense. There is no other business on earth that does that. We pay back all the royalties, and they still own our property. It is ridiculous.[185]

46. However, a minority of independent labels do forgive debts after a certain period of time. 19 percent of record labels that are AIM members have a policy of writing off debt, of which the average is ten years;[186] Beggars Banquet, one of the UK's largest independent labels, writes off debt after 15 years.[187] However, many labels do not, meaning that many deals that were signed decades ago are still recouping against initial production and distribution costs. Horace Trubridge, General Secretary of the Musicians' Union, argued in oral evidence that "every other area of business writes off bad debt after six years, but not record labels; if you owed them some money from the 1970s, you still owe them that money, and they will not pay you any royalties".[188] However, in a positive move, Sony (who answered questions on this subject in evidence to the Committee) recently announced that it would "pay through on existing unrecouped balances to increase the ability of those who qualify to receive more money from uses of their music" for deals made before 2000 (though at the time of writing Universal and Warner have not similarly followed suit).[189] ***We urge Universal and Warner to look again at the issue of unrecouped balances with a view to enabling more of their legacy artists to receive payments when their music is streamed.***

47. Moreover, there is evidence that this has been inconsistently applied. A written submission from Hipgnosis notes that singer-songwriters Seal and Enrique Iglesias have been paid at a 50 percent licence rate for streaming revenue by their record labels; in the latter case, Iglesias's share was subsequently reduced to his royalty rate after two years, which resulted in a lawsuit and settlement out of court subject to a non-disclosure agreement.[190]

48. The issue of unfair contracts is exacerbated when considered against the relatively meagre returns from streaming, even as streaming itself is displacing other forms of music consumption and has emerged as the dominant modality.[191] According to the Office of National Statistics, professional musicians earned an average of £23,059 in 2018 , well below the national average of £29,832, despite themselves contributing £1.1 billion to the UK's export revenue alone in the same year.[192] Despite this, 92 percent of performers

185 Q179
186 Association of Independent Music (EMS0157)
187 Verity Susman (EMS0136); Musicians' Union (EMS0258); Q347 [Rupert Skellett]
188 Q513
189 "Sony Music writes off artists' decades-old debts", BBC News (11 June 2021)
190 Hipgnosis Songs Fund Limited (EMS0237)
191 International Federation of Musicians (FIM) (EMS0025); Ben Sizer (EMS0050); Chris Whitten (EMS0096); Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133); BPI (EMS0208)
192 The Ivors Academy of Music Creators (EMS0197)

claim that less than five percent of their earnings comes from streaming.[193] Nadine Shah, a critically acclaimed, *Mercury*-nominated musician and songwriter, told us about the dual impact of poor remuneration from streaming and the devastation of live music caused by the pandemic:

> As an artist with a substantial profile, a substantial fan base, critically acclaimed, I don't make enough money from streaming. I am in a position now where I am struggling to pay my rent and I am embarrassed to talk about these issues publicly. I am embarrassed to talk about them for many reasons, because money to an extent is an indication of success. Here that is not really the case because I am a successful musician but I am not being paid fairly for the work that I make. As I first said in this session, often artists are encouraged not to ask these questions.[194]

49. As such, musicians have become over-reliant on touring and live music income: 70 percent is estimated to be due to live music.[195] As Ed O'Brien told us in oral evidence, "for so long live income has been like band-aids".[196] This has led many performers to treat streaming services as a promotional tool rather than a sustainable form of income. Several musicians noted that a presence on streaming services is necessary to be discovered and 'heard', meaning that withdrawing works from these services is not practical and could stymie future success.[197] One performer, meanwhile, noted that venues and promoters have come to expect a Spotify presence and use this to evaluate whether to book an act.[198] Consequently, musicians' income streams have become much less diversified than the decades prior to digital piracy.[199] Furthermore, several performers argued that recording music and performing live have become inexorably linked, as recording music would be unviable without touring but touring typically is prompted to promote the release of new records.[200]

50. Despite this, performers are set to face further pressures to live income due to the ongoing issue with EU travel arrangements for creatives. Historically, touring in Europe has been an important source of revenue for British musicians, as Colin Young argued on 24 November 2020:

> A musician, his revenue, 70 percent will be from live performances and the cream is to be had in the summer festival season. It is pure profit and Europe has totally transformed that. Any obstacle is bad for live touring in Europe, so whether it is going to be visas, whatever it is, it is going to be bad.[201]

Negotiations between the UK and EU, which led to the Trade and Cooperation Agreement (TCA) that came into force on 1 January 2021, did not result in provisions for short-term travel for creatives or associated technical and support staff. This has created barriers affecting both the movement of musicians and their supporting ecosystem (in the form of

193 The Ivors Academy of Music Creators (EMS0197)
194 Q75
195 Will Page (EMS0166)
196 Q78
197 Niall Parker (EMS0267)
198 Thomas Verity (EMS0152)
199 Chris Whitten (EMS0096)
200 Marcus Cain (EMS0049) ; Anna Neale (EMS0058); Martin Green (EMS0127); Matthew Tong (EMS0155)
201 Q60

visas and work permits) and the movement of goods such as equipment and merchandise. As Tom Gray noted, this could add a considerable financial and bureaucratic burden on performers:

> I performed across Europe for 20 years and to go into Switzerland you had to fill in a thing called a Carnet. It cost several hundred pounds and you had to itemise every single piece of equipment and merchandise that you were carrying with you.[202]

The financial burden imposed by these costs therefore impact performers' most important source of income and exacerbate existing issues with remuneration from streaming.

51. There are also concerns that the economics of streaming entrench historically successful artists and create barriers for new performers. Of the four UK acts who featured in Billboard's top 10 worldwide music tours of 2019 only Ed Sheeran released a debut single in the last 50 years (with the other three being Elton John, the Rolling Stones and Sir Paul McCartney).[203] Meanwhile, it has become an industry norm that costs of producing music, such as for space and equipment, are falling to creators. Whilst externalising costs of production is beneficial to corporate margins, it raises barriers of entry for musicians who cannot access the means to cover these costs. Evidence we received cited Maria Schneider, a jazz musician and composer, who has previously observed that "many, if not the vast majority of record companies, are no longer advancing money for a lot of music on their labels, whilst creators are sinking tens of thousands of dollars into making their own records".[204] Written evidence to this inquiry supported that observation[205] and 43 percent of professional musicians told YouGov that insufficient income from streaming has caused them to look for jobs outside of music.[206] Several musicians via written evidence argued that they or their peers have been forced to subsidise making music with other employment, which subsequently further reduces the resources and time available to devote to making music.[207] Other performers have noted that it has been more sustainable to carve a niche in creating music for television, film and advertising,[208] or in creating 'muzak' or background music optimised for mood playlists.[209]

Non-featured artists

52. Musicians releasing music to streaming services, including those on record deals, do so as the 'featured artist'. Featured artists are performers whose names are credited within the title of a record release.[210] In contrast to featured artists, non-featured artists are performers whose names are not prominently featured on the release of a recording.[211] Non-featured artists are typically session musicians (professional artists such as backup vocalists, orchestral players or specialist musicians who are hired to perform on a recording or tour on a 'work-for-hire' basis)[212] who have transferred their performers' rights to the

202 Q62
203 The Ivors Academy of Music Creators (EMS0197)
204 All Party Parliamentary Jazz Appreciation Group (EMS0161)
205 Leaone (EMS0054)
206 The Ivors Academy of Music Creators (EMS0197)
207 Marcus Cain (EMS0049)
208 Henry Bird (EMS0132); Verity Susman (EMS0136)
209 Q36
210 Anthony Hamer-Hodges (EMS0206)
211 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020)
212 Association of Independent Music (EMS0157); BPI (EMS0208)

producer of the recording in exchange for a one-off payment.[213] The minimum rate for this payment is negotiated through periodic collective bargaining agreements between the BPI, representing record labels, and the Musicians' Union, representing session musicians.[214] The current agreement, negotiated in 2019, is set at £130 for a standard three hour session or £43.33 per hour, which increases to £48.60 per hour (and with a minimum session length of two hours).[215] Other aspects of the agreement include: a five minute break every hour in a standard session; limits whereby a record label can only use 20 minutes of recorded performance per session; and additional payments for overtime, overdubbing and bank holiday employment.[216]

53. Because non-featured artists transfer their rights in exchange for a one-off session fee rather than a royalty, they are effectively 'bought out' of their rights to future revenues, including from streaming.[217] This means that, when a track that includes contributions from one or more non-featured artists is streamed, downloaded or purchased physically, those artists are not paid. Instead, session musicians are only entitled to an equal share of 20 percent of gross revenues from physical and online sales, which is referred to as the non-featured performers fund or session fund, after 50 years since the publication of the recording.[218] The exception to this is where UK law provides performers with a right to equitable remuneration, such as when recorded music is played in public or broadcast via radio.[219] Because this right legally cannot be transferred or waived, in these instances non-featured artists receive a payment alongside (albeit at a lesser rate than) featured artists from the performers' overall share. Where a recording is incorporated in a music video or is used as a backing track for performers to mime or sing live within a broadcast, session musicians have also been entitled to subsequent annual payments since 2012. However, these payments have amounted to only approximately £2,708,000 in total for all session musicians between 2012 and 2020.[220]

54. Session musicians fulfil several important roles in the creation and performance of recorded and live music, both through their creativity, skill and expertise in their own right but also as a pipeline for new talent to emerge.[221] However, their reliance on session fees to earn a living has been particularly impacted by the Covid-19 pandemic. Written evidence from several session musicians (or those who started their careers as session musicians) argued that the terms of the BPI/Musicians' Union agreement are unfair because they "[deprive] session musicians of fair and legal remuneration for the exploitation of their performances" and that the agreement itself is worded so that it will apply unilaterally to any "hereafter created" format.[222] The Musicians' Union itself criticised the status quo, arguing that as streaming displaces radio, it reduces opportunities for session musicians to participate in equitable remuneration for their recordings.[223] Many prominent featured artists, such as Nile Rodgers, Tom Gray, and Bloc Party's Matthew Tong, also cited the lack

213 Intellectual Property Office, Performers' rights, 16 October 2019
214 Association of Independent Music (EMS0157)
215 BPI (EMS0208)
216 BPI (EMS0208)
217 Association of Independent Music (EMS0157); Robin Firman (EMS0017); Anthony Hamer-Hodges (EMS0206)
218 Intellectual Property Office, Performers' rights, 16 October 2019; Musicians' Union, Session Fund, accessed 12 May 2021
219 Robin Firman (EMS0017); International Federation of Musicians (FIM) (EMS0025)
220 BPI (EMS0208); Musicians' Union, Subsequent Payments for Music Videos, accessed 12 May 2021
221 Robin Firman (EMS0017); Peter Oxer (EMS0031); Just East of Jazz (EMS0079)
222 Robin Firman (EMS0017); Peter Oxer (EMS0031); Anna Neale (EMS0058); Just East of Jazz (EMS0079); Dr Gareth Bonello (EMS0069); Chris Tombling (EMS0093); Joe Newman (EMS0083); Thomas Verity (EMS0152)
223 Q505 [Horace Trubridge]; Musicians' Union (EMS0080)

of remuneration for session musicians from streaming as a salient issue.[224] Ed O'Brien noted that, as a solo artist, his band rely on income from touring but have also, during the pandemic, been excluded as freelancers from Government support packages; Mr O'Brien told us that his bass player, for instance, has said that "'I am going to have to take a year out and this is a chance to do an MA or something'".[225] Though the Minister for Digital and Culture, Caroline Dinenage MP, refused to state whether she thought the lack of remuneration for session musicians from streaming was fair due to the "wildly differing views" between stakeholders, she did emphasise the contributions of all musiciansincluding that of session musicians—to recorded music production and sympathised with their position, noting that "it seems that there is a disparity […] between what happens on the radio and on streaming and yet the contribution of all the talented artists on the piece of music is no different".[226]

55. Submissions from both the BPI and AIM, however, asserted that session musicians are remunerated fairly on the basis that they are paid up-front regardless of the success of the recording and thus are not exposed to the risk of a release not being commercially successful.[227] Moreover, the BPI emphasised that, "where the recordings are successful, they enjoy certain further payments" from specific formats.[228] By contrast, AIM warned that any attempt to redress the disparity for session musicians could result in session fees being reduced to compensate for the margin reduction to "investors" (i.e. the record labels), fewer session musicians being used and that any alternative, success-based model would "favour the few session musicians who play on the small percentage of very successful tracks".[229] Similar to its perspective on featured artists, the BPI argued that "the most important element in securing future earnings […] to increase the overall size of the recorded music sector, so that labels can invest in more recordings and hence, more recording sessions".[230] However, AIM's submission did recognise that "minimum rates for sessions negotiated between the BPI and Musicians' Union have not increased dramatically", despite session musicians not participating in booming revenues from streaming. Moreover, neither submission considered why session fees might automatically decrease given that these fees are subject to collective bargaining by the Musicians' Union and the BPI, nor why there would necessarily be a reduction in the number of session musicians if greater performer remuneration instead underpinned greater financial incentives for more and more wide-ranging music to be created.

Artist business partners

56. Whilst creators perform the most fundamental and important part of the music industry—production of the 'raw material' on which the industry is based—they also often provide the foundation for a front-line business that aims to maximise the revenue that accrues from their creative output and enable further production. Although creators may operate these 'artist businesses' themselves, they are often supported by an ecosystem of employees and business and corporate partnerships that focus on and aim to develop one particular aspect of a creator's career.[231] Managers, for example, may run the day-

224 Qq10, 187
225 Qq77–8 [Ed O'Brien]
226 Q733 [Caroline Dinenage]
227 Association of Independent Music (EMS0157); BPI (EMS0208)
228 BPI (EMS0208)
229 Association of Independent Music (EMS0157)
230 BPI (EMS0208)
231 CMU (EMS0183)

to-day operations of the company; lawyers and accountants provide important legal and financial support and advice; and agents and promoters arrange the live music shows and tours that make up the primary revenue stream for most performers.

57. Diminishing returns for creators, both in the context of streaming but also in terms of live music and other modes of recorded music consumption, has had knock-on effects on this ecosystem. AIM's submission acknowledges that managers, who have traditionally worked on a 20 percent commission model on artists' net revenues, are "having to invest more and for longer when working with a developing artist" with no long-term security that they will see returns on this investment, unlike record labels.[232] Agents, similarly, work on commission for income that has since disappeared.[233] Road crews, made up of professional technicians and engineers required to facilitate live music events, face intense working conditions and increasingly precarious employment conditions despite their expertise.[234] The pandemic has subsequently forced many to seek alternative employment in lieu of lost revenue from live music and an absence of Government support.[235] Ed O'Brien in particular argued that "my crew people are not 'roadies'; they are proper technicians and engineers and I know that most of them have become delivery drivers—Amazon drivers".[236]

58. **The pitiful returns from music streaming impact the entire creative ecosystem. Successful, critically acclaimed professional performers are seeing meagre returns from the dominant mode of music consumption. Non-featured performers are frozen out altogether, impacting what should be a viable career in its own right, as well as a critical pipeline for new talent. Those that provide specialist support for creators, either based on commission or working as salaried staff as part of an artist's business or technical expertise, are also affected, meaning that fewer jobs will be sustained by an otherwise growing sector.**

Equitable remuneration

Current applications

59. Given that the benefits from streaming have disproportionately accrued to the record labels, it is unsurprising that many contributors to our inquiry have called for a right to equitable remuneration to be applied to streaming. The right to equitable remuneration (as explained in paragraphs 28–9 in Chapter 2) is a non-waivable, non-transferrable statutory right to payment when certain copyright controls are exploited. This is paid according to industry standard rates (which have no statutory basis), which currently stands at 50:50 between the label and performers.[237] Equitable remuneration is a proposed solution to many of the aforementioned issues facing performers. First, equitable remuneration is not subject to recoupment, meaning that performers would be paid when their tracks are streamed regardless of whether their recordings have earned out on the initial investment and expenditure.[238] As Horace Trubridge, General Secretary of the Musicians' Union,

232 Association of Independent Music (EMS0157)
233 Gordon Bennett (EMS0245)
234 Matthew Tong (EMS0155); Qq77, 104
235 Q78
236 Q77–8
237 Q10
238 Q17

explained, "when equitable remuneration came in for radio play, it was a lifeline" as "it meant that you had a source of income that the record companies could not get their hands on".[239] Second, equitable remuneration could help redress the some of the disparity faced by legacy performers who are paid according to the terms of pre-digital contracts at much lower royalty rates,[240] despite the fact that these artists often generate significant revenues for the industry.[241] Finally, it is non-waivable and non-transferrable. This means that performers cannot transfer away their right to equitable remuneration, even in instances where they may be negotiating with much more powerful parties (or otherwise feel pressured or intimidated into doing so).

60. Solutions for poor creator remuneration are popular with music consumers. A recent survey of streaming service customers, undertaken by YouGov on behalf of the #BrokenRecord Campaign, Musicians' Union and Ivors Academy, found that there is widespread public support for better remuneration for creators. 77 percent of respondents felt that performers were not paid enough, and 76 percent felt that songwriters and composers were underpaid.[242] 81 percent of respondents also wished to see session musicians receive some share of streaming revenue.[243] These sentiments perhaps underpin the success of tech companies like Patreon and Bandcamp, which allow artists to create fan communities and monetise this fanbase independently of corporate partners by offering exclusive or early access to creative content, merchandise, and other benefits.[244] Spotify similarly at the start of the pandemic launched a function for artists to raise donations for fans that became known as the Spotify 'tip jar'.[245] However, Nadine Shah was critical of the 'tip jar', arguing that it was an admission that the economics of streaming were not benefitting creators:

> Initially I thought, "This is interesting. This is another way of making money." I found it insanely condescending. It was an admission of sorts by that platform that says, "We know that you are not making enough." As I said earlier, when I have to talk about transparency and my earnings and what I make among my peers and my fans, I don't want to come across like I am cap in hand. I believe that I am worth and deserve to be treated better, but I believe that that was an admission that the system is not working for us and I found it very, very condescending.[246]

Furthermore, Ms Shah observed that emerging artists that had yet to build a dedicated fanbase would therefore not be able to rely on the additional support of superfans to make a burgeoning professional music career viable.[247]

The classification of streaming

61. Whilst calls for better creator remuneration from streaming have been prompted by the iniquitous distribution of the benefits of streaming, arguments to apply an equitable

239 Q505
240 Q84
241 Q513
242 The Ivors Academy of Music Creators (EMS0197); #BrokenRecord Campaign (EMS0218)
243 The Ivors Academy of Music Creators (EMS0197); #BrokenRecord Campaign (EMS0218)
244 MIDiA Research (EMS0073); DIUO (EMS0074); Patreon, Inc. (EMS0110)
245 "Spotify's 'tip jar' is a slap in the face for musicians. It should pay them better", The Guardian (23 April 2020)
246 Q94
247 Q95

remuneration right specifically have emerged due to the inconsistency of and contestation about the classification of music streaming within UK law. It is clear from those who have given evidence to us that music streaming poses a definitional challenge. There is no consensus as to how streaming should be defined and classified under UK law. Broadly speaking, performers argue that streaming has characteristics that justify a classification that would engage equitable remuneration. This position has been endorsed by most creator unions, campaign groups and trade associations, several (non-domestic) collecting societies and several academics. Conversely (and as expected), record labels and their trade associations have generally argued for the status quo. For the most part, the Music Publishers' Association (MPA), domestic music collecting societies and the streaming services themselves generally declined to take a stance on the debate.

62. During our inquiry, companies ranging from the major multinational record labels Universal, Sony and Warner to independents like Jazz Re:freshed, as well as trade bodies the BPI and AIM, argued that streaming should be classified as 'making available'. The major labels' case for this classification cited technical specifications for this: namely, the on-demand functionality of streaming platforms. As Tony Harlow, Chief Executive of Warner Music UK, explained in oral evidence:

> You can play what you want when you want it and skip when you don't want. That is the basis of the argument that streams are equivalent to sales: you have a choice. You can either choose a song directly or you could make your own playlist, or as you say you could listen to something like Sunday morning jazz; but when I am listening to it as you are listening to it, it will then feed me artists based on the choices I have made before. I can decide how long I want to listen to it. That is not like broadcast. I can decide when I want to listen to that. I can skip, and most subscription platforms nowadays will offer you the chance to case your recordings, or bring them down to use offline. So in all those ways it is like a sale and, as I say, it is covered by that making available right, which is kind of what the internet has set out as the basis of equivalent to sale.[248]

Universal Music, Warner Music and Sony Music expanded on this in subsequent correspondence, arguing that streaming services allow users to skip, pause, rewind or skip forward, download, repeat, cancel, download, like, retrieve artwork and credits and/or create their own playlists at their leisure.[249] Warner Music also argued that listener behaviour also informs algorithmic curation, further emphasising the user interactivity.[250] Finally, Universal Music wrote that in instances where streaming services restricted the interactivity and functionality on certain devices for ad-funded users, they typically allowed those same users to listen with unrestricted functionality on other devices.[251]

63. When asked to characterise streaming in contrast to other legal classifications, record labels emphasised that streaming appropriately could be described as a sale, thereby justifying both performer remuneration according to royalty arrangements and the relative revenue disparities between the recording and song rightsholders (see paragraphs 78–88 for the implications of this). Universal's submission argued that "the reason for

248 Q279
249 Warner Music UK (EMS0279); Sony Music UK & Ireland (EMS0280); Universal Music UK & Ireland (EMS0281)
250 Warner Music UK (EMS0279)
251 Universal Music UK & Ireland (EMS0281)

introducing the exclusive making available right at the international level in the first place was to ensure that rights holders can authorise online uses that have the same commercial effect as the distribution of copies in the off-line world".[252] Warner Music's correspondence expressed this comparison in economic terms, noting that "commercially, streaming is substitutable for, and has largely replaced, physical goods and downloads".[253] When asked whether streaming was analogous to a sale or a rental, BPI Chief Executive Geoff Taylor argued that:

> When the framers of the internet treaties granted rights for the future, they granted an exclusive 'making available' right, which is what applies to streaming, and they did that in the knowledge that an exclusive right was needed because these interactive digital transmissions were going to take over from the sales model. So we would say that, if you are going to compare to either, it is really a 'making available', but the better comparison is to a sale.[254]

This analogy was supported by the independent sector. Paul Pacifico, Chief Executive of AIM, likened a music streaming subscription to a phone contract, arguing that a phone customer buy a specific number of (or otherwise infinite) minutes, whereas a customer would have to give back a rented car or home video after a certain amount of time.[255] On broadcast, Sony emphasised the lack of user control, arguing that broadcast mediums "do not afford any interactivity to the end user because the user cannot influence the transmission of the music which can be listened to at a given time; he or she can only choose to turn off the station if the piece broadcast is not to his or her liking".[256] Warner similarly noted the lack of individual consumption, stating that "every listener hears the same track at the same time with no possibility for individual selection of or interaction with the content".[257]

64. However, the balance of evidence that we have heard suggests that the classification of streaming is not as straightforward as posited by the record labels. First, the consumption of streaming does also share characteristics with rental, insofar as consumers may receive unlimited access music from streaming services but only for as long as they pay for time-limited access (i.e. subscribed to the service).[258] This occurs even when a track has been downloaded from a streaming service for offline play, which is distinct from what occurs when music is bought and downloaded from a digital MP3 store (which is also classified as making available).[259] Nile Rodgers illustratively argued that:

> In the old days we would buy a CD and that was a sale. That was something we owned and there is a big difference. Like those bicycles that are on the street that you can put your credit card in and ride on the bicycle, but you have to return it, it is not your bicycle to keep forever.[260]

252 Universal Music UK & Ireland (EMS0281)
253 Warner Music UK (EMS0279)
254 Q417
255 Qq363–5 [Paul Pacifico]
256 Sony Music UK & Ireland (EMS0280)
257 Warner Music UK (EMS0279)
258 Qq581–6
259 An exception, however, would be Resonate Co-operative's 'stream2own' model, whereby a track is streamed by a user until payment for this consumption covers the cost of an MP3 download sale, after which it is owned.
260

65. José Luis Sevillano, Director-General of the Spanish collecting society Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE), concurred, asserting that "who can say that Netflix is more similar to an old Blockbuster or to a shop where you can buy a film? It is a rental right."[261] Streaming services themselves also pushed back on the idea that streaming was straightforwardly similar to physical sales or downloads relative to other modes of consumption. Whilst they did not comment on the legal ramifications, Apple and Spotify did, in oral evidence, concede that streaming was "more akin to a rental" and "different to an ownership model".[262]

66. Similarly, streaming also shares similarities with more passive listening experiences such as broadcast. Autoplay, which applies where a user stops actively selecting music and the service's recommendation systems subsequently select tracks for them, is an example where music is curated for, rather than by, the user (albeit in a more personalised way).[263] Streaming services themselves can delineate whether a user has selected a track themselves or listened passively via autoplay or algorithmic or editorially-curated playlists, meaning this differentiation is technically feasible to monitor.[264] Though major record labels have argued that streaming is substitutable for, and is replacing, sales and downloads, it is equally applicable that streaming is substitutable for, and is replacing, radio. In oral evidence, Spotify confirmed that it intends to leverage its more personalised listening experience to radio listeners and would expect to reduce radio listens over time.[265] Dawn Ostroff, Spotify's Chief Content Officer and Advertising Business Officer at Spotify, has previously said that "our job is sucking listeners away from radio" and suggested the $30 billion of radio industry advertising revenue presents a business opportunity for ad-funded streaming services in particular.[266] Finally, the BBC has warned explicitly that music streaming is a critical challenge to the prominence of radio consumption of public service broadcasting, particularly due to the displacement of traditional radio by ecosystem providers such as smart speakers and in-car hardware (discussed further in paragraph 160).[267]

67. Many submissions also observed an inconsistency in how streaming is classified between the recording and publishing sides. Unlike the recording, which is classified simply as 'making available', the song is classified as both a 'mechanical' (reproduction) and a 'performance'. This means that performing rights royalties are paid to the song. Therefore, streaming is already paying a performing right within making available without changing the law. Though Roberto Neri, Chair of the MPA, declined to comment explicitly on the difference in classification between the recording and the song, he explained that publishers apply this model because "there is a performance element, because it has been performed" and "there is a mechanical element behind that, to actually get on the service" and "you can download the tracks on to your devices".[268] Mr Neri also asserted that he was satisfied with the classification of streaming under publishing, stating that the model "is fit for purpose as it is".[269] As such, performers have questioned why they are excluded from equitable remuneration (their performance royalty) when a performance royalty is

261 Q113
262 Qq645 [Elena Segal], 583–5 [Horacio Gutierrez]
263 The Ivors Academy of Music Creators (EMS0197); SCRIPT (EMS0205); Qq505–6, 512
264 Qq593–6
265 Q682 [Horacio Gutierrez]
266 Q681 [Kevin Brennan MP, Horacio Gutierrez]
267 BBC (EMS0227)
268 Qq424–5
269 Q425

paid to songwriters and composers of the same track. The lack of remuneration right for performers partially underpinned a Musicians' Union and Ivors Academy campaign, which prompted over thirty creators and organisations to submit evidence both confidentially and publicly to our inquiry arguing for equitable remuneration to apply to recording as well as publishing.[270]

68. However, perhaps the most compelling argument is not technical, but economic. The right to equitable remuneration currently applies to modes of consumption whereby the manufacturing, storage, distribution and physical breakage costs for record companies, after the song has been created and the performance recorded, are marginal relative to other modes such as physical sales or otherwise externalised to retailers or broadcasters. In renting, for instance, the costs of manufacturing and distributing each unit to the label occur once (when rental copies are delivered to the rental copy owner), whilst the subsequent act of renting incurs little to no additional costs to the label. Similarly, once music has been licensed for public performance or broadcast, there are no marginal costs to the label for each additional use. The same technologically enabled reduction and externalisation of costs occurs for the modes of consumption that exploit the making available right. For both digital downloads and music streaming, the storage, distribution and breakage costs associated with simply transferring a digital copy of the recording to the download store or streaming service are negligible or non-existent relative to storage, distribution and breakage for the purpose of physical sales. Despite the reduction in marginal costs with digital consumption, these cost savings have not been shared with the performers.

69. **The major music companies and independent record labels have consistently asserted that music streaming is straightforwardly 'making available', and therefore performers should be remunerated as though it was a sale. However, this classification does not consider the complexities of streaming that sets it apart from other modes of consumption. For example, it also has the characteristics of a rental and a broadcast, which are consumed by exploiting copyright controls that provide performers with a statutory right to equitable remuneration. Furthermore, this classification creates inconsistencies in comparison to the song rights. Finally, precluding the making available right from equitable remuneration does not capture the realities of costs associated with the distribution of digital music. *We recommend that the Government addresses these inconsistencies and incongruities by exploring ways to provide performers with a right to equitable remuneration when music is consumed by digital means.***

Legislating for equitable remuneration

70. There are several ways that equitable remuneration could be applied to streaming that we have considered, with different potential outcomes. One method would be for a legislative intervention to provide a specific classification for streaming. Many submissions from artists, academics and organisations (including several independent record labels and an Irish collecting society) called for streaming to be reclassified as communication to

270 Wendy Kirkland (EMS0037); Anna Neale (EMS0058); Joe Newman (EMS0083); Isaac Anderson (EMS0101); Fran O'Hanlon (EMS0105); Thomas Verity (EMS0152); Joshua Magill (EMS0153); Matthew Tong (EMS0155); Josienne Clarke (EMS0159); All Party Parliamentary Jazz Appreciation Group (EMS0161); Irish Music Rights Organisation CLG (EMS0162); Willis (EMS0186); Iain Archer (EMS0190); Luke Williams (EMS0191); Renee Sheehan (EMS0195); *Anonymous* (EMS0199); Dr Gavin Wayte (EMS0200); Chris Baron (EMS0222); Niall Parker (EMS0267)

the public.[271] In oral evidence, the Ivors Academy and Musicians' Union both advocated for this approach, both on the basis of streaming's substantial functional distinction from downloading and similarity to radio and for greater consistency between the song and recording sides.[272] This had strong support amongst written evidence we gathered, often citing similarities with traditional radio[273] or on the basis of consistency.[274] Conversely, evidence from Colin Young and Nile Rodgers proposed applying a more nuanced reclassification based on distinguishing between actively selected and passively consumed content, similar to the classification of streaming for the publishing side, to reflect changes in both the methods of user payment and consumption.[275] They propose that, if the distinction between active and passive listening is recognised, payment would be administered according to two distinct royalty streams. Where a user actively participates in selecting music, revenues are allocated between rightsholders as though they have purchased a CD (i.e. where the recording and publishing sides according to the 55 percent to 15 percent split, and where appropriate the creative and corporate partners are then paid according to royalty arrangements).[276] Where a user passively streams music, revenues are allocated as though they have listened to a broadcast (i.e. where both the recording and publishing sides and the creator and corporate partners on each side are remunerated equitably).[277]

71. These methods could be accomplished by adding an exception to the definition of broadcast in the Copyright, Designs and Patents Act 1988, which currently excludes internet transmission but for certain specific exceptions such as radio broadcasts that are simultaneously transmitted via the internet.[278] However, the Government would need to ensure that streaming is defined precisely. A definition that was too broad would potentially encapsulate other modes of music consumption, thereby negating the purpose of creating a specific exception for streaming only.[279] Similarly, a definition that was too technologically specific would risk not applying to certain forms of music streaming or becoming quickly outdated as streaming itself evolves.[280] Finally, this approach may mean that the law might need revisiting if and when new modes of music consumption appear in the future. This would necessitate Government to be prepared to proactively intervene if this is the case. Indeed, Tim Moss, Chief Executive of the IPO, asserted that this is

271 Wendy Kirkland (EMS0037); Anna Neale (EMS0058); Dr Gareth Bonello (EMS0069); Just East of Jazz (EMS0079); Musicians' Union (EMS0080); Joe Newman (EMS0083); Chris Tombling (EMS0093); Isaac Anderson (EMS0101); Fran O'Hanlon (EMS0105); Verity Susman (EMS0136); Thomas Verity (EMS0152); Joshua Magill (EMS0153); Matthew Tong (EMS0155); Josienne Clarke (EMS0159); All Party Parliamentary Jazz Appreciation Group (EMS0161); Irish Music Rights Organisation CLG (EMS0162); Willis (EMS0186); Iain Archer (EMS0190); Luke Williams (EMS0191); AJ Dean-Revington (EMS0192); Renee Sheehan (EMS0195); *Anonymous* (EMS0199); Dr Gavin Wayte (EMS0200); Chris Baron (EMS0222); Niall Parker (EMS0267); Dr Hayleigh Bosher (EMS0254); see also CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)

272 Qq491 [Graham Davies], 493 [Horace Trubridge], 506 [Horace Trubridge], 510 [Graham Davies]

273 Just East of Jazz (EMS0079); Musicians' Union (EMS0080); Music Publishers' Association (EMS0179); Willis (EMS0186); AJ Dean-Revington (EMS0192)

274 Wendy Kirkland (EMS0037); Anna Neale (EMS0058); Joe Newman (EMS0083); Isaac Anderson (EMS0101); Fran O'Hanlon (EMS0105); Thomas Verity (EMS0152); Joshua Magill (EMS0153); Matthew Tong (EMS0155); Josienne Clarke (EMS0159); All Party Parliamentary Jazz Appreciation Group (EMS0161); Irish Music Rights Organisation CLG (EMS0162); Willis (EMS0186); Iain Archer (EMS0190); Luke Williams (EMS0191); Renee Sheehan (EMS0195); *Anonymous* (EMS0199); Dr Gavin Wayte (EMS0200); Chris Baron (EMS0222); Dr Hayleigh Bosher (EMS0254); Niall Parker (EMS0267)

275 CC Young & Co Limited (EMS0077); Qq12 [Colin Young], 197 [Nile Rodgers]

276 CC Young & Co Limited (EMS0077)

277 CC Young & Co Limited (EMS0077); Q197

278 Dr Hayleigh Bosher (EMS0254)

279 Dr Hayleigh Bosher (EMS0254)

280 Dr Hayleigh Bosher (EMS0254)

often necessary of Government, having previously been undertaken by Parliament and the Government led by Prime Minister Margaret Thatcher in the 1980s:

> As things change, we need to make sure the copyright regime is fit for the purpose. The UK has a great copyright regime and we need to understand how things change over time and make sure that it is fit for purpose.[281]

However, when questioned, Mr Moss and Department for DCMS officials also repeatedly affirmed that they felt that the current copyright framework was "fit for purpose"[282] given that the making available right was "designed for the streaming environment" and "was linked to changes in the internet and the way that music was being done, of which streaming would be one".[283]

72. A likely consequence of this approach would be the introduction of compulsory or collective licensing for recording rights for streaming.[284] Tom Frederikse, a former music producer and dual-qualified UK solicitor and New York attorney, explained that:

> I think the easy answer to "What is [equitable remuneration]?" is that it is collective licensing. It does create a restriction on the exclusive rights of the rights holder to negotiate for themselves. But as you have heard many times this morning, the artist-label negotiation rarely takes place on a level playing field, so this goes some way towards helping that problem. Also, as we can see in the US and elsewhere, collective licensing for all forms of streaming and broadcasts is certainly possible.[285]

Both the major and independent record labels definitively favoured direct licensing due to the greater power afforded to them by being able to walk away from negotiations.[286] Despite some concerns about the implications for self-releasing artists (see paragraphs 128–9 in Chapter 4), the negotiating power afforded by direct licensing does likely increase the total streaming revenue for the music industry.

73. Another method of practically applying equitable remuneration to streaming exists in Spain. Under the Spanish system, the performer is presumed to have transferred the exclusive right under the terms of their contract, which the producer (i.e. the record label) retains, whilst the non-waivable and non-transferrable remuneration right allows performers to be paid when music is streamed.[287] In Spain, equitable remuneration is paid by the user of the sound recording (in this instance, the streaming services) to the rightsholders via the Spanish collecting society AIE subject to an administrative fee of approximately 10 percent.[288] In total, around £800,000 per year is paid to UK performers by AIE from the equitable remuneration right.[289] The Spanish system has been in place since 2006, when Spanish law that transposed the 2001 EU Information Society Directive came into force.[290] This solution was posited in written evidence by the #PayPerformers

281 Q740
282 Qq728, 731 [Robert Specterman-Green], 734–40
283 Qq728, 730, 734, 736, 740, 755
284 Qq12, 17, 48
285 Q12
286 Qq238–9, 341
287 #PayPerformers (EMS0064); Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133)
288 Robin Firman (EMS0017); Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133)
289 Qq137–8
290 #PayPerformers (EMS0064); Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133)

campaign, Musicians' Union and songwriter Robin Firman, and has been explored in Holland, Switzerland, Hungary and elsewhere.[291]

74. The main proposal by the #BrokenRecord campaign calls for amending UK law so that the right to equitable remuneration would extend to making available. This suggestion has also been endorsed by the Musicians' Union.[292] A recent letter to the Prime Minister calling for this amendment was signed by over 230 artists from a variety of genres, including Lily Allen, Massive Attack, Gary Barlow, Kate Bush, Celeste, Paloma Faith, Noel Gallagher, Kano, Chris Martin, Sir Paul McCartney, Kate Nash, Stevie Nicks, Jimmy Page, Mike Skinner and Sting.[293] Unlike reclassifying streaming in legislation, this approach would not require the Government to proscriptively define a stream, thus future-proofing UK law to any technological deviation in streaming. It would, it should be noted, also apply to downloads. Another advantage would be that this would be relatively straightforward. Spain's model provides some illustrative precedents for policymakers as to the practicality of applying equitable remuneration to the making available right. AEPO-ARTIS, a non-profit organisation representing 36 European performers' collecting societies, argue that in practice, UK performers are forced to transfer their exclusive right to record companies, film studios and other producers for little to no remuneration anyway.[294] This is due to the overwhelming contractual power held by record labels relative to performers they negotiate with, which was argued by several legal, academic and industry professionals.[295] The Scottish Research Centre for Intellectual Property and Technology Law (SCRIPT), note that creators' weak bargaining position at the time of signing initial contracts may be caused by a lack of experience and/or information and a desire to be produced or published at any cost, and exacerbated due to the relatively few controls on copyright contracts in the UK.[296]

75. The co-existence of remuneration and exclusive rights already applies in several UK contexts, established in the Copyright, Designs and Patents Act 1988. This occurs in the case of rental, where performers have the right to equitable remuneration when a CD or DVD is rented from a library, and in the case of non-featured performers' funds, where non-featured artists are entitled to an equal share of 20 percent of gross revenues from physical and online sales of the recording after the fiftieth year following its publication.[297] This therefore addresses the critique levied against applying equitable remuneration to the making available right by one submission we received, which argued that if the "exclusive right is reduced to a simple right of remuneration, performers will no longer have any right to authorize or prohibit the use of their records".[298] This position was similarly argued by Tim Moss who argued that "the broadcaster can broadcast whatever it likes and the rightsholder cannot control what is broadcast".[299] However, practically speaking, rightsholders are only able to control whether streaming services have licensed the rights;

291 Robin Firman (EMS0017); #PayPerformers (EMS0064); Q131 [José Luis Sevillano]
292 #BrokenRecord Campaign (EMS0218); Musicians' Union (EMS0258)
293 "Paul McCartney, Kate Bush, Stevie Nicks and more sign letter calling on Boris Johnson to fix streaming economy", NME (20 April 2021)
294 AEPO-ARTIS (EMS0051)
295 Qq12 [Tom Frederikse], 169 [Nile Rodgers]; AEPO-ARTIS (EMS0051); Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133); SCRIPT (EMS0205); Dr Hayleigh Bosher (EMS0254)
296 SCRIPT (EMS0205)
297 Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133); Q510 [Graham Davies]; see also The Copyright and Related Rights Regulations 1996, section 12; Musicians' Union, Session Fund, accessed 12 May 2021
298 Horatiu Coldea (EMS0263)
299 Q738

they do not control what is played or when, particularly when algorithmic curation takes place.[300] Mr Moss himself also noted when questioned that this was the case in Spain, where the making available right was then linked to a remuneration right, and confirmed that "we want to look at this in more detail" as to " whether that works in practice and gives a better deal for those in the whole music industry".[301] A remuneration right for digital music consumption, therefore, could practically be introduced to apply to the making available right similar to the rental right where performers retain the right to equitable remuneration where their rental right has been transferred.[302] As Tom Frederikse noted:

> Regarding the application of equitable remuneration in streaming, clearly the on-demand nature of streaming is fundamentally different to that of broadcasting, but the music industry has a long tradition of crossbred music business models. […] There is certainly a lot of precedent for pulling models and principles from one type to another.[303]

76. **The right to equitable remuneration is a simple yet effective solution to the problems caused by poor remuneration from music streaming. It is a right that is already established within UK law and has been applied to streaming elsewhere in the world. A clear solution would therefore be to apply the right to equitable remuneration to the making available right in a similar way to the rental right. As such, an additive 'digital music remuneration' payment would be made to performers through their collecting societies when their music is streamed or downloaded. This digital music remuneration would address the issues of long-term sustainability for professional performers and the cannibalisation of other forms of music consumption where equitable remuneration applies, whilst also retaining the benefits of direct licensing.**

77. ***We recommend that the Government legislate so that performers enjoy the right to equitable remuneration for streaming income. Amending the Copyright, Design and Patents Act 1988 so that the making available right does not preclude the right to equitable remuneration, using the precedent set by the co-existence of the rental right and right to equitable remuneration in UK law, would be an effective solution. This would be relatively simple to enact and would appropriately reflect the diminished (and increasingly externalised) marginal costs of production and distribution associated with digital consumption. Furthermore, were the Government to do this by echoing existing UK law, this remuneration right would apply to the rightsholders (i.e. the record labels) rather than the streaming services.***

Remuneration of song rightsholders

Valuation of the song

78. As discussed in Chapter 2 (see paragraph 26), streaming services keep approximately 30 to 35 percent of gross revenues and distribute the remaining 65 to 70 percent, known as the royalty pot, to the music industry. Whilst the majority accrues to master rightsholders, who receive approximately 78.5 to 80 percent of revenues distributed to the industry, song rightsholders receive approximately 20 to 21.5 percent. Despite this, many witnesses to our

300 Q739
301 Q753
302 Copyright, Designs and Patents Act 1988, section 93B
303 Q12

inquiry have emphasised the importance of the song to music streaming. Representatives of song rightsholders contrasted the poor rate of remuneration for songwriters and composers relative to other parties, despite the fact that the song and recording rights of any track are logically symbiotic insofar as both need to be licenced for recorded music to be consumed. Roberto Neri questioned why the streaming services' share of the gross revenue pot was twice as much as that of song rightsholders, arguing that:

> Our songwriters are half of what is brought to the table. Without the songs, there are no music services. […] Without a songwriter creating a song, there is no music industry.[304]

Graham Davies, Chief Executive of the Ivors Academy of Music Creators, similarly emphasised the importance of the underlying song to the recording: "The songwriters, as we all know, invent the music. You do not have a recording, you do not have music, without the song".[305] Academic research has begun to explore this assertion further with statistical analysis, which has suggested that the quality of songwriting is as important as performing talent in determining the extent of music consumption.[306]

79. The importance of quality songwriting and composing should also be contextualised by how streaming technology has influenced music consumption. Many written submissions have recognised that streaming has provoked a decline in album sales concurrent to an increased consumption of individual tracks, referred to as a 'song economy'. The song economy of streaming services have been in part driven by changing demand-side consumption habits underpinned by functionality such as playlisting, alongside the weakening of supply-side incentives to create album-length music to capitalise on economies of scale for physical manufacturing and delivery costs.[307] This shift in consumption behaviour is not unprecedented: ERA posit that the concept of 'albums' did not exist before the invention of vinyl LPs, and moreover were limited to around 40 minutes of play until the invention of CDs.[308] Instead, creators are now incentivised by platforms to release tracks continuously to optimise streaming revenues. Daniel Ek, founder and CEO of Spotify, attracted criticism last year for saying in an interview with Music Ally that "you can't record music once every three to four years and think that's going to be enough",[309] which many musicians felt demonstrated a misunderstanding of the creative process of making music.[310]

80. However, even as the industry moves towards a song economy, songwriters and composers face new social and technological influences when creating music. Most significantly, most on-demand streaming services only register a user's stream if that user listens for thirty seconds. BMI Award-winning singer-songwriter Fiona Bevan and critically-acclaimed jazz saxophonist, MC and composer Soweto Kinch both noted that that they had observed similar trends as fellow creators are incentivised to write for a particular aesthetic based on quick beats and catchy hooks, leading to greater homogenisation around a "disposable sort of sound".[311] Guy Garvey, meanwhile, told us

304 Q430 [Roberto Neri]
305 Q501 [Graham Davies]
306 The Ivors Academy of Music Creators (EMS0197)
307 Q494 [Graham Davies]; MIDiA Research (EMS0073); BPI (EMS0208); Niall Parker (EMS0267)
308 Entertainment Retailers Association (EMS0081)
309 "Spotify CEO talks Covid-19, artist incomes and podcasting (interview)", Music Ally (30 July 2020)
310 "Musicians criticise Spotify CEO for saying it's "not enough" to release albums "every 3–4 years"", NME (2 August 2020)
311 Qq182–4

that whilst "Elbow is an album band", the band has and would shorten the introduction to a track if it optimised the track for streaming and playlisting with the aim to then lead listeners to the album.[312] The BPI has similarly asserted that number of tracks on albums and EPs have also increased, in order to maximise the number of tracks streamed (and therefore generate additional revenue) in case an artist's music is left playing.[313]

Impact on music publishing

Songwriters and composers

81. From the creator side, the current valuation of the song despite the importance of song writing and composing has resulted in financial hardship for all but a select few. In oral evidence, Fiona Bevan disclosed that one track that she co-wrote, of which her share was 48 percent, earned her approximately £100 on an album that was the fastest-selling solo artist album of the year at the time of release and reached No. 1 in the UK album charts.[314] Successful songwriters and composers also provided written testimony, both publicly and confidentially, about low rates of remuneration for successful songs. One songwriter and composer, who co-wrote an NME and Rolling Stone award-winning song that was streamed 137 million times on Spotify, received a royalty of £3,013.47. Another prominent songwriter and producer received approximately €352 in Spotify payments over three years from a one-third writing share for a song that was streamed over 14 million times. Yet another composer and artist, who has created music for some of the biggest films in the world, wrote confidentially that they make more money from a track being played on TV than out of millions of record streams. Several witnesses asserted that, as a result, many hit songwriters and composers were also working in 'gig economy' jobs for Uber or Deliveroo in lieu of adequate remuneration from streaming.[315]

82. Creators of music in genres such as classical, national and traditional music and types of popular music such as jazz are particularly disrupted by streaming, even accounting for the fact that their specialist or supposed 'niche' nature meant that it would already be difficult to achieve the numbers of streams that mainstream music would.[316] Several witnesses, for example, argued that paying rightsholders after 30 seconds of streaming a track meant that a seven-minute classical piece or a nine-minute jazz symphony would pay the same as a 31-second album interlude.[317] One classical composer noted in written evidence that Ariana Grande's 'thank u, next' could be streamed three times for every stream of Pink Floyd's nine-minute 'Comfortably Numb' from the band's concept album *The Wall*, and seven times for every stream of Simon Rattle conducting the twenty-four minute first movement of Symphony No. 2 by Gustav Mahler.[318] Effectively, this means that, particularly for services that use 'pro-rata' payment models, regular long-form, classical, jazz and traditional music listeners subsidise the consumption of consumers with popular or mainstream tastes, especially where mainstream music has optimised for streaming. Many witnesses also asserted that these issues were further compounded by

312 Q96
313 BPI (EMS0208)
314 Qq171–3 [Fiona Bevan]
315 Qq136, 170
316 Ed Hughes (EMS0033); Just East of Jazz (EMS0079); Simon Lasky (EMS0274)
317 Q36 [Tom Gray], 182 [Fiona Bevan], 184 [Soweto Kinch]; All Party Parliamentary Jazz Appreciation Group (EMS0161)
318 Matthew Whiteside (EMS0022)

algorithmic curation and playlisting that disadvantages these genres over mainstream pop and commercial music.[319] The algorithmic and playlisting problem too is multifaceted: on the one hand, these types of music may be overlooked by recommendation systems entirely, but one submission we received also highlighted that niche music is being contextualised in problematic ways when it is playlisted, arguing that "if a highly trained soloist views getting included on a Spotify 'Sleep' playlist as a career booster, something is really wrong".[320] As a result, it is estimated that the value of music such as jazz has been suppressed by about three to six percent, reducing financial incentives to its continued investment and production.[321]

83. Moreover, for songwriters and composers particularly, there are often likely to be several creators contributing to a song. This means that what revenues that are allocated to song rightsholders are often divided between more parties than on the recording side. Fiona Bevan noted that "if you look at the charts, the vast majority of music in the charts is written through collaborations and teams, songwriters and producers and artists together or producers and songwriters together".[322] It is not unusual for songwriters to share revenues for writing credits with at least three to four other songwriters, if not more;[323] 'Havana' by Camila Cabello, 'Uptown Funk' by Mark Ronson featuring Bruno Mars and 'Strip That Down' by Liam Payne featuring Quavo credit ten, twelve and fifteen writers respectively.[324] Soweto Kinch observed that "if you are independent, you would be looking to pay splits to a composer, a band arranger, songwriters, lyric writers and so on".[325] Sometimes the recording artist may also contribute to the writing of songs or otherwise negotiate a credit, writing fee or upstreaming bonus.[326] Maria Forte explained why this trend may be increasing:

> The easiest explanation is, first, sampling is quite prevalent. When you sample a song and you give up a share of the copyright, you immediately have the songwriters of that sampled song in your song. That can be a way in which suddenly you get 17 songwriters. Somebody can write a song and then the producer, who is a producer-writer, will get it and add bits to it. There can be a number of people in the room who will be given a percentage. Often, if it is a major artist, they will require a percentage of the song irrespective of whether or not they contributed to it.[327]

Indeed, the latter practices, where song writing revenues have become fair game, have become an industry norm to the extent that they are summarised by the maxim 'add/change a word, take a third'. Since we heard this evidence, a group of top songwriters, including Emily Warren, Tayla Parx, Victoria Monét, Justin Tranter and Savan Kotecha,[328] have penned an open letter to express concern about "a growing number of artists that are demanding publishing on songs they did not write" and have resolved to "not give publishing or songwriting credit to anyone who did not create or change the lyric or

319 Q183 [Fiona Bevan]; Just East of Jazz (EMS0079); Patreon, Inc. (EMS0110); All Party Parliamentary Jazz Appreciation Group (EMS0161)
320 Christian Castle (EMS0165)
321 Qq169 [Soweto Kinch], 193
322 Q173
323 Helienne Lindvall (EMS0112); Association of Independent Music (EMS0157); see also MIDiA Research (EMS0073)
324 Entertainment Retailers Association (EMS0081); see also Q501 [Graham Davies]
325 Q173
326 "Meet the songwriters who told pop stars: 'Don't steal from us'", BBC (14 April 2021)
327 Q150
328 "Hit songwriters ask pop stars to stop taking credit for songs they didn't write", BBC (31 March 2021)

melody or otherwise contribute to the composition without a reasonably equivalent/meaningful exchange for all the writers on the song".[329]

84. As with performers, the lack of financial remuneration often compounds other barriers facing songwriters and composers. However, unlike performers, who may receive advances or session fees, songwriters are often unpaid for their work unless and until their work is released commercially.[330] Fiona Bevan explained that "songwriters spend a lot of their own time, energy and money unpaid, because we do not get paid to go to work, we get paid solely on royalties, so we are taking the risk and we are developing the artists for free for the record label and not getting paid for it".[331] Furthermore, evidence we received from successful professional British songwriters revealed that not only has it become an industry norm for externalising the recording costs of music production to be passed to the performer, but also the songwriter.[332] Songwriter, producer and performer Iain Archer described in written evidence the songwriter perspective of this dynamic:

> A songwriting session will require two days of my time with an artist, then up to two extra days of my own time completing the work. I provide a studio with world class equipment and instruments, lyric, melody and chordal writing, playing, arrangement and production. I pay the energy company to power and heat/air condition the studio. I provide snacks and drinks. This is all at my own expense, despite the artist often being signed to a multinational record label. Songwriting is not only a process of creating a world class combination of lyric and music, it is also about developing the identity of an artist, working with the artist towards a piece of work that will actively promote their unique selling point—it is a highly skilled task to get this right. The labels work off the claim that they develop the artist and are deserving of the extra remuneration for undertaking this task—all the while aware that the vast majority of this work is being done for free by the songwriter. The label skill is knowing which songwriter to use, getting them involved and then using their time, resources and skillset for free.[333]

One songwriter, who has created music commercially across the world, wrote confidentially that they were typically expected to self-finance hundreds of pounds in costs for a song that has subsequently earned them less than £1,000 (as one of four writers) for over 17 million streams on Spotify alone. Helienne Lindvall, another award-winning professional songwriter and Chair of the Ivors Academy's Songwriter Committee, similarly wrote that even hundreds of thousands of streams often would not cover the expenses incurred in writing sessions, let alone uncompensated investment such as working with emerging artists to develop their sound and musical direction.[334]

85. These financial difficulties disincentivise new and upcoming songwriters and composers in particular. Several self-described emerging performer/songwriters, including one who had already earned seven million streams, wrote to us both publicly and confidentially describing their disaffection for making music commercially due to poor remuneration rates from streaming. These sentiments have also been expressed by

329 #ThePact, Read the letter here, accessed 30 April 2021
330 Anna Neale (EMS0058); Helienne Lindvall (EMS0112); Q523 [Graham Davies]
331 Q197 [Fiona Bevan]
332 Q501 [Graham Davies]
333 Iain Archer (EMS0190)
334 Helienne Lindvall (EMS0112)

established composers, songwriters and industry professionals.[335] Soweto Kinch told us that the disparity between song and recording undermines the message that there are many viable career paths in the music industry:

> When I do lectures and teach university undergrads, I say, "We need people in PR, we need people to organise, to curate shows and to arrange and compose," but if all the income is either coming to the star performer or the backing and the label, it doesn't make the idea of being a professional arranger or composer particularly viable.[336]

Moreover, the externalisation of production costs to songwriters similarly creates barriers to entry for new, young songwriters, and particularly those from low income backgrounds. Iain Archer asserts that poor remuneration, the diminishing of songwriter control and the over-saturation of the market due to the demand for new content means that young new creators are already unable to establish a career.[337] Finally, witnesses have asserted that disincentivising new talent, compounded with the risk-averse nature of many industry professionals, may harm musical experimentation. Soweto Kinch emphasised several times that the modern music ecology would not produce "a Kate Bush or a David Bowie […] or somebody like Rod Stewart" because of the prioritisation of short-term profitability.[338]

Music publishers

86. Just as songwriters and composers have faced financial hardship, music publishers have argued that the economics of music streaming do not work for them. Music publishers fulfil several important functions, should a songwriter or composer choose to work with them. As noted above, music publishers work with songwriters and composers to exploit song rights that they administer.[339] Because the song rights underpin the recording, publishers may work with songwriters and composers from the start of the creative process by investing in and/or initiating creative projects.[340] Publishers also ensure that creative works are brought to market and are made available as widely as possible, and that copyrights are protected and enforced.[341] Additionally, since the advent of digital music consumption, music publishers have begun working with collecting societies to ensure that the relevant metadata for their assets are captured and disseminated to ensure that rightsholders are remunerated accurately and efficiently.[342] Notably, evidence we received from publishers, ranging from independent companies to BMG, the world's fourth largest publisher, typically argued for greater remuneration for songwriters and composers and endorsed the creator perspective.[343] The IMPF, for instance, asserted in written evidence that "the amount of revenue that streaming services make off the back of creators' work and the gross disparity and inequality of what they pay out has become scandalous" and called on streaming services to "pay up and pay fair".[344]

335 Verity Susman (EMS0136); Julian Henry (EMS0137)
336 Q174
337 Iain Archer (EMS0190)
338 Qq166, 169, 185
339 The Ivors Academy of Music Creators (EMS0197)
340 IMPF, Independent Music Publishers International Forum (EMS0121)
341 Q132; IMPF, Independent Music Publishers International Forum (EMS0121); The Ivors Academy of Music Creators (EMS0197)
342 Qq132–4 [Maria Forte], 142 [José Luis Sevillano]; The Ivors Academy of Music Creators (EMS0197)
343 IMPF, Independent Music Publishers International Forum (EMS0121); Steve Farris (EMS0131); BMG (EMS0207); Qq111–2, 136, 150–1, 424, 427, 429–31
344 Ibid

87. Alongside their creative partners, independent publishers have therefore called for a greater share of streaming revenue. This was, however, in contrast to the major music groups, who dominate music publishing as well as recording, and the MPA (which is discussed in detail in paragraphs 130–134 in Chapter 4). Like arguments made by and about songwriters and composers, the Independent Music Publishers' Forum (IMPF) argues that the disparity between the recording and song rights mean that:

> while record labels are reporting dramatic increases in revenues from streaming services, the publishing sector (and thereby the songwriters and composers they represent) does not benefit from this growth […] at a time when the song is becoming more valuable as the business moves to a track-based model.[345]

Maria Forte, managing director of UK-based consultancy and management services company Maria Forte Music Services Ltd, argued that "the economics do not work for a publisher to have 15 percent and a record label to have 55 percent".[346] One manager of a music publisher argued that they had sometimes funded deals where the creator had received a similar or greater advance than the performer had received from the record label, despite expecting significantly less return in revenue for the song than the recording side would.[347] Similar to songwriters, for classical music there may also be more than one publisher (including separate publishers for the arrangement and the original composition), diminishing publisher revenues further.[348]

88. **Despite being an important part in the music creation and music streaming process, song rightsholders are not effectively remunerated for their work.** ***The Government should work with creators and the independent publishing sector to explore ways in which new and upcoming songwriters and composers can be supported to have sustainable careers and independent music publishers remain commercially viable. As part of this, and in the context of increasing digital music consumption through streaming, we urge them to consider how to ensure that the song is valued in parity with the recording. If necessary, the Government should bring forward legislative proposals alongside the introduction of equitable remuneration for performers proposed in paragraphs 76–7 to ensure that all creators benefit from these reforms.***

Metadata

89. When recorded music is licensed by streaming services, there are three key elements transferred by the record label: the asset (i.e. the track), the artwork and the metadata (which is data about the track itself).[349] Allison Noble of the University of Southampton notes that there are three types of metadata relevant to music streaming.[350] First, there is the descriptive metadata, which details the contents of a track, such as the title, album, track number, genre, and so on. Second, there is the ownership metadata, which details the creators, their corporate partners, the contractual terms agreed by them, and so on. Third, there is the recommendation metadata, which are tags applied and constantly refined by the service using signals such as observed and quantified user behaviour

345 IMPF, Independent Music Publishers International Forum (EMS0121)
346 Q111
347 Steve Farris (EMS0131)
348 Dr Sasha Valeri Millwood (EMS0275)
349 Q132
350 Allison Noble (EMS0115)

that enable its recommendation systems to function in the most effective manner. Both the descriptive and ownership metadata are generated by the music industry when the piece of music is created and recorded.[351] Songs and recordings are all each given unique identifiers—called an International Standard Musical Works Code (ISWC) and International Standard Recording Code (ISRC) respectively—to help authenticate them, distinguish them from other works and catalogue the relevant rightsholders.[352] These data are fundamentally important to the economics of music streaming because they account for who is remunerated, by whom, how and on what terms.[353]

90. There is widespread consensus across the music industry and amongst the music streaming services that issues with the metadata are a significant challenge to efficient and correct rightsholder remuneration. Metadata received by streaming services from the music industry creates issues at source. This may be due to the complexities of music rights and licensing. Because the recording and song rights are licensed separately and often held by different music creators and companies, many labels do not supply the relevant ISWC when licensing music to streaming services, meaning that songwriters often lose out altogether when music is streamed.[354] Often, this is by choice because of the difficulty of doing so: in oral evidence, Maria Forte asserted that in conversation with one record label, a representative said "'I don't care about composer information because it's nothing to do with me. I'm not changing my system to do that'".[355] This is exacerbated when one song has multiple recordings or covers (as there will then be one ISWC for the song but a different ISRC for each recording).[356] Finally, this often occurs with recordings in labels' back catalogues, where paper records need to be digitised or otherwise have been lost or destroyed.[357]

91. The data retrieved by the music industry also causes issues for rightsholders. Maria Forte noted that collecting societies often have to work out how to distribute revenues to publishers, songwriters and composers using only ISRCs rather than the relevant ISWCs, or otherwise receive metadata that is incomprehensible or impossible to process.[358] The sheer quantity of streams (and therefore data) further compounds this problem.[359] Finally, streaming services themselves often create barriers to providing good metadata or challenging bad metadata, such as requiring that these demands be made by the exclusive rightsholder or a representative. This prevents both third-party 'concerned citizens' from intervening and creates impracticalities where there are many performers and/or songwriters and composers, such as in the case of classical music.[360]

92. That said, streaming services themselves have called for solutions to bad metadata. The ERA acknowledged the problem, writing that:

> Whether it be the poor quality of industry metadata which creates delays, how revenues from unidentified streams are divided up, blockages in payment or the slow speed of payments and high level of commissions

351 Allison Noble (EMS0115)
352 Hipgnosis Songs Fund Limited (EMS0237)
353 Q132
354 Helienne Lindvall (EMS0112); Hipgnosis Songs Fund Limited (EMS0237); Q135
355 Q135
356 Q132
357 Q135
358 Q132
359 Q132
360 Dr Sasha Valeri Millwood (EMS0275)

> through some collection societies, there are a number of significant steps which could help the music industry make the best of the opportunities presented by streaming.[361]

YouTube's written submission similarly urged policymakers to "solve the data problems that plague music licensing; poor and missing ownership data cause unnecessary risk and expense for music services, and prevent timely, accurate royalty payments to songwriters and publishers" and "explore the development of a comprehensive musical works and sound recording ownership database that would have beneficial applications across all areas of music licensing".[362]

93. At best, mismatched, incomplete or missing metadata can result in delays to creator royalties for months or even years.[363] At worst, this can result in payments being misallocated[364] or otherwise consigned as unclaimed or non-attributable royalties to 'black boxes'.[365] Black boxes consisted of $2.5 billion in unallocated income in 2019 alone.[366] After a period of time, black boxes are then assigned pro-rata to streams that have been correctly identified, which is established in standard publishing agreements.[367] This means that those creators and companies, particularly who are most listened to, are effectively are paid twice: first for their own streams, and then for streams that cannot be allocated.[368] More recently, Phonographic Performance Limited (PPL), the performer collecting society, has changed how it allocates black box income: Peter Leathem, CEO of PPL, told us that the performers' share of reallocated revenues are now allocated to causes such as the Momentum Fund, which tries to identify and support up-and-coming artists (it should be noted, however, that labels do not contribute to the Momentum Fund).[369] For its part, the Government is (or should be) aware of these issues: in the 2019 'Music 2025' report commissioned to investigate the 'Music Data Dilemma', it was summarised that the digital value chain was being severely affected by various factors, including: "unprecedented volumes of data being generated, divergent velocities across the data flow, exponential increases in the variety of data sources, a lack of confidence in the veracity of the information and difficulties with access"; competing data protocols; diverging data standards; and "multi-layered fragmentation of metadata and a preference for proprietary walled data silos".[370]

94. **Metadata issues compound the poor terms on which creators are remunerated. Whilst there is a significant challenge, it is not insurmountable.** ***First, the Government must oblige record labels to provide metadata for the underlying song when they license a recording to streaming services. Second, it should push industry by any means necessary to establish a minimum viable data standard within the next two years to ensure that services provide data in a way that is usable and comparable across all services. Third, it should work with industry to end the practice of distributing black boxes pro rata and, instead, place obligations on collecting societies that mean that***

361 Entertainment Retailers Association (EMS0081)
362 YouTube (EMS0144)
363 Q132; Anna Neale (EMS0058); Entertainment Retailers Association (EMS0081)
364 Helienne Lindvall (EMS0112)
365 The Ivors Academy of Music Creators (EMS0197); Dr Jay Mogis (EMS0256)
366 Qa113 [José Luis Sevillano], 141
367 Qq142 [Maria Forte], 149; Helienne Lindvall (EMS0112); The Ivors Academy of Music Creators (EMS0197)
368 The Ivors Academy of Music Creators (EMS0197)
369 Qq208–9
370 Allison Noble (EMS0115); Intellectual Property Office, Music 2025: The Music Data Dilemma: issues facing the music industry in improving data management (18 June 2019)

this revenue is reinvested in the industry, such as to support creative talent and or develop solutions to revenue distribution issues. The Government should concurrently commission an exploratory audit of black boxes to achieve greater clarity as to what is genuinely impossible to allocate and what is mis- or un-allocated due to a lack of will. Finally, the Government should explore the practicalities of creating or commissioning a comprehensive musical works database and task the IPO with co-ordinating industry work on a registration portal so that rightsholders can provide accurate copyright data to necessary stakeholders easily.

Royalty chains

95. Exacerbating the issue of songwriter remuneration are the complexities in how song rights are licensed and how royalties are subsequently processed. The licensing of song rights is more complex than the licensing of the recording rights for the same track. Recording rights in the UK are licensed directly; as such, when a track is streamed and the service has subsequently ascertained how revenues should be allocated, the monies are distributed to the featured performers' labels or distributors, who then subsequently remunerate their performers according to the terms of their contracts. This process is referred to as a royalty chain. For the song rights, however, this process works differently. First, there may be more institutions between a streaming service and a songwriter or composer than between a service and a performer. This could include one or more collecting societies, publishers and sub-publishers and/or a special purpose vehicle (joint ventures between collecting societies and publishers).[371] Second, a stream exploits both the mechanical rights and performing rights of the song; by convention, a single songwriter/composer is paid down separate chains for each, with the 50 percent allocated for the mechanical (including the songwriter/composers' royalties) paid in full to the publisher first.[372] Third, a songwriter or composer's contract may specify that the creator receives a cut of the publisher's share of income paid by their collecting society, which is paid via the publisher rather than the society.[373] This means that, for UK songwriters and composers at least, there will likely be three royalty chains per stream.[374]

96. As a result of these complexities, songwriters and composers face several issues that impact when and how much they may be remunerated.[375] First, these complexities exacerbate existing issues with the metadata. ICE, a digital licensing hub co-owned by PRS for Music, Swedish collecting society STIM and German collecting society GEMA, estimates that over €100 million in royalties for Europe alone was unmatched in 2019.[376] Second, as money flows down these chains, it will be subject to deductions. These could be fees and administrative costs levied by collecting societies or shares of revenue claimed by corporate partners under contractual terms.[377] Third, there may be delays and, as creators will be at the end of these chains, they are impacted most often and by the greatest degree. Songwriters and composers, by virtue of being at the end of longer and/or more complex chains, typically must wait longer than performers to receive their royalties: whilst performers may wait months to receive royalties for streams of their work,

371 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), pp.196–9
372 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), pp.201–2
373 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), pp.197–8
374 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), p.203; Music Managers Forum and Featured Artists Coalition (EMS0128)
375 Music Managers Forum and Featured Artists Coalition (EMS0128)
376 Music Managers Forum and Featured Artists Coalition (EMS0128)
377 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), p.205

songwriters may have to wait years.[378] The delays in each of the three chains for one song alone may also occur at different stages, meaning that a songwriter or composer may not be fully remunerated for the total streams for one track in any period at the same time.[379] Furthermore, royalties may be subject to ownership or data clashes and/or audits. A lack of transparency means that these often happen unbeknownst to the creator, which therefore means that creators are reliant on parties further up the chain acting on their behalf. Finally, industry norms add further layers of confusion, complexity and potentials for data disputes and misallocation of royalties.[380] This includes divergence between how song rights are licensed in different countries, regions and copyright systems or conventions in how song rights are remunerated. The Music Managers' Forum and Featured Artists' Coalition estimate that between 20 to 50 percent of songwriter royalties are either mis- or un-allocated due to incomplete, missing or inaccurate data, lost to deductions or delayed for years due to these inefficiencies.[381]

97. **The licensing and royalty chains of song rights causes considerable confusion and complexity to the system, and songwriters and composers pay the price. There is no single solution to create more efficient and timely royalty chains but the Government can work with industry to facilitate this.** ***The Government should require all publishers and collecting societies to publish royalty chain information to provide transparency to creators about how much money is flowing through the system and where problems are arising. This should be done periodically, and in a way that is practical and useful to other stakeholders, including other collecting societies and publishers. It should also require publishers and collecting societies to put in place efficient, practical alert systems to inform creators and representatives about data conflicts. Finally, the Government should leverage the size of the UK market to explore how global licensing deals could be made possible by policymakers around the world, including in trade deals, which would support creators both domestically and abroad.***

378 Will Page (EMS0166)
379 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), p.203
380 Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020), pp.185–6
381 Music Managers Forum and Featured Artists Coalition (EMS0128)

4 The market for music rights

98. Whilst creators and the artist businesses that support them are the most fundamental and important part of the music industry, they are often supported by various corporate and business partners that provide specialist support, resources, investment and market access to help develop that creator's career.[382] Where a creator is signed to a deal, this includes record labels, who invest in and help creators exploit recording rights, and publishers, who invest in and help exploit song rights.

99. The record and publishing industries are comprised of a diverse array of businesses that offer a range of services. The largest of these businesses are the so-called 'major' music companies, known as the 'Big Three'. These are: Universal Music Group and its publishing company Universal Music Publishing Group (UMPG); Sony Music and Sony Music Publishing (formerly Sony/ATV Music Publishing); and Warner Music Group and its publishing subsidiary Warner Chappell Music. AIM and the IMPF define a major record label and/or music publisher as "a multinational company which (together with the companies in its group) has more than five percent of the world market(s)" in recording or music publishing; otherwise, a company is considered independent.[383] Beyond the majors, there are a range of larger multinationals, such as Beggars Group and BMG, and thousands of medium and small-sized businesses (including self-releasing performers, songwriters and composers and 'single artist labels'), distinguishing themselves through an array of specialist services based on genre or geographic specificity, fair dealing and so on.[384]

100. This Chapter will first describe how the music industry has consolidated during and following the period of digital piracy over the last few decades and the current state of the market. Next, we will discuss the implications for competition and conflicts of interest in the acquisition of rights, licensing of music and revenue shares. Finally, we will evaluate concerns regarding transparency for creators and how this has been addressed in other jurisdictions.

Consolidation

Recent historic trends

101. The majors' market share has become increasingly concentrated in the last twenty years. The devastation of the music industry by digital piracy forced a sustained period of consolidation in the market;[385] notably, each of the three current major music companies have merged with or acquired the other 'Big Six' companies (PolyGram, Bertelsmann Music Group (BMG) and EMI Group Ltd) that existed in the 1990s. In 1998, PolyGram was acquired by Seagram, Universal's parent company, for $10.6 billion and folded into Universal's music and entertainment operations[386] (though Universal has recently revived the PolyGram brand for new film and TV projects).[387] In 2004, BMG, then owned by European media company Bertelsmann, merged its recording operations in a joint

382 CMU (EMS0183)
383 IMPF, Independent Music Publishers International Forum (EMS0121)
384 IMPF, Independent Music Publishers International Forum (EMS0121); Qq332–3 [Paul Pacifico]
385 BMG (EMS0207)
386 "Seagram buys PolyGram from Philips for $10.6bn", The Independent (21 May 1998)
387 "Universal revives Polydor brand to handle new movie and TV projects", Music Business Worldwide (12 February 2017)

venture with Sony, giving Universal and newly-created Sony BMG a combined 51.1% market share.[388] Sony eventually bought out Bertelsmann's stake in the joint venture in a $1.2 billion deal in 2008[389] (with the latter relaunching BMG in the same year with a small stable of European artists retained by the company).[390] From 2012, EMI was broken up and its operations were variously acquired by Universal, Sony and Warner, with Universal acquiring its recorded music operations for $1.9 billion (of which most of the regional and classical catalogues and labels were then sold to Warner for $765 million) and Sony acquiring its publishing operations for $2.2 billion.[391]

102. Even as the record industry has returned to growth with the advent of streaming, the major music companies have continued to acquire competitors. In the last five years, the majors have acquired British indie companies such as Ministry of Sound Recordings in 2016 (by Sony Music),[392] ZTT, Stiff Records and publisher Perfect Songs in 2017 (by Universal)[393] and musical theatre record label First Night Records (by Warner) in 2019.[394] Only weeks after we put an email from singer and icon Sandie Shaw to the UK heads of the major music companies that asserted that "British record companies being bought up, 'our crown jewels […] are gone' and 'there is currently no such thing as the UK record industry'",[395] Sony Music announced its intention to purchase two London-based companies (recorded music services company AWAL and performance rights collection agency Kobalt Neighbouring Rights) from Kobalt Music Group for a deal worth $430 million.[396] In response, Paul Pacifico, Chief Executive of AIM, told us that "I absolutely understand where Sandie is coming from" and that "it is a concern to artists and entrepreneurs in music alike to make sure that small, hard-fighting sector of the market is given the support it needs to continue to punch above its weight".[397] Mr Pacifico also warned that the continued acquisition of independents by majors "is not problematic in itself, so long as the market conditions enable new ones to spring up and continue to grow".[398] The IMPF similarly cautioned that "mergers and acquisitions mean fewer companies, which weakens the bargaining position of independent music publishers".[399] Since 2014, the Worldwide Independents' Network, a global network for independent music companies, has pledged in its Fair Digital Deals Declaration that:

> we oppose further consolidation in the recorded music, publishing and radio sectors since this is bad for independent music companies, their artists and fans, as it reduces market access and consumer choice

and:

> we support initiatives which confront market abuse, and which aim to adapt competition laws to promote independent market access and foster

388 "Sony and BMG merger backed by EU", BBC News (19 July 2004)
389 "Sony goes solo in music venture", BBC News (5 August 2008)
390 "Bertelsmann takes full control of BMG music rights unit", BBC News (1 March 2013)
391 "EMI sold to Vivendi and Sony in $4.1B deals", CBC (11 November 2011)
392 "Sony Music buys Ministry Of Sound Recordings", Complete Music Update (11 August 2016)
393 "Universal Music snaps up UK record labels ZTT and Stiff Records", The Guardian (19 December 2017)
394 "Warner Music Group acquires First Night Records", Music Week (15 July 2019)
395 Q331 [Damian Green MP]
396 "Sony Music buys AWAL and Kobalt Neighbouring Rights from Kobalt Music Group", Music Business Worldwide (1 February 2021)
397 Qq412
398 Qq413
399 IMPF, Independent Music Publishers International Forum (EMS0121)

> collective responses by independents to potentially anti-competitive conduct by large operators.[400]

103. This continual consolidation has begun to catch the notice of UK regulators. The CMA has recently launched an investigation into Sony's completed acquisition of AWAL and Kobalt Neighbouring Rights following an initial enforcement order served on 17 May 2021.[401] In response, Mr Pacifico said that:

> Over the last several years we have seen an incremental shift towards a music market in which a few dominant players have disproportionate influence. Each increment counts, and it is crucial to the future health of the market to ensure that all players can take part on a meritocratic basis.[402]

Helen Lewis, Executive Chair of the Independent Music Companies Association (IMPALA), a European trade association for small and medium-sized music companies, similarly told Complete Music Update that:

> We welcome the investigation into this acquisition as it leads to further concentration in the music market and is part of an ongoing wider move by Sony to acquire significant independent players in key markets. We expect the investigation to cover both the physical and also digital markets, and the impact on competitors, digital services, artists and fans, who will all lose out.[403]

State of the market

Recording and publishing

104. Whilst the record label and music publisher for a recording and its underling song and composition may be different companies, it is important to note that the majority of companies have both recording and publishing operations. The three major music groups operate both the recording and publishing industries either under their own brands or through subsidiary companies or brands; through these businesses, the majors dominate both the recording and publishing markets globally and in the UK.[404] Although the two operations are typically kept separate from one another,[405] they ultimately report in to the same corporate leadership (indeed, Sony Corp recently restructured its music operations to greater align Sony Music Entertainment and Sony/ATV under the then-new, unified Sony Music Group).[406] Moreover, this trend extends beyond the majors. A recent survey of AIM members found that 89 percent of independent record labels reported to having business interests beyond just recordings, with 81 percent declaring interests in publishing (as well as 46 percent being involved in artist management and 35 percent being creators themselves).[407]

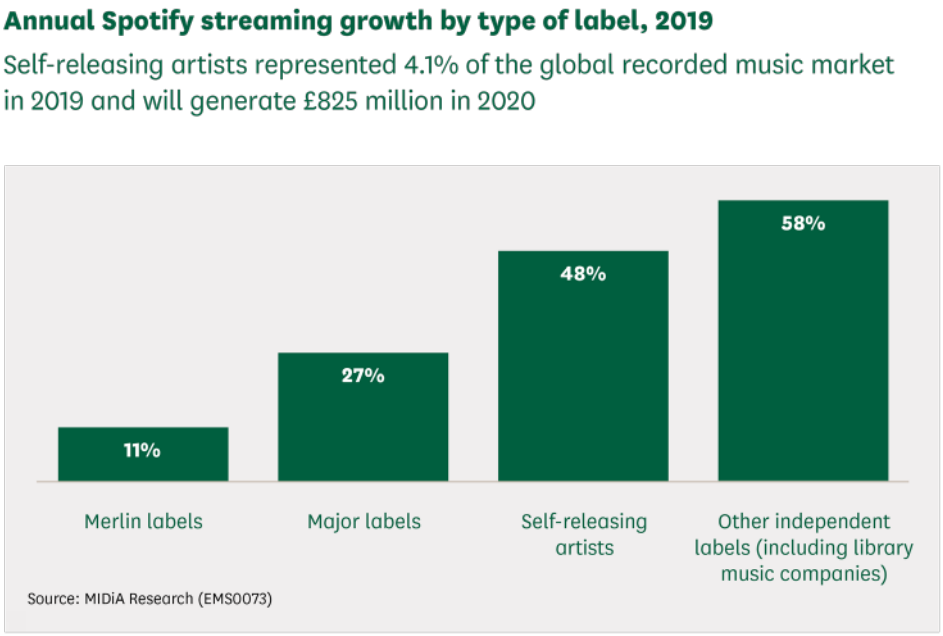
400 Association of Independent Music (EMS0157)
401 Competition and Markets Authority, Sony Music Entertainment/Kobalt Music Group merger inquiry, accessed 2 June 2021
402 "CMA to investigate Sony Music's acquisition of AWAL", Music Week (19 May 2021)
403 "UK competition regulator to investigate Sony's AWAL purchase", Complete Music Update (19 May 2021)
404 The Ivors Academy of Music Creators (EMS0197)
405 "Revamp of Sony's entertainment business could more closely align Sony Music with Sony/ATV", Complete Music Update (12 December 2016)
406 "Rob Stringer to run new Sony Music Group, housing publishing and records, from August 1", Music Business Worldwide (17 July 2019)
407 Association of Independent Music (EMS0157)

Distribution services

105. Research also suggests that streaming is driving a historic growth in the number of creators releasing music without a deal with a record label. Evidence from MIDiA Research has found that there were over 4.7 million self-releasing artists by Q3 of 2020, of which over 340,000 were from the UK.[408] Furthermore, self-releasing artists are finding increasing success, with revenues growing faster than any other sector in the global recorded music business, up 32 percent in 2019 to reach 4.1 percent of all revenues globally, and were projected to have taken in £825 million in 2020 alone.[409] Creators who want to release music to streaming services such as Spotify without a label must release a music through a distributor. Many distributors are independent, such as TuneCore, DistroKid and CD Baby. However, the growth in the number of self-releasing artists and the share of the revenues that has begun to accrue to them has prompted intervention by the major music groups. Subsequently, the majors have now each launched or otherwise acquired one or more distributors to capitalise on this market. Sony Music initially acquired a majority stake in The Orchard, a music distribution and artist and label services company reaching both physical and digital retailers, in 2012, and the remaining equity in 2015 for a reported $200 million.[410] Warner launched ADA, a full-service physical and digital distribution company, in 2012 and Level, a digital distributor, in 2018.[411] Universal currently operates three: Spinnup, a digital distributor launched in 2013;[412] Virgin Music Label & Artist Services, a distributor of independent labels (launched as a rebranding of its pre-existing Caroline Distribution service this February to capitalise on the Virgin Records brand); and Ingrooves, a distribution and artist services company, acquired in 2019.[413]

408 MIDiA Research (EMS0073)
409 MIDiA Research (EMS0073)
410 "'The Orchard is a totally unique proposition in the music business'", Music Business Worldwide (15 July 2019)
411 "Warner quietly launches free TuneCore rival for unsigned artists", Music Business Worldwide (11 May 2018)
412 "Universal-backed digital distribution and A&R platform Spinnup launches in the UK", Complete Music Update (8 July 2014)
413 "Universal launches Virgin Music Label & Artist Services around the world, rebranding Caroline and Caroline International", Music Business Worldwide (18 February 2021)

Annual Spotify streaming growth by type of label, 2019



Self-releasing artists represented 4.1% of the global recorded music market in 2019 and will generate £825 million in 2019

Shareholdings and cross-ownership

106. As well as maintaining interests in recording, publishing and distribution services, several majors maintain commercial interests in the streaming services themselves. In summer 2008, Spotify offered shares worth a combined 18 percent equity stake to the then-four major music groups (Sony, Universal, Warner and EMI) and Merlin, the collective digital rights and licensing agency for independent record labels, in exchange for an €8,804.40 investment.[414] Through this investment, Sony received 6 percent of Spotify shares, Universal received 5 percent (and later acquired an additional 2 percent when it purchased EMI's record operations), Warner received 4 percent and Merlin received 1 percent.

107. After Spotify was floated on the New York Stock Exchange in April 2018 with a market capitalisation in excess of $28.5 billion, Sony sold 50 percent of its shares for $750 million and Warner sold 75 percent of its shares for approximately $400 million.[415] Both Sony and Warner did credit artists with a portion of the profits "on the same basis as we share revenue from actual usage and digital breakage".[416] Sony confirmed to us that over $250 million was shared with artists[417] whilst written evidence asserts that Warner paid out 25 percent to artists subject to recoupment of advances.[418] As of 2021, Merlin[419] and

414 "Here's exactly how many shares the major labels and Merlin bought in Spotify and what we think those stakes are worth now", Music Business Worldwide (14 May 2018)
415 "Here's exactly how many shares the major labels and Merlin bought in Spotify and what we think those stakes are worth now", Music Business Worldwide (14 May 2018)
416 "Warner, Sony To Pay Artists Profits From Sales Of Spotify Shares", Music Row (5 February 2016)
417 Q251 [Jason Iley]
418 The Ivors Academy of Music Creators (EMS0197)
419 "Here's exactly how many shares the major labels and Merlin bought in Spotify and what we think those stakes are worth now", Music Business Worldwide (14 May 2018)

Warner have divested completely from Spotify, though the latter retains a "small stake" in Deezer, "a significant platform in other countries".[420] Since then, Spotify's market cap has almost doubled, reaching a peak of $54.55 billion in July 2020; Universal, who is yet to sell any part of its equity (but whose stake has reportedly fallen to 3.5 percent due to stock dilution), now has a stake worth over $1.6 billion.[421] It should also be noted, however, that whilst record companies were invited to invest in streaming services, publishers were not similarly invited to do so. This subsequently impacted the remuneration of song rightsholders, as whilst performers received at least some benefit from Warner and Sony's sales of shares, songwriters and composers did not.

108. However, the shareholdings of the major music groups are made complex by the various instances of cross-ownership between themselves (and their parent companies). Whilst Vivendi is the majority stakeholder in Universal Music Group, 20 percent of the company is owned by Tencent Holdings, a tech-focused multinational Chinese holding company (indeed, this stake was increased from ten percent through an option in the original acquisition after our inquiry began).[422] Alongside its Universal stake, Tencent Holdings also holds two percent equity in Warner Music.[423] However, both Warner and Sony Music own a four percent stake in Tencent Holdings' subsidiary Tencent Media Entertainment, which develops the music streaming services QQ Music, Kugou and Kuwo that currently dominate the Chinese market.[424] Recently, Tencent Music Entertainment and Spotify agreed to exchange comparable equity stakes in one another, with Tencent Holdings making secondary purchases to make up for the difference in valuations between the two companies, in order to give both companies better leverage in negotiations with the major music groups.[425] As a result, Tencent Music Entertainment now owns a 9.2 percent stake in Spotify, whilst Spotify similarly owns a 9.1 percent stake in Tencent Music Entertainment.[426]

420 Q251 [Tony Harlow]

421 "Universal's stake in Spotify is worth over $1.6 billion... but it's got no plans to sell up", Music Business Worldwide (3 August 2020); #BrokenRecord Campaign (EMS0218)

422 "Chinese tech firm increases stake in Universal Music to 20%", The Guardian (18 December 2020)

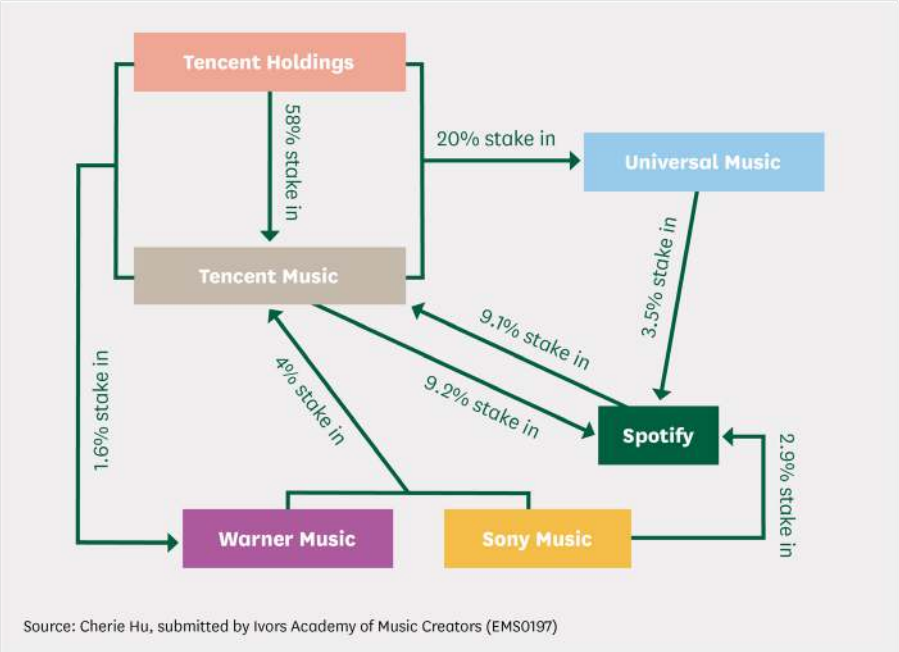
423 "Warner Music signs fresh China licensing deal with Tencent", Financial Times (22 March 2021)

424 The Ivors Academy of Music Creators (EMS0197)

425 "Tencent and Spotify buy minority stakes in each other", Financial Times (8 December 2017)

426 "Tencent set to control 10% of Universal, also owns 9.1% of Spotify - but Daniel Ek has the final say on the firm's stake", Music Business Worldwide (10 February 2020)

Cross ownership and equity stakes between Spotify and the major music companies



Market dominance

109. There has been some speculation as to the market share of the major music companies. IFPI states that the majors' global market share in 2020 was 68 percent in recording (with Universal claiming 32 percent, Sony claiming 20 percent and Warner claiming 16 percent) and 58 percent in publishing (with Sony claiming 25 percent, Universal claiming 21 percent and Warner claiming 12 percent).[427] MIDiA Research and the IMPF broadly concur with these figures for recording and publishing, giving the majors a 67.5 percent and 55 percent market share respectively.[428] That said, MIDiA Research does argue that, for recorded music at least, these figures are overstated, as they include revenue from independent labels that have piggybacked on the majors' own digital distribution deals, but nonetheless "is the measure that they use for licensing negotiations".[429] However, there is evidence that the majors' share of the UK recording industry is more concentrated than the global market, despite being US-based companies. AIM states that the independent community accounts for 25 percent of the UK recording market, which would thereby put the majors' share at 75 percent.[430] Indeed, this is corroborated by a judgement from the Court of Appeal pertaining to a lawsuit by the UK subsidiaries of two of the majors, Warner Music UK and Sony Music Entertainment UK, against TuneIn, which stated that "The Claimants [Warner and Sony] and the groups of companies they represent, own, or

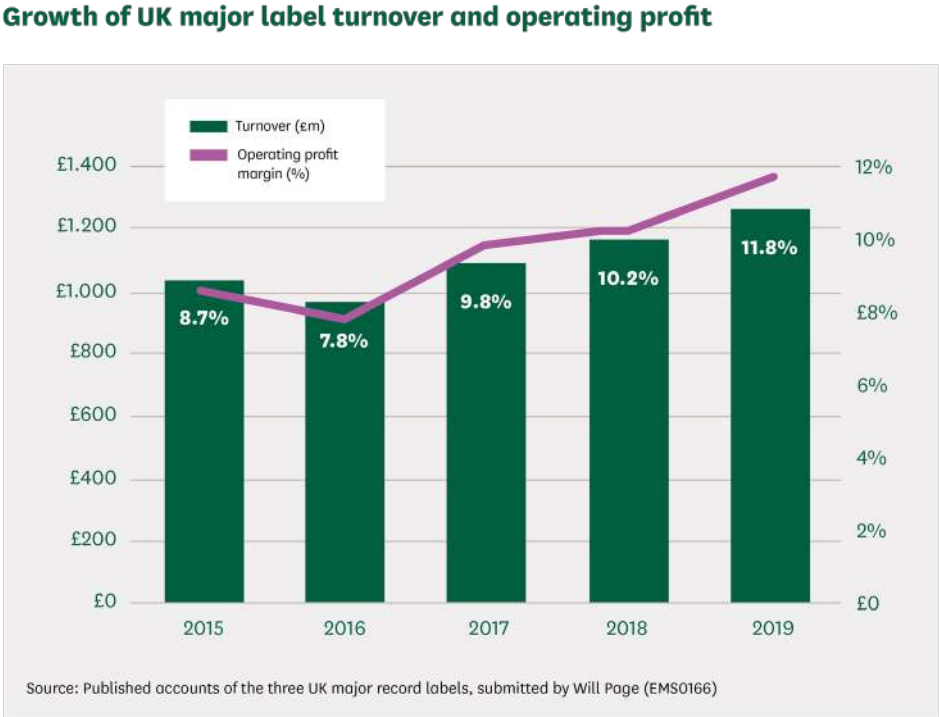
427 The Ivors Academy of Music Creators (EMS0197)
428 MIDiA Research (EMS0073); IMPF, Independent Music Publishers International Forum (EMS0121)
429 MIDiA Research (EMS0073)
430 Q332 [Paul Pacifico]; Association of Independent Music (EMS0157)

hold exclusive licences to, copyrights in sound recordings of music […] account for more than half of the market for digital sales of recorded music in the United Kingdom, and about 43 percent globally".[431]

110. The size of the major music groups due to their diverse and pervasive range of operations and holdings across the music industry has resulted in strong financial performances. Aggregate information from the accounts of the major music companies show that, in the last six years, the major music companies are performing exceptionally well in terms of profit, and are continuing to grow.[432] Between 2015 and 2019, disclosed major label turnover increased by 21 percent, but operating profit grew by an unprecedented 64 percent and their operating profit margin on turnover increased from 8.7 percent to 11.8 percent.[433] This means that, not only are the majors earning more money than in the last twenty years, they are also making more profit from these incomes. This has been corroborated by the majors themselves, as it has been reported that Sony Music CEO Rob Stringer recently told shareholders that streaming has underpinned historic profit margins for the company.[434] As such, the majors are now significantly valuable companies outright, despite the recorded sector having not yet reached pre-piracy (inflation-adjusted) levels of turnover and revenue. Warner Music, at the time of writing, currently has a market capitalisation of almost $18 billion. Music Business Worldwide estimates that Sony's music operations (albeit including its 'Visual Media and Platform' interactive entertainment division, which incorporates but does not exclusively deal in music) are valued at $38.4 billion.[435] Based on the recent ten percent option exercised by Tencent Holdings, Universal Music Group is valued at €30 billion (or over $33.6 billion) ahead of its own IPO.[436] This has translated to significant remuneration packages for the executives of these companies. Confidentially-submitted written evidence, analysing Warner Music's recent filing for its initial public offering, found that in 2019 the top 5 Warner executives received remuneration packages equal to the earnings of 2019's top 27 tracks as well as a share package worth $590 million.

431 [2021] EWCA Civ 441, [2021] WLR(D) 183
432 Helienne Lindvall (EMS0112); Iain Archer (EMS0190); Anthony Hamer-Hodges (EMS0206)
433 Will Page (EMS0166)
434 Helienne Lindvall (EMS0112)
435 "Why, in a post-Tencent/Universal world, the three major music companies are worth nearly $90 billion", Music Business Worldwide (15 August 2019)
436 "Chinese tech firm increases stake in Universal Music to 20%", The Guardian (18 December 2020); #BrokenRecord Campaign (EMS0218)

Growth of UK major label turnover and operating profit



111. **There is no doubt that the major music groups currently dominate the music industry, both in terms of overall market share in recording and (to a lesser extent) in publishing, but also through vertical integration, their acquisition of competing services and the system of cross-ownership.** ***We recommend that the Government refer a case to the Competition and Markets Authority (CMA), to undertake a full market study into the economic impact of the majors' dominance (see paragraphs 129, 134 and 183 for further recommendations). The Government must also provide the CMA with the resources and staffing to undertake this case to ensure that it can dedicate the necessary resources to this work whilst not impacting the pre-existing work it is currently undertaking.***

Competition concerns

112. Due to the role of record labels, publishers and distributors (and by consequence the major music groups) in bringing music to market, these trends have implications throughout the supply chain. On the one hand, these companies essentially act as buyers for recording and song rights through their investment in creative talent. On the other hand, these same companies essentially act as sellers of licences for access to recordings to streaming services. In this way, it can be argued that the majors create both an oligopsony in the acquisition of music assets at the beginning of the supply chain and an oligopoly where assets are licensed to retailers in order for music to be brought to market.

Oligopsony in asset acquisition

113. An oligopsony occurs when a market is dominated by a small number of large buyers. This theoretically concentrates demand (and therefore market power) in the hands of the buyers, which can effectively keep prices down at the expense of the sellers. When applied to the music industry, this means that the terms under which the major music groups in particular acquire the rights to music favour the majors at the expense of the creators. As has been discussed, the major music groups are disproportionately benefitting from music streaming relative to creators. This has resulted in record high levels of income and profit growth and historic levels of profitability for the major labels[437] whilst performers' incomes average less than the median wage.[438]

114. This, naturally, begs the question as to why such contractual terms exist. Record labels have emphasised that performers are presented with more choice than before regarding the terms under which they might wish to release their music. Both Universal and Sony, in oral evidence, argued that this has created a highly competitive environment between the major labels, independent labels and distribution services.[439] Jason Iley, Chair and CEO of Sony Music UK and Ireland, argued that:

> Today, three of the most culturally important acts—Jorja Smith, AJ Tracey and Skepta—have chosen to sign to a distribution company. They want a bigger share of the revenue and that is their choice. With respect to them and their management, that is their decision. I clearly would prefer them to sign to Sony Music, but that is the opportunity of choice.[440]

These sentiments were echoed by the Minister for Digital and Culture, who cited Stormzy as another example of a successful, self-releasing artist who found initial success outside the major music companies.

115. However, in many ways, this choice is not straightforward. First, the size of the major record labels means that they can apply their financial might in terms of the size of performer advances, and subsequently leverage the risk of not recouping these considerable advances in exchange for poor royalty terms, externalised costs of production borne by creators, and greater and broader costs being subject to recoupment. Whilst we cannot supply exact figures as the evidence was supplied confidentially, the majority of artist and repertoire costs for the major music companies is spent on artist advances rather than recording and video production costs. Whilst advances are up-front incomes paid directly to creators (subject to deductions by their representatives), and thus are fairly considered recoupable, they also function as a means of asset acquisition, which means they are not solely paid for the benefit of the creator. Moreover, given that the majority of the majors' advance and royalty deals are life of copyright deals, they will therefore accrue revenue for a significant period of time. As evidence from academics at SCRIPT explains:

> The issue remains that artist contracts traditionally favour labels and publishers due to their initial risk in investing in artists, however, the unbalanced nature of such contracts has a direct implication on the revenue received by artists. Contracts agreed before, and even during, the advent of

437 Will Page (EMS0166); Anthony Hamer-Hodges (EMS0206)
438 Ben Sizer (EMS0050); The Ivors Academy of Music Creators (EMS0197); Q181 [Fiona Bevan]
439 Qq241 [David Joseph], 251 [Jason Iley, David Joseph], 252 [Jason Iley]
440 Q252

> the streaming era do not sufficiently reflect the consequences of streaming on revenue sources for artists. There is also the broader issue of uneven bargaining power in contractual relationships, applicable not just to artists in the music industry, but creative practitioners in general: artists have "a weaker bargaining position, due to their inexperience, lack of information or desire to be published or produced at any cost."[441]

116. Second, record labels act as industry gatekeepers in many ways. Each of the artists cited by Mr. Iley and Minister Dinenage all make music in the UK hip hop, grime, R&B and/or garage genres, and therefore may have faced structural barriers to record deals before achieving success as a self-releasing artist. Moreover, industry norms often result in artists who view themselves as 'major label acts' wanting to sign to major labels who gate-keep access to the press, brand deals, sponsorships and so on.[442] As Tom Frederikse noted, "the reaction to praise for one's art plays a big role" in artists accepting low royalty rates in record deals, even against legal advice.[443] Furthermore, as copyright enforcement is costly,[444] creators are incentivised to effectively 'outsource' it to music companies rather than self-release and take on these responsibilities themselves.

117. Finally, there is little opportunity for self-releasing artists to fully disintermediate from either record labels or distributors (or, in the case of label-owned distributors, both). Spotify's own attempts to develop a new tool that allowed artists to upload music directly to the platform was discontinued in July 2019;[445] several witnesses have implied that attempts at disintermediation by the tech companies was (or otherwise would be) stopped as part of negotiations with industry.[446] At any rate, the lack of disintermediation has two key benefits for the major music companies. First, it ensures that artists that self-release must go through intermediaries such as digital distributors and aggregators that are often major-owned in order to distribute music through streaming services, which itself generates revenues from up-front fees or commission. As such, even the many creators who wish to release music without a label may indirectly find themselves working with the majors through label-owned distribution businesses. Second, these businesses may become an avenue to scout and 'upstream' new talent in future, whereby self-releasing artists may be identified and signed to more comprehensive record deals. However, it should be noted that, from supplementary evidence we received, upstreaming from distributors and independent or subsidiary labels only comprises a small percentage of the majors' overall repertoire. Sony, for example, asserted that it had only upstreamed "one or two artists" from a Sony-owned distributor in the past ten years,[447] though Billboard has reported that 80 artists have been signed to Universal's front-line labels from Spinnup.[448] Whilst trends may change and these proportions may shift long-term both as rights revert to public ownership (i.e. out of label's repertoires) and major-owned distribution businesses mature, in the short term this impact should not be overstated.

118. This may be why the majors are able to retain their market position despite independent record labels often offering better contract terms, such as profit-share deals,

441 SCRIPT (EMS0205)
442 Qq157–8
443 Q53
444 Dr Nicola Searle (EMS0041)
445 "Spotify closes its direct-upload test for artists", Music Ally (1 July 2019)
446 Qq33, 128, 156–8
447 Sony Music UK & Ireland (EMS0280)
448 "Universal Music Expands Spinnup Distributor in Japan to Sign Local Talent", Billboard (24 June 2020)

debt forgiveness and rights reversion for artists. Yvette Griffith, co-CEO and Executive Director of Jazz Re:freshed, a not-for-profit label, described the terms of her label's deals:

> We made a decision fairly recently, because of our position in the ecosystem and because we are a not-for-profit and are not a commercial organisation and we receive some support from the likes of the Arts Council to recognise the work we do in the landscape for emerging talent. Parcelled up into our trying to encourage artists to fly into the wider recording world, we made a decision to become a licensing label. We do not own the copyright, and we license the copyright for a period of time. At the end of that period, we can negotiate with the artists and they may choose to let us license for another period or they may fly and take it elsewhere. It is a risk and it is a gamble, but it is the choice we have made. We are probably fairly unusual in that context, but it gives you an example of the diversity of deals that exist within that indie landscape.[449]

119. Regardless, this oligopsony has emerged because of the majors' success in asset acquisition. Many academics and creator groups argue that the majors' position fundamentally comes from owning most of the most valuable rights.[450] Professor David Hesmondhalgh argues that although record labels may well take on risk in developing artists, even one success for a label can cancel out many failures, mitigating the overall financial risk, and that larger labels are moreover able to spread this risk, as well as the actualised costs of maintaining their repertoire, staff and executive pay, across a larger catalogue of acts, creating longstanding conditions of oligopoly.[451] As such, many submissions have argued for the Government to provide pro-competition policy interventions in order for independent companies to emerge and compete and for artists to have greater rights when negotiating terms with companies themselves.

120. In terms of supporting the independent sector, the Association of Independent Music argue that new entrants to the market often lack scale, expertise and capital to compete with the major music companies. Whilst scale and expertise are accrued with time and success (and trade associations play a role in also providing the latter), both the BPI and AIM, representing record labels, have called for the Government to introduce capital incentives. As Paul Pacifico explained:

> Independent music businesses suffer twice in the capital market. They suffer because it is a high-risk business. It is also a very complicated and misunderstood business, so when you talk to investors they very rarely understand or are prepared to take risk on a business that they do not really get. Access to capital is not an evenly spread problem across the industry. Big corporations with big global parents have access to balance sheets that smaller companies simply do not, and I think a tax incentive is a way of making sure that those smaller businesses, the innovators, the entrepreneurs, those British small businesses, can make a go of it and grow their businesses without having to sell out to a major every single time.[452]

449 Q381 [Yvette Griffith]
450 Q33; Bournemouth University (EMS0048); Professor David Hesmondhalgh (EMS0143)
451 Professor David Hesmondhalgh (EMS0143)
452 Q394

The BPI's written submission firstly calls for the Government to extend and expand the Music Export Growth Scheme, which is jointly funded by the taxpayer and industry to help break performers internationally and has delivered £4 million in grants since 2014, buttressed by more dedicated resources to assist small and medium-sized labels particularly in exporting and promoting their performers in local markets alongside the Scheme itself.[453] Furthermore, both the BPI and AIM also call for a focused fiscal incentive to "pump-prime the capital market for music investment".[454] As the BPI notes, whilst the Government currently provides fiscal incentives for other creative industries such as film, animation, high-end and children's TV, gaming, theatre and orchestras, commercial music remains a notable exception.[455] When asked to comment on the reason for this, Minister Dinenage seemed open-minded to this changing, saying that: "I suppose because commercial music has always been such a great British success story, but clearly the plight of so many musicians now that live music is not an option has definitely brought a lot of things into question".[456]

121. In terms of improved rights for artists, written evidence has suggested several proposals. First, many have called for a right to recapture to be similarly implemented in the UK.[457] This right already exists in the United States, whereby creators have the right to recapture after 35 years, giving them increased leverage to renegotiate royalty rates or take their rights to other companies if the terms of their record deals are unfavourable. This would prevent the most valuable rights from accreting at labels with the most capital and create a market for recaptured rights, whereby companies would compete upwards on royalty rates and terms of recoupment. Academics at SCRIPT and the Musicians' Union also recommend that the Government should concurrently introduce contract adjustment mechanisms for creators.[458] They argue that a right to contract readjustment would better correlate remuneration to proven market success and bring the industry as a whole to parity with existing, more ethical business practices like those of BMG.[459] Similar provisions are proposed by the EU Directive on Copyright in the Digital Single Market and are already established in Germany, the Netherlands and the UK's Patents Act 1977, which applies to an employee's right to compensation when an invention has benefitted their employer.[460] This would provide successful professional creators with a statutory right to additional remuneration when their initial remuneration agreed under the contract is disproportionately low compared to subsequent revenues derived from the exploitation of their creations, which would particularly benefit performers on outdated legacy contracts.

122. **The Government must make sure that UK law is not enabling the outcome of market dominance. This means that independent labels must be supported to challenge the majors' dominance and creators must be empowered to offset the disparity in negotiating power when signing with music companies.** ***The Government should expand support for the Music Export Growth Scheme to allow British music companies***

453 BPI (EMS0208)
454 Association of Independent Music (EMS0157); BPI (EMS0208)
455 BPI (EMS0208)
456 Q777
457 Music Managers Forum and Featured Artists Coalition (EMS0128); CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189); SCRIPT (EMS0205); Dr Hayleigh Bosher (EMS0254); Musicians' Union (EMS0258)
458 SCRIPT (EMS0205); Musicians' Union (EMS0258)
459 Musicians' Union (EMS0258)
460 SCRIPT (EMS0205)

to compete with the multinational majors and provide the resources needed for them to survive and thrive in export markets. This scheme must be appropriately targeted at independent British companies. To prevent the further acquisition of successful rights by the majors and ensure greater competition, the Government and BPI should also place clauses in grant funding awards that a company or artists' rights cannot be acquired by the major music companies for a certain period of time. Moreover, the Government should bring forward proposals for a focused fiscal incentive for the independent music sector, similar to that which exists in TV, animation, film, theatre and gaming.

123. ***We recommend that the Government concurrently expand creator rights by introducing a right to recapture works and a right to contract adjustment where an artist's royalties are disproportionately low compared to the success of their music into the Copyright, Designs and Patents Act 1988. These rights already exist elsewhere, such as in the United States, Germany and the Netherlands, and would give creators greater leverage when negotiation contracts with music companies. We suggest that the right to recapture should occur after a period of twenty years, which is longer than the periods where many labels write off bad debt but short enough to occur within an artist's career. This would create a more dynamic market for rights and allow successful artists to go to the market to negotiate better terms for their rights. The right to contract readjustment should similarly be implemented as soon as practically possible to ensure that rights for UK creators do not fall behind rights for European creators.***

Oligopoly in music licensing

124. In contrast to an oligopsony, an oligopoly occurs when a market is dominated by a small number of large sellers. This theoretically concentrates demand (and therefore power) in the hands of the sellers, which can effectively keep prices high at the expense of the buyers in absence of alternative sources of supply. When applied to music streaming, this means that the major music groups have been able to extract favourable terms from the streaming services, which has had implications both for competition in the market for streaming services and between record labels themselves.[461]

125. One way this has manifested is the prevalence of non-exclusivity in licensing negotiations, in contrast to streaming services for film and television; instead, the music available on most mainstream services is relatively homogenous (see paragraphs 143–6 in Chapter 5). This has created the situation whereby, even as the majors are posting record profits, the streaming services themselves are yet to prove sustainably profitable.[462] Traditional costs that fall to the record labels with physical distribution, such as manufacturing, storing and transporting the product or for breakage or returns, do not apply for streaming.[463] Instead, the internet has simultaneously allowed for frictionless transfer of assets from the label to the service.[464] Concurrently, the costs incurred by digital distribution have been transferred to and are borne by the streaming service.[465] For example, there are costs for content hosting through cloud storage providers (such as Google or Amazon) and for research and development to improve the service. Spotify,

461 Competition Policy International, Music Streaming: Is It a Level Playing Field? (23 February 2021)

462 Christian Castle (EMS0165); CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189); Davo McConville (EMS0214); Qq9, 14 [Tom Gray], 22 [Tom Frederikse], 493 [Horace Trubridge]

463 Q5 [Tom Frederikse]; Musicians' Union (EMS0080); Professor David Hesmondhalgh (EMS0143); The Ivors Academy of Music Creators (EMS0197)

464 Q624 [Horacio Gutierrez]

465 Q5 [Tom Frederikse], 624–5

for instance, spent 10 percent of its revenue on research and development in 2020.[466] Horace Trubridge, General Secretary of the Musicians' Union, noted that streaming has also extended the commercial lifespan of music by eliminating these costs for labels, as previously, "when their labels decided that they were no longer able to make money for them, they stopped pressing up records and stopped marketing their music", but now "suddenly there is a market for that music again".[467] Despite the elimination, externalisation and replacement of physical costs as music distribution has become digitised, the revenue share for music retailers (i.e., record shops, download stores or streaming services) has remained consistently at 30 percent across both physical and digital retail domains, whilst the savings created by digital distribution have disproportionately benefitted record labels.

126. That is not to argue that the costs of producing music have been completely eliminated. Confidential, commercially sensitive evidence we received from two of the major record labels demonstrated that labels do provide significant, non-recoupable investment in marketing. However, representatives of both the streaming services and creators have pointed out that streaming services have also undertaken costs of marketing individual performers alongside marketing their services.[468] Paul Firth, Director of International Music at Amazon and with a background in music retail, said that "I think as a streaming service you play a much more active role in helping an artist break than we ever did as a retailer".[469] Given that, generally speaking, music licensing is non-exclusive, this investment in marketing is not solely for the benefit of the service but may also indirectly market that performer for play on other services.

127. This has likely underpinned record label success of negotiating licensing agreements for recordings to streaming services directly. Both the major and independent record labels definitively favoured direct licensing.[470] Tony Harlow, CEO of Warner Music UK, explained why record labels felt direct licensing was more effective:

> I think that the answer to that is that we believe that that direct relationship […] gives the maximum power of negotiation. It is underpinned by the ability, ultimately, to say no to any licence, and that is the maximum strength to get the best position. Wherever that position is weakened, for example by the safe harbour, which was very much the theme of the conversation before, we get less good and less effective deals. That is why we favour the direct negotiation.[471]

Paul Pacifico, CEO of AIM, representing the independent community, noted that direct licensing had not disadvantaged smaller labels due to the ability for independents to license collectively but separately from the major labels:

> In most markets across the economy, you would expect smaller operators to suffer when negotiating with large organisations. If you are a small food supplier dealing with a big supermarket, you do not expect to get great rates. In the independent music community, we have addressed some of those challenges, for example, with the formation of a licensing partnership

466 Q623 [Horacio Gutierrez]
467 Q513 [Horace Trubridge]
468 Qq490 [Graham Davies], 625 [Paul Firth]
469 Q625 [Paul Firth]
470 Qq238–9, 341
471 Q238 [Tony Harlow]

> in Merlin, an international organisation that licenses on our behalf and enables us to take advantage of the best available rates in the market.[472]

128. Despite Mr Pacifico's assertion, several contributors have expressed concerns about the indirect impact of direct licensing on independent labels and self-releasing musicians. Because these licensing negotiations are conducted in secret, smaller labels and self-releasing artists are therefore similarly subject to these terms with no leverage to extract similar terms for themselves. As one artist noted, because these parties do not negotiate directly with platforms but instead release via a distributor or piggy-back on the majors' deals, "we just get to sign up, wait for the first payments to come through, and then decide whether it was worth it or not".[473] The Incorporated Society of Musicians speculates that:

> whilst the terms of [the majors'] deals remain confidential it is believed that preferential streaming rates were secured over smaller stakeholders and independent artists due to their overwhelming market share.[474]

Academic evidence supports these speculations. Written evidence received from Dr Franco Mariuzzo and Dr Peter Ormosi at the Centre for Competition Policy observed through quantitative analysis that there exists a "difference in the distributional characteristics of major and independent record label streaming data"[475] and that "major songs feature on popular Spotify playlists at a disproportionately higher rate than independent songs".[476] They posit that this may be due to the majors' leverage over Spotify and their direct and indirect ownership over the platforms' playlists contribute to this and "resembles more a vertically integrated part of major record labels".[477] In a recent paper, Daniel Antal, Professor Amelia Fletcher and Dr Ormosi, who contributed a separate written submission, similarly argue that streaming services "tend to favor more mainstream, established and international music, in particular that which appears on major labels, and to disadvantage the more niche, the more independent, the more locally-focused".[478] They also consider this to be due to the majors' strong negotiating power preferential playlist access and unlabelled proprietary playlists and algorithmic bias.[479]

129. **Despite the general consensus that direct licensing between the record industry and streaming services is positive, there are ongoing concerns about the majors' position in negotiation, which allows them to benefit at the expense of independent labels and self-releasing artists, particularly regarding playlisting. This is further evidence that a referral to the CMA is needed (as recommended in paragraph 111).**

Conflict of interest in negotiations

130. Record labels disproportionately benefit from streaming both because of how royalty pot revenues are distributed between the song and master rights and because the making available right means that record labels pay performers under the terms of their record deals. As noted previously (see paragraphs 78–88 in Chapter 3), this has led to songwriters,

472 Q341 [Paul Pacifico]
473 Ben Sizer (EMS0050)
474 Incorporated Society of Musicians (EMS0223)
475 Mariuzzo, Franco and Ormosi, Peter L., Independent v Major Record Labels: Do They Compete on a Level-Playing Streaming Field? (13 November 2020).
476 Dr Peter Ormosi and Dr Franco Mariuzzo (EMS0076)
477 Dr Peter Ormosi and Dr Franco Mariuzzo (EMS0076)
478 Competition Policy International, Music Streaming: Is It a Level Playing Field? (23 February 2021)
479 Daniel Antal, Amelia Fletcher, and Peter Ormosi (EMS0286)

publishers and composers feeling short-changed by the split between two sides. It should be noted that song rightsholders have more than doubled their share of revenues in predominant formats over time. Roberto Neri and Rupert Skellett have explained that the song copyright received 8.5 percent of wholesale revenues for physical sales, which was negotiated up to 12 percent for downloads, and has since been negotiated up to 15 percent of retail (not wholesale) revenues for streaming.[480] However, it is clear that there are many factors that mean that this remains a contentious issue.

131. Throughout our inquiry, we have questioned witnesses about why the status quo for the revenue share between the recording and publishing has come about. It has been suggested that, while the major music groups maintain that these respective rates are due to market forces, rates were actually fixed following a negotiation with Apple. This has not been corroborated by published evidence to this inquiry but Spotify's Head of Global Affairs and Chief Legal Officer, Horacio Gutierrez, stated in no uncertain terms that "the reality is that labels demand that a majority of the revenue go to them, and then we had to clear the rights with publishers around the world".[481] In terms of the origins of the split, Fiona Bevan argued that:

> It comes from an archaic split where the labels had huge physical overheads to produce vinyl and CDs, to store them and to ship them. We have heard about breakage as well during these sessions. Of course very few people buy physical nowadays and streaming has taken over utterly. Streaming has even supplanted downloads. There is not really an excuse for these huge behemoth companies to have 55 percent when they do not have these physical overheads anymore. It is very cheap for them to distribute the music.[482]

Graham Davies, CEO of the Ivors Academy of Music Creators, similarly asserted that:

> If we go back to 2005 when digital started, it was a download economy and we used to download singles and albums. We can see why the industry adopted a model more akin to a physical sales model, but it really is not applicable to streaming. There is ambiguity over whether or not it is a sale. Clearly, a download is a sale, where you purchase something and you can listen to that as little or as much as you like for the rest of your life. That is what a download is. A stream is not a download. We would really advocate for clarifying that aspect, because it is a communication to the public, and the more the industry has propagated it, the more it has suppressed the value of the song.[483]

When asked whether it was by accident that archaic models have been transposed by record companies onto streaming, Maria Forte speculated that "I think it was not design initially, but I do think there is a certain design now" and noted that, unlike for recording, songwriters receive the majority of revenues, meaning the corporate side (including the major publishers) get less.[484] Nile Rodgers similarly posited "since streaming became the main mechanism for consuming music, record companies have unilaterally decided that a

480 Qq402 [Rupert Skellett], 427–31 [Roberto Neri]
481 Q621
482 Q170
483 Q491
484 Q112

stream is considered a sale because it maximises their profits".[485] When asked to speculate from an independent recording company side, Rupert Skellett conceded that "I suppose that might be true; the majors might be looking at where their margins are highest",[486] though he argued that as "a record company man" the rates were "at the right level".[487]

132. With music publishers and the IMPF unanimously calling for the value of the song to have parity with the value of the recording (see paragraphs 78–88 in Chapter 3), it is conspicuous that the MPA refused to give a definitive perspective on the debate, particularly given that the publishing arms of the three major music groups are counted amongst their members. The MPA's written submission specifically warned the Government not to legislate in favour of more equitable business models and creator-publisher contracts, alongside recommendations regarding piracy and safe harbour provisions for tech companies.[488] We also asked Roberto Neri several times in oral evidence whether he was satisfied with the valuation of the song.[489] Whilst Mr Neri's responses consistently advocated song rightsholders' share of revenues increasing,[490] he refused to argue specifically for parity between the song and recording, asserting that "we are all negotiating and would love it to be as high as it possibly is, and, as I say, with every negotiation we are managing to nudge it up".[491] When asked outright whether the MPA's perspective differed from the IMPF because of the major music companies' dominance of both recording and publishing, Mr Neri responded that:

> I have not encountered or seen anything, but I have heard conspiracy theories in the 20 years that I have been in the business. The major publishing companies are helping to push the rates up in the other forums that I sit in, on different boards.[492]

133. Though rebalancing the relative values of the recording and the song would have implications for record label revenue, it must be contextualised. As most independent labels and the majors also have publishing interests, losses to the recording operations would be somewhat offset by a growth in publishing revenue (whilst also benefitting songwriters and composers). By realigning remuneration incentives for industry (that is, by bringing parity to record labels, publishers, performers, and songwriters and composers) debates could then shift from 'how the revenue pie is divided' to 'maximising the size of the pie' within the music industry itself. Instead, under the current arrangement, the debates about the overall size of the industry are lost on publishers and creators because only a minority of revenues will subsequently make their way to them.

134. **As long as the major record labels also dominate the market for song rights through their publishing operations, it is hard to see whether the song will be valued fairly as a result. It is well-evidenced that redressing the disparities in relative value between the song and recording has occurred infrequently in the last few decades. Whilst the major music groups dominate music publishing, there is little incentive for their music publishing interests to redress the devaluation of the song relative to the recording. *In***

485 Q175
486 Q401
487 Q403
488 Music Publishers' Association (EMS0179)
489 Qq424–30, 434–6, 452
490 Q427
491 Q428
492 Q436

its reference to the CMA (as recommended in paragraph 111), the Government should urge the CMA to consider how the majors' position in both recording and publishing has influenced the relative value of song and recording rights.

Transparency

Non-disclosure agreements

135. We also received evidence criticising the lack of transparency from music companies and streaming services. Creators and their representatives are routinely prevented from seeing the terms of licensing agreements between record labels and streaming services both during and after negotiations despite the licensing of their works by labels to streaming services occurring on their behalf.[493] As Tom Gray argued "It is very untransparent. It is almost impossible to find out anything. All the deals between the DSPs and the labels are shrouded in NDAs".[494] These sentiments were echoed by Nadine Shah and Ed O'Brien, who argued that the lack of transparency, combined with the unequal remuneration, has eroded trust between creators and their labels.[495] Ed O'Brien noted the potential for this to discourage younger artists:

> I think it has always been tough for artists. I think it is even more murky now with the lack of transparency, the opaqueness in the system, the fact that some partners are making huge amounts of money, some of the labels and things like that. It has always been tough but it feels like it is tougher now.[496]

136. Some evidence we received did seek to provide some balance to the discussion around transparency. Independents such as Jazz Re:freshed argued that one of their unique selling point to creators was greater transparency.[497] Guy Garvey similarly noted that Elbow's label had provided a level of transparency:

> On transparency—and I am referring to notes that I have from my manager, so I am swotting up here, Nadine, I am not claiming to have this knowledge—he says that Polydor accounts every six months show clear and accurate income streams. We have a great relationship with our record label, I feel I should say that. He also says that Spotify and Apple have management apps that show real-time streaming figures and historical data that can be referenced with the label info. He is happy with that element of it.[498]

Similarly, Rupert Skellett argued that often these non-disclosure agreements were imposed from above by other parties:

> We obviously cannot show them the deals through Merlin and platforms. We are prevented by NDA clauses from showing our agreements, our licences, that we have direct to artists.[499]

493 Music Managers Forum and Featured Artists Coalition (EMS0128)
494 Q40
495 Qq75 [Nadine Shah], 84 94
496 Q84
497 Qq335, 391 [Yvette Griffith], 393
498 Q75 [Guy Garvey]
499 Q392

However, it should be noted that, even in these instances, the industry norm is that of opacity, with creators relying on good relationships with labels or company norms for transparency rather than systemic industry-wide practices and obligations.

137. The prevalence of non-disclosure agreements impacts creators in several ways. Non-disclosure agreements create barriers to auditing streaming revenues. This means that creators and their representatives often cannot independently verify whether they are being remunerated correctly.[500] Colin Young detailed the importance of transparency when undertaking audit for all sides of the music streaming ecosystem:

> I am constantly met with much resistance and there are always reasons why [the data] is not available, so I am always having to make compromises in the audit. I can never do what I would like to do. It comes with limitations. That is the problem. The audit is there to provide a remedy. It is to remedy mistakes, errors or misunderstandings and it is both ways; there could be a counterclaim, so I am not saying either side is perfect—absolutely not. What I am saying is I need the data to be standardised and consistent, and I need it granular and I need it at source. I need to be able to go back to Spotify and what they gave labels.[501]

Nile Rodgers similarly emphasised the importance of audits for artists in claiming rightful revenues:

> The only time that we really get to check to see if things are the way they should be is when we go in and audit. Every single time—and I am not making this up for dramatic or comedic purposes—I have audited a label, I have found money. Sometimes it is staggering, the amount of money. That is because of the way the system was designed right from the beginning.[502]

138. Furthermore, NDAs also prevent the disclosure of proof of sales figures which, in turn, block an artist's legal right to audit every three years, and the cost of legal recourse for this may fall to the artist.[503] As Helienne Lindvall notes, this means that creators like her "have no legal, affordable avenue to dispute such claims, and simply have to accept whatever royalty payouts these huge corporations pay me for the use of my music".[504] Second, the lack of transparency disempowers creators by creating information asymmetries when it comes to negotiating terms with music companies and making decisions about which route to market to choose.[505] The costs of this asymmetry is then likely to be borne by creators in terms of reduced royalty rates, advances and other terms through adverse selection. Finally, a lack of transparency has undermined research into inequities of creator remuneration. Most recently, the important IPO-funded study into Creators Earnings in the Streaming Age, mentioned in Chapter 1, has faced challenges due to a lack of data and engagement from the major music companies and streaming services.[506] In a recent damning letter from the Department for Business, Energy and Industrial Strategy confirmed that the streaming services and major music companies have treated

500 Musicians' Union (EMS0080); Creators' Rights Alliance (EMS0187); The Ivors Academy of Music Creators (EMS0197); SCRIPT (EMS0205); Incorporated Society of Musicians (EMS0223)
501 Q41
502 Q167
503 Hipgnosis Songs Fund Limited (EMS0237)
504 Helienne Lindvall (EMS0112)
505 SCRIPT (EMS0205)
506 The Ivors Academy of Music Creators (EMS0197)

the process with apparent contempt. Of the streaming services, only YouTube, Deezer and SoundCloud agreed to be interviewed and none provided relevant data that was not already in the public domain, whilst all major record companies and all but one major publishing company declined the researchers' requests for further discussions.[507]

139. **Artists and their representatives face a systemic lack of transparency from both music companies and the streaming services that license their works. This exacerbates the inequities of creator remuneration by creating information asymmetries and preventing them from undertaking their right to audit. Creators and their representatives have a right to know about the terms on which their works are exploited and verify the outcome of these agreements. It is also deeply concerning that this norm is challenging academic research efforts, including and in particular taxpayer-funded projects, despite efforts to positively engage music companies and streaming services in this endeavour.**

Transparency obligations

140. It is unsurprising, then, that many creators and their industry bodies have, in response, called for greater obligations regarding transparency from streaming services and music companies.[508] However, perhaps as a reflection as to the pervasiveness of industry norms, when asked what policy changes could be brought about to address this issue several witnesses expressed scepticism that such intervention was even possible. Both Tom Frederikse and Maria Forte reckoned in oral evidence that contractual obligations would prevent government from legally intervening.[509] The Department for Digital, Culture, Media and Sport and the Intellectual Property Office seemed to agree with this position, telling us that:

> The Government recognises the importance of fair remuneration and transparency in the global streaming environment, while also acknowledging that contractual agreements between rights holders and streaming platforms as well as between record labels and artists are a private matter.

The Government's submission subsequently takes a passive approach to this issue, simply urging for "ongoing dialogue between music creators, record labels, and streaming services, as they seek to resolve challenges in this area".[510]

141. It is important as parliamentarians to address any misconception and to reaffirm, therefore, for the avoidance of doubt that Parliament is sovereign within the UK. As such, it is of course within the gift of Parliament to bring about, for example, minimum statutory standards or rights that would apply irrespective of attempts by music companies or streaming services to shut artists out through non-disclosure agreements. Indeed, the European Union has done exactly this: Article 19 of the Directive on Copyright in the Digital Single Market (discussed further in paragraphs 173–8 in Chapter 5) imposes a transparency obligation on entities such as music companies, collecting societies and streaming services to provide creators with transparency reports:

507 Department for Business, Energy and Industrial Strategy (EMS0288)

508 Musicians' Union (EMS0080); Creators' Rights Alliance (EMS0187); The Ivors Academy of Music Creators (EMS0197); Incorporated Society of Musicians (EMS0223)

509 Qq43, 160

510 Department for Digital, Culture, Media and Sport and the Intellectual Property Office (EMS0078)

> Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances […] in particular as regards modes of exploitation, all revenues generated and remuneration due.[511]

142. **The Government has repeatedly told us that it will not implement in UK law provisions akin to those established by the Directive on Copyright in the Digital Single Market. We accept that the Directive is not a silver bullet to the music industry's problems, but it is a step in the right direction in terms of protections and rights for rightsholders.** ***The Government should ensure that creators in the UK are not worse served that they would have been had the UK remained in the European Union. As a minimum, the Government should introduce a right for performers (or their representatives) to have sight of the terms of deals where their works are licensed, on request and subject to non-disclosure. There should also be notification requirements, requiring relevant parties to provide clear information and guidance to creators about the terms and structures of every deal where creators' works are licensed, sold or otherwise made available, and the means and methods by which monies that are being distributed to them are calculated, reported and transferred.***

511 Directive (EU) 2019/790, Article 19

5 The music streaming market

Competition in the streaming market

143. On one view, the market for (most) streaming services is highly competitive. First, the services themselves are relatively homogenous. The music content on mainstream services is effectively substitutable, as major labels, independent labels and self-releasing artists make their music available as widely as possible.[512] One streaming service, Tidal, that attempted to make exclusive releases part of its unique selling point, has in fact faced legal action previously from fans over Kanye West's seventh album *The Life of Pablo*, which was released on other platforms only two months after it was released to Tidal after being marketed as a Tidal-exclusive.[513] Most features and functionality have become standardised, including offline and high-fidelity playback. Most services facilitate algorithmically and editorially-curated and individually created playlisting. As Jimmy Iovine summarised to the BBC in 2018, "the streaming services are all charging $9.99 and everyone has the same music".[514]

144. Second, companies offering premium services all charge broadly identical, stable nominal prices. Most services offer individual monthly subscriptions at £/$/€9.99, which has been the case for over a decade, and it is yet to be seen whether any service can and will deviate successfully (though Spotify recently announced it will increase the price of its Student, Duo and Family plans).[515] Third, because of price and service standardisation, as well as their increasing ubiquity, users have relatively complete information about the service's product and prices.

145. Finally, this pricing is competitive to the degree that streaming services have not been historically profitable. Services like Spotify and SoundCloud have, to date, mostly posted operating losses. In fact, Spotify's cumulative annual losses in the decade up until 2020 totalled €2.62 billion.[516] These services are sustained by venture capital, which allows them to price competitively in order to maintain market growth.[517] Other services, where streaming is one facet of a broader business, like Apple and Amazon, are described as loss leaders.[518] In 2017, Jimmy Iovine, CEO of Apple Music, told *Billboard* that "streaming services have a bad situation, there's no margins, they're not making any money".[519] Of course, absence of profitability in a growth phase does not mean that the business in maturity would not be profitable; still less that the segment of customers who are paying, given that very many are not, are not profitable.

146. However, the Covid-19 pandemic has created unique conditions for streaming services. Due to the need for social distancing and lockdown measures required to slow the spread of coronavirus and the subsequent closure of live music venues and record shops, there has been an opportunity for streaming services to grow. Spotify is an

512 BBC (EMS0227)
513 "Lawsuit against Kanye West and Tidal over 'The Life of Pablo' reportedly dismissed", NME (30 January 2019)
514 "Apple Music's Jimmy Iovine says streaming services are 'too similar'", BBC News (25 March 2018)
515 "Spotify is raising prices for lots of its plans", The Verge (26 April 2021)
516 "Loss-making Spotify will continue to put growth ahead of profit for 'next few years'", Music Business Worldwide (6 May 2020)
517 Qq31 [Tom Gray], 553–5 [Raoul Chatterjee]
518 Sonstream Ltd (EMS0154); Adam Fenn (EMS0180)
519 "Jimmy Iovine Breaks Down What's Wrong With the Music Business, Warns Against Overoptimism in Streaming: 'They're Not Making Money'", Billboard (29 November 2017)

indicative example. It alone added 30 million subscribers in 2020, including 11 million in Q4, eclipsing forecasts.[520] Since January 2020, Spotify's share price has risen faster than so-called FAANG (Facebook, Apple, Amazon, Netflix and Google) stocks. In this time, Spotify's share price has more than doubled (an increase of over 103 percent, growing at a higher rate even than Apple (almost 85 percent) and Amazon (almost 78 percent), who both offer services beyond streaming. Moreover, each of the three companies outstripped Netflix (which grew by almost 70 percent), Google (almost 52 percent) and Facebook (almost 28 percent). Even smaller companies like SoundCloud have recently broken even in several quarters, marking a significant turnaround from just 2019 when the company made a loss of 16 percent.[521] When questioned, however, representatives of the companies were hesitant to attribute success to the loss of live music. Spotify claimed that "we did well under the circumstances" but "it was not necessarily a banner year" as "throughout 2020 we saw advertising revenue suffer".[522] Paul Firth, Director of International Music at Amazon, similarly, argued that "I don't know that we can say that there was a positive impact or even a negative impact from the situation we found", and argued that data suggested a link between the growth of music streaming and growth in live music.[523]

Technology-driven challenges to the market

Algorithms and playlists

147. Streaming services remain in parity with one another on price, which has not substantially changed in over a decade.[524] We note that parity of pricing can be a feature both of perfectly competitive markets and of sticky oligopolistic ones. Unlike streaming services that offer film and TV, where exclusive licences are more common, music streaming services are not differentiated by content. Instead, services have primarily differentiated themselves through their algorithmically- and editorially-curated playlists; the Federation of Independent Musicians describes playlists as being "at the core of streaming services".[525] Dr Nicola Searle argues that Spotify "is very focused on utilising algorithms to deliver what they think the user will listen to".[526] YouTube similarly is powered by its systems that prioritise likes, comments, viewer retention and view and subscription velocity. Both Apple and Amazon cited human curation as the most distinctive element of their service offering.[527] Amazon in particular noted that it has invested significantly in human curation, employing music specialists for this purpose in every country.[528]

148. As well as providing a unique selling point for the services themselves, curation also performs an important function. Streaming provides users with access to a historically unprecedented amount of music.[529] As with other content-based tech platforms, a streaming service's systems, processes and design often play an important role in making this content accessible and manageable to end users. This gives music curators and algorithms an influential role in what music consumers actually listen to.[530]

520 "Spotify boosts subscriptions but warns of 'uncertainty' ahead", Financial Times (3 February 2021)
521 Qq553–5
522 Q685 [Horacio Gutierrez]
523 Q687
524 Q18
525 Qq148–9, 604; International Federation of Musicians (FIM) (EMS0025)
526 Dr Nicola Searle (EMS0041)
527 Qq598 [Elena Segal], 604–5 [Paul Firth]
528 Q604 [Paul Firth]
529 Dr Gary Sinclair (EMS0019); Q513
530 SCRIPT (EMS0205); All Party Parliamentary Jazz Appreciation Group (EMS0161)

Editorial curation

149. Editorial playlists are playlists created by the employees of a service or high-profile, influential, marketable third parties. Creators have told us that being featured on playlists has a significant impact on reach and revenues.[531] One creator, who has achieved 17 million streams on Spotify, wrote that "my success as an artist has been largely helped by placement on Spotify editorial playlists—this has driven my streaming numbers up and has earnt me modest recognition and in turn some career enhancing opportunities".[532] In many ways, these playlists act like traditional radio, with a human gatekeeper deciding what tracks to include.[533] Unlike streaming services, however, Ofcom's Broadcasting Code specifically precludes practices such as pay-for-play, known as 'payola': section 10.5 states that "no commercial arrangement that involves payment, or the provision of some other valuable consideration, to the broadcaster may influence the selection or rotation of music for broadcast".[534]

150. This raises questions as to the basis under which tracks are selected and whether this is open to manipulation, particularly for independent and self-releasing artists.[535] In fact, several creators did argue that editorial playlists favour those signed to major labels, claiming that 85 percent of music on Spotify is major owned and comprise 90 percent of editorial playlists, which creates a self-fulfilling cycle whereby major-owned music dominates playlists, achieves significant reach and then continues to dominate new playlists.[536] The ordering of playlists can also create hierarchies of importance to tracks, which impact the likelihood that rightsholders of featured tracks will be listened to in large quantities and therefore remunerated. Performers are often encouraged to pay for marketing workshops by the platforms themselves, or for services that pitch to playlist curators or otherwise develop relationships with curators themselves in order to achieve additional promotion through playlisting, despite little long-term impact on their fanbase or future revenues beyond streaming.[537] One performer, writing in confidence, also asserted that some playlist curators offered to promote independent performers for a fee, creating a black market for playlisting.

151. **Music curators play an important role in the discovery and consumption of digital music and are influential in how creators are remunerated. It is, therefore, unsurprising that music creators are putting more resources into catching the eye of these curators. *Where curators are paid or receive benefits in kind for playlisting, we recommend that they are subject to a code of practice developed by the Advertising Standards Authority, similar to social media influencers, to ensure that the decisions they make are transparent and ethical.***

531 Dr Gareth Bonello (EMS0069); Dave Mathers (EMS0092); Matthew Hickman (EMS0100); Fran O'Hanlon (EMS0105)
532 *Anonymous* (EMS0199)
533 Ben Sizer (EMS0050)
534 Ofcom, Section ten: Commercial communications on radio
535 Ali Gavan (EMS0026); Association of Independent Music (EMS0157); Music Publishers' Association (EMS0179); BPI (EMS0208); Dr Hayleigh Bosher (EMS0254)
536 Matthew Hickman (EMS0100); Fran O'Hanlon (EMS0105)
537 Ali Gavan (EMS0026); Andy Ruddy (EMS0094); Elliott Haslam (EMS0151); Kadian Foster (EMS0168); Transcripts of roundtables with emerging artists (EMS0293)

Algorithmic curation

152. Algorithmic curation, by contract, refers to the recommendation systems employed by a service for music consumption purposes (rather than, for instance, personalised advertising). This can take several forms: either in the creation of personalised playlists or to curate tracks for autoplay. Isaac Anderson, a professional musician who submitted evidence, described Spotify as "somewhat of a battleground for smaller, unsigned artists", asserting that:

> When a track goes live, the first seven days are essential in 'training the algorithm'—in other words, directing as much traffic as possible to your new release, in order for Spotify to recognise the plays and favour any chances of it being placed in an algorithmic or editorial playlist.[538]

However, several submissions warned that algorithms, as with any recommendation system, could reflect biases that may subsequently reduce new music discovery, homogenise taste and disempower self-releasing artists.[539] Many creators in written evidence were critical of the opacity of algorithmic curation, and called for greater oversight.[540] Moreover, the Spanish collecting society AIE, Incorporated Society of Musicians, Musicians' Union and others expressed concern at a recent announcement that companies would be enabled to pay for the promotion of their music for a royalty cut.[541] Finally, the BPI has noted that algorithms can disadvantage UK artists where they are based on global play counts given that territories with relatively larger populations can skew towards their own domestic artists.[542]

153. **Algorithms are fundamental to the operation of streaming services. However, many questions remain about how they influence music consumption and how much oversight exists.** ***The Government should commission research into the impact of streaming services' algorithms on music consumption, including where creators are forgoing royalty payments in exchange for algorithmic promotion.***

User data

154. Similarly, there are concerns that services such as Spotify, Amazon and YouTube, which offer free, ad-supported streaming to many (or most) users, may be incentivised to maximise data collection and commodification, both for advertising purposes but also

538 Isaac Anderson (EMS0101)

539 Dr Nicola Searle (EMS0041); Ben Sizer (EMS0050); DIUO (EMS0074); Chris Whitten (EMS0096); Cognizant (EMS0134); Julian Henry (EMS0137); Generator North East Ltd (EMS0171); Adam Fenn (EMS0180); Iain Archer (EMS0190); AJ Dean-Revington (EMS0192); BPI (EMS0208); Oliver Julian (EMS0219); Neil Adams, Sarah Ramage, Caleb Evans and Paul Deacon (EMS0225)

540 Iain Cameron (EMS0015); Ali Gavan (EMS0026); Angela Reith (EMS0029); Wendy Kirkland (EMS0037); Anna Neale (EMS0058); Dr Gareth Bonello (EMS0069); Just East of Jazz (EMS0079); Joe Newman (EMS0083); Matthew Hickman (EMS0100); Fran O'Hanlon (EMS0105); Helienne Lindvall (EMS0112); IMPF, Independent Music Publishers International Forum (EMS0121); Joshua Magill (EMS0153); Matthew Tong (EMS0155); Association of Independent Music (EMS0157); Josienne Clarke (EMS0159); Natalia Wierzbicka (EMS0160); Irish Music Rights Organisation CLG (EMS0162); Council of Music Makers, Featured Artists Coalition (FAC), Ivors Academy, Music Managers' Forum (MMF), Music Producers' Guild (MPG), and Musicians' Union (MU) (EMS0172); Music Publishers' Association (EMS0179); Iain Archer (EMS0190); Luke Williams (EMS0191); Renee Sheehan (EMS0195); *Anonymous* (EMS0199); Isaac Neilson (EMS0201); BMG (EMS0207); BPI (EMS0208); Tim Richards (EMS0221)

541 Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133); Christian Castle (EMS0165); Incorporated Society of Musicians (EMS0223); Musicians' Union (EMS0258)

542 BPI (EMS0208)

as leverage in licensing negotiations. This would have implications for both user privacy, which could be undermined by more pervasive data gathering systems, and for competition, whereby services could gain a competitive advantage from aggregating large quantities of data. Indeed, we know this is already occurring to some degree, as one previous licensing arrangement between Universal and Spotify gave the former "'unprecedented access to data, creating the foundation for new tools for artists and labels to expand, engage and build deeper connections with their fans'".[543] Despite this, Spotify asserted in oral evidence that access to data was provided to rightsholders equally through its Spotify for Artists tool to alleviate competition concerns amongst the music industry.[544] Nonetheless, it must be ensured that the financial interests of the music industry and streaming services do not similarly disincentivise user privacy and data ethics for digital music consumers. As the streaming market matures, the use of consumer data in advertising and licensing deals will require effective co-operation by the DMU and Information Commissioner's Office to ensure a high standard of consumer protections.

Vertical integration

155. Given the competitiveness of the music streaming market, companies have increasingly sought to integrate vertically with other services or otherwise utilise other offerings to achieve a competitive advantage. Jimmy Iovine has argued this, positing that: "Amazon sells Prime; Apple sells telephones and iPads; Spotify, they're going to have to figure out a way to get that audience to buy something else".[545] In many ways, this competition has promoted innovation and positive differentiation of services. This year, for example, Spotify launched its first hardware device, an in-car entertainment device called the Car Thing, in the United States.[546] Other services have launched recently, advertising their services based on more ethical payment systems for rightsholders.[547] In oral evidence to our inquiry, Apple spoke several times about how its business model has reflected its pro-privacy values that differentiate its products to those of other tech companies.[548]

156. There is a risk, however, that the current unprofitability of music streaming may lead companies to adopt increasingly anti-competitive practices in order to become (more) profitable. This may lead to a market 'tipping', whereby once a product or service reaches a critical mass of users, network effects create a snowball effect whereby a market rapidly tends towards monopoly equilibrium. Vertically integrated tech companies, for example, with more mature hardware and smart technology divisions could theoretically gain an advantage by creating incentives such as free trials or frictions for competitors such as denying access to third-party services or shipping with defaults that are difficult for customers to change, particularly if one piece of hardware were to dominate the market. The BBC was warned that "vertical integration can tilt the market towards the eco-system's own services ahead of third parties whether they are alternative streaming services or other forms of audio such as Radio broadcasters".[549]

543 Q249 [Clive Efford MP]
544 Q694 [Horacio Gutierrez]
545 "Jimmy Iovine Breaks Down What's Wrong With the Music Business, Warns Against Overoptimism in Streaming: 'They're Not Making Money'", Billboard (29 November 2017)
546 "Spotify launches its in-car entertainment system 'Car Thing' in US", TechCrunch (13 April 2021)
547 Sonstream Ltd (EMS0154); Resonate Co-operative (Resonate (Beyond Streaming) Ltd) (EMS0169)
548 Q642, 695 [Elena Segal]
549 BBC (EMS0227)

157. When asked, both Amazon and Apple did detail various pro-competition business practices to ensure compliance with competition law, such as business structure (such as compartmentalisation between streaming and other divisions of the business like those working on hardware or voice assistants) and fair access to third-party services (both at set-up and thereafter).[550] Some jurisdictions are already responding to allegations of anticompetitive practice. On 30 April 2021, the European Commission issued antitrust charges against Apple following an initial complaint from Spotify. Specifically, it found that Apple broke competition law with its app store policies that both require app developers to use Apple's own in-app purchase system (which levies a 30 percent commission fee) and forbid developers from advertising other extra-app purchasing options, which allegedly have resulted in higher prices for consumers.[551] Spotify's complaints against Apple have gone further, however. In September 2020, Spotify described Apple's Apple One subscription bundle, which also includes Apple TV Plus, Arcade, iCloud storage and other Apple products, as "anti-competitive behaviour, which if left unchecked, will cause irreparable harm to the developer community and threaten our collective freedoms to listen, learn, create, and connect" (despite the fact that Spotify itself has previously been bundled with Hulu, AT&T and Samsung[552] and Amazon bundles its streaming service with Prime).[553]

158. It is necessary, therefore, that the UK regulatory environment is equipped to respond to these multi-faceted challenges. The CMA's Digital Markets Taskforce issued advice to government in December 2020 on the design and implementation of a new regime for digital markets and the powers that its new DMU will need.[554] The Government has committed to consulting on proposals this year and to legislating in order to provide the DMU with a statutory footing when parliamentary time allows.[555] In the meantime, the CMA has announced that the DMU will work with existing CMA enforcement teams to address anti-competitive practices by digital firms within the CMA's current remit.[556]

159. **The market for streaming services itself is fiercely competitive. However, there is the potential that companies may leverage other aspects of their business or elsewise use vertical integrations to gain a competitive advantage; indeed, some jurisdictions have considered that this is already happening in some areas. It is important that the UK has a regulatory regime to respond to these challenges. We are encouraged that the CMA has already launched its Digital Markets Unit, which is undertaking important work in this area within the scope of the CMA's current powers, but to ensure proper compliance the DMU needs to be put on a statutory basis as soon as possible. *The Government should launch its consultation on the new pro-competition regime for digital markets by the time it has responded to this Report and commit to a reasonable timeframe (to which it can be held accountable) for when it reasonably expects legislation to be brought forward thereafter.***

550 Q606 [Paul Firth, Elena Segal]
551 "EU accuses Apple of App Store antitrust violations after Spotify complaint", The Verge (30 April 2021)
552 "Apple says its new Apple One services bundle isn't unfair to Spotify", The Verge (15 September 2020)
553 Qq623, 626–8
554 "CMA advises government on new regulatory regime for tech giants", Competition and Markets Authority, accessed 23 May 2021
555 Competition and Markets Authority, Digital Markets Unit, accessed 23 May 2021
556 "New watchdog to boost online competition launches", Department for Digital, Culture, Media and Sport and Competition and Markets Authority, accessed 23 May 2021

Prominence

160. Alongside proposed and existing regulatory regimes into competition in digital markets and data privacy, the UK also maintains a regime to support our public service broadcasting (PSB) ecosystem. In our recent Report into the 'Future of public service broadcasting', we discussed several challenges to PSB content and the current prominence regime for audio-visual content that similarly apply to music streaming and radio. Music streaming poses several related challenges to the prominence regime as subscription video-on-demand (SVoD) services. First, music streaming poses a market share challenge to PSB content,[557] which similarly provide music and speech but also, distinctly, critically important content such as news.[558] Second, smart speakers create similar problems to hardware such as smart TVs, smart sticks and set-top boxes, whereby PSB apps are not prominent, easily accessible or even installed by default.[559] Vertically integrated streaming services also intermediate the relationship between PSB content and listeners through their hardware. The BBC's submission argues that, for example, if a listener requests a jazz radio station, the default would be a streamed playlist from YouTube music rather than a live radio broadcast.[560] However, there are some differences in the challenges posed by music streaming. Music streaming services do not carry PSB content (which poses a particular challenge for television).[561] Irrespectively, though the BBC has responded to competition for listeners provoked by music streaming with its own BBC Sounds app, it remains disadvantaged by simultaneous progression from radio to connected devices, smart speakers and in-car devices. The Department for DCMS is currently undertaking a strategic review of public service broadcasting. ***The Government must ensure that the challenges posed by music streaming to the UK's prominence regime are duly considered.***

Safe harbour

Safe harbour provisions in law

161. Throughout our inquiry, voices from across the music industry railed against safe harbour provisions that were transposed into UK law from the European Union's E-Commerce Directive. Safe harbour aimed to clarify the pecuniary and financial liabilities of 'information service providers' in instances of transmission (as a mere conduit), caching and, most pertinently, hosting infringing information where the provider "has neither knowledge of nor control over the information which is transmitted or stored".[562] The Directive was transposed into UK law by the Electronic Commerce (EC Directive) Regulations 2002. To benefit from this limitation of liability in regards to content hosting, it was specified that services must not "have actual knowledge of unlawful activity or information" and were required to "[act] expeditiously to remove or disable access" to the information concerned.[563] The Directive also specifically prevented member-states from imposing a general monitoring obligation (though did allow for obligations to

557 Digital, Culture, Media and Sport Committee, Sixth Report of the Session 2019–21, The future of public service broadcasting, HC 156, para 89
558 BBC (EMS0227)
559 Digital, Culture, Media and Sport Committee, Sixth Report of the Session 2019–21, The future of public service broadcasting, HC 156, para 74
560 BBC (EMS0227)
561 Digital, Culture, Media and Sport Committee, Sixth Report of the Session 2019–21, The future of public service broadcasting, HC 156, paras 81–8
562 Directive 2000/31/EC
563 The Electronic Commerce (EC Directive) Regulations 2002, regulation 19

monitor content in specific cases).[564] Subsequent guidance from the Court of Justice of the European Union, in a preliminary ruling on questions referred by the High Court of Justice for England and Wales in the case of *L'Oréal vs eBay*, further clarified that a provider loses its hosting defence in instances where it "plays an active role" or "provides assistance intended to optimise or promote" illegal content or activity or elsewise should "have been aware of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality in question".[565]

162. Safe harbour thus applies directly to tech companies whose services host user-generated content (UGC), such as YouTube, SoundCloud, TikTok, Facebook and Twitch. Evidence to our inquiry from the tech sector argued that safe harbour has provided policy certainty that underpins investment and therefore has facilitated user-driven creativity online.[566] YouTube argued that, whilst safe harbour provides a strong foundation, "we obviously go far above and beyond the safe harbour framework with our investments" such as music licensing.[567]

163. Tom Frederikse noted that social media services in particular, such as YouTube, do not function as straightforward music streaming services, given that they have "a huge amount of user-generated content, […] video and other elements that are not present in the straightforward music services".[568] Nonetheless, YouTube dominates the music streaming landscape. Sales data from RIAA shows that YouTube had a 51 percent[569] market share in 2019[570] whilst Tom Gray estimated that "eight of the most streamed videos on YouTube ever are music videos".[571] Worldwide, YouTube's user base far exceeds that of other services: Apple Music has around 60 million active monthly subscribers; Spotify reports 320 million active users; YouTube, by contrast, boasts an estimated two billion active monthly users (albeit using the platform for more than music streaming).[572] In the UK specifically, 45 percent of consumers aged 16 and above use YouTube weekly for music, 10 points ahead of the next most used service Spotify; on a more granular level, while British teenagers are more likely to use Spotify weekly, all other demographics strongly skew towards YouTube.[573] These trends may shift even further in YouTube's favour: in the US, YouTube has a market penetration of 70 percent for 12 to 34 year olds.[574] YouTube also plays an important role in music discovery: amongst UK consumers, it is second only to radio as the means for discovering new music.[575] YouTube itself argues that the opportunities for discovery and revenue it provides has meant that over 610 UK YouTube channels have attracted over one million subscribers and that 84 percent of views on UK content come internationally, making it "a chief exporter of British talent".[576]

564 Directive 2000/31/EC
565 Judgment of 12 Jul 2011, C-324/09 (L'Oréal), ECLI:EU:C:2011:474
566 Qq530, 533–4 [Katherine Oyama]
567 Q534 [Katherine Oyama]
568 Q38
569 Less conservative estimates, submitted by Sonstream Ltd, put YouTube's market share at a staggering 78 percent.
570 Q44; Sonstream Ltd (EMS0154); Kirstian Taylor (EMS0198); Isaac Neilson (EMS0201)
571 Q44
572 PRS for Music (EMS0158)
573 MIDiA Research (EMS0073)
574 Musicians' Union (EMS0080)
575 MIDiA Research (EMS0073)
576 YouTube (EMS0144)

Economic implications of safe harbour

Impact for UGC-hosting services

164. Tom Gray describes safe harbour as "a get-out-of-jail-free card for Google from copyright and competition law".[577] Fundamentally, safe harbour exempts streaming services that host UGC from being criminally and financially liable for content that infringes copyright in good faith as long as they act expeditiously against this content where they gain "actual knowledge" of infringing content, such as when notified.[578] Safe harbour thereby protects social media companies' free-to-use, ad-funded business model from proscriptive statutory and regulatory moderation requirements, which in practice has allowed users to continue to upload and consume music for free. Elena Segal, Global Senior Director of Music Publishing at Apple Inc., argued that safe harbour provisions create an "unlevel playing field" in favour of YouTube:

> The fact that they do not necessarily have licences for all of the music that they use and that they do not need to. Even where they do have licences the amount they pay, because of the way their business model is set up and the way the tariffs work, is less.[579]

As such, whereas other streaming services negotiate to license music and subsequently make that available to consumers, YouTube effectively negotiates licences for music that users are already providing through the service.[580] This gives YouTube an ongoing competitive advantage when licensing music relative to other competitors that do not host UGC.[581]

165. The economic impacts of safe harbour provisions are twofold. First, it has a direct impact on the music industry via its own rates. Typically, YouTube pays less on average on a per-stream basis than other services, which has been observed by many academics and researchers, industry trade bodies and creators and music companies themselves.[582] Second, according to MIDiA Research, despite YouTube's dominance of streaming both in terms of use and users and "strong progress driving subscriptions in recent years", it remains overwhelmingly ad-funded whilst services owned and operated by YouTube's parent Alphabet rank fourth in terms of the number of subscribers.[583] The confluence of these issues creates what is referred to as the value gap, whereby UGC-hosting services continue to lag behind market norms established by other services in terms of music industry remuneration.[584]

577 Q38
578 Copyright, Designs and Patents Act 1988, section 97A
579 Qq616–7
580 MIDiA Research (EMS0073); Q617 [Elena Segal]
581 SCRIPT (EMS0205)
582 Pete Woodroffe (EMS0018); Ali Gavan (EMS0026); Beggars Group Limited (EMS0047); Anna Neale (EMS0058); MIDiA Research (EMS0073); Musicians' Union (EMS0080); Tru Thoughts (EMS0091); Adam Fenn (EMS0180); Iain Archer (EMS0190); The Ivors Academy of Music Creators (EMS0197); Kirstian Taylor (EMS0198); SCRIPT (EMS0205); BPI (EMS0208); Incorporated Society of Musicians (EMS0223)
583 MIDiA Research (EMS0073)
584 Musicians' Union (EMS0080); IMPF, Independent Music Publishers International Forum (EMS0121); Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133); Association of Independent Music (EMS0157); PRS for Music (EMS0158); All Party Parliamentary Jazz Appreciation Group (EMS0161); The Ivors Academy of Music Creators (EMS0197); Qq118, 217, 221, 499–500

166. Despite these legal protections, UGC-hosting services use several tools to address piracy on its site. SoundCloud, for instance, operate a content identification system that scans content when it is uploaded against matches in a reference database and block any matches.[585] YouTube similarly operates a content-matching system with several aspects:

- Public webforms that, in this instance, allow users to make copyright claims to YouTube;
- The Copyright Match Tool, which matches content uploaded to YouTube by a user to subsequent any uploads, that allows rightsholders to request removal, contact the uploader or leave the video up; and
- Content ID, which underpins the effectiveness of other tools by creating a 'digital fingerprint' for copyrighted works based on the video's metadata.[586]

167. YouTube argues that over half of all revenue generated by the music industry from its service comes from copyright claims made through Content ID.[587] We note that there is recognition amongst stakeholders (including several who have submitted confidential evidence) that YouTube's Content ID system is effective and efficiently scalable and has set the benchmark for automated copyright enforcement tools.[588] However, we have, in the context of our scrutiny of the online harms framework, found elsewhere that automated systems such as YouTube and SoundCloud's may be prone to inaccuracies (i.e. false positives and/or negatives when searching for or evaluating infringing content) due to technical limitations, developer biases and so on.[589] Our Report into 'Misinformation in the COVID-19 Infodemic' concluded that no technological solution is (yet) a complete substitute for human reporting and review.[590] Furthermore, we have observed that tech services often do not create frictions or keep money in escrow in favour of expediting payments, meaning that copyright infringers can successfully monetise infringing content before it is identified by the system.[591] Finally, the current systems place the onus on rightsholders to provide data and documentation to YouTube before it is protected, which typically is at the expense of emerging or independent performers.[592] For its part, YouTube has called on policymakers to explore the possibility of creating a comprehensive musical works and sound recording database, which may have applications here.[593]

168. YouTube has, in response, emphasised its overall contribution to the music industry. When the issue of lower 'per-stream' pay-outs was posed to YouTube's Director of Government Affairs and Public Policy, Katherine Oyama, she rejected the premise that YouTube pays less per stream than other services, claiming that "the research that I have seen that does analyse that has had us absolutely on par with them".[594] Ms Oyama further responded that "if we make any money the majority of the revenue is going out

585 Q540 [Raoul Chatterjee]
586 YouTube (EMS0144); Q461 [Katherine Oyama]
587 YouTube (EMS0144)
588 Isaac Neilson (EMS0201); SCRIPT (EMS0205)
589 Digital, Culture, Media and Sport Committee, Second Report of the Session 2019–21, Misinformation in the COVID-19 Infodemic, HC 234
590 Digital, Culture, Media and Sport Committee, Second Report of the Session 2019–21, Misinformation in the COVID-19 Infodemic, HC 234, para 39
591 Oral evidence taken before the Digital, Culture, Media and Sport Sub-committee on Online Harms and Disinformation on 17 December 2020, HC (2019–21) 1049, Qq83–9
592 Sonstream Ltd (EMS0154)
593 YouTube (EMS0144)
594 Qq566–77 [Katherine Oyama]

to the music industry" and that industry rightsholders, including artists and major and independent labels, have benefitted as a result.[595] Addressing the criticism of remuneration, YouTube argues that it has paid out over $12 billion to the music industry as of January 2020 (including $3 billion to rightsholders globally in 2019 alone) and projects that it will "become the music industry's number one source of revenue by 2025".[596] In the UK, YouTube argues that its creative ecosystem supports the equivalent of 30,000 full time jobs and contributes £1.4 billion to GDP.[597] However, evidence from Sonstream Ltd, a UK-based start-up alternative streaming service, contextualised these figures. Sonstream notes that that, though YouTube accounts for 51 percent of music streaming per year, it only contributed seven percent of all revenue (and that this figure also only applies to music accounted through their Content ID system, which accounts for less than half of the music on the platform).[598] Moreover, Sonstream Ltd argues that YouTube's $3 billion contribution to the music industry contrasts to its $15 billion total advertising revenue.[599] Finally, creators have argued that YouTube's own policies prevents them from participating in advertising revenue until they achieve 1,000 channel subscribers and 4,000 hours of watch time, which is difficult when competing within the parameters of opaque algorithms.[600] Tom Gray asserted that bringing YouTube to parity with other streaming services would positively impact creators: "if we can increase the dividend by 10 percent, 20 percent, 50 percent from YouTube or bring it in line with Spotify, which would be 10 times the value, that is an enormous amount of money for what are basically not highly paid people".[601]

Impact on competitors

169. The tech companies' safe harbour-protected business model also has an indirect impact on rightsholders through its competition with other streaming services. First, safe harbour protections for YouTube's ad-funded, UGC-hosting service has exacerbated conditions that limit changes in price for streaming subscriptions. Several witnesses have speculated that the ready availability of free music and the dominance of YouTube has led to prices for streaming services being fixed at £9.99 per month for over a decade (which, as discussed in Chapter 2, may benefit the consumer short-term but could have long-term impacts).[602] In real terms, static prices have equated to a reduction in remuneration for rightsholders of 26 percent.[603] Horacio Gutierrez, Head of Global Affairs and Chief Legal Officer at Spotify, noted, "the balance that we have to strike is one in which music does not become unaffordable to consumers and we are pushing them back into online piracy scenarios";[604] however, Elena Segal argued that this applied to legitimate free services as much as illegitimate pirate sites, stating that "competing with free is always very difficult because consumers have a choice to move to free" and that "it is challenging to compete on an unlevel playing field".[605] Raoul Chatterjee, Vice President for Content Partnerships at Soundcloud, defended the free-to-use model by arguing that ad-supported sites added

595 Qq566–79 [Katherine Oyama]
596 YouTube (EMS0144)
597 YouTube (EMS0144)
598 Sonstream Ltd (EMS0154)
599 Sonstream Ltd (EMS0154)
600 Natalia Wierzbicka (EMS0160)
601 Q67
602 Qq114 [Maria Forte], 118 [José Luis Sevillano]
603 Q18
604 Q597
605 Qq598, 616

incremental value to the industry from users who might not be able to afford monthly subscriptions where otherwise they may have turned to piracy, and that ad-supported services often performed an additive role alongside subscriptions to premium services.[606] However, whilst the services themselves may be additive, the time spent by consumers using ad-supported services over premium services would impact the number of streams that would otherwise be generated on the latter, which would subsequently impact rightsholder remuneration from relatively-more lucrative premium royalty pots.

170. Concurrently, the presence of these services has incentivised other services to introduce ad-funded services alongside their subscription models. The ad-funded model clearly presents an opportunity cost (i.e. the quantity of benefit forgone that is created by the choice of one option over another) for streaming services and rightsholders. Mr Gutierrez explained that 90 percent of revenues come from subscriptions in contrast to ten percent from the ad-funded tier,[607] despite having 155 million subscribers and 199 million ad-supported users respectively.[608] Explaining Apple's position, Elena Segal argued that "we do not think that an ad-supported service can generate enough revenue to support a healthy overall ecosystem and it would also go against our fundamental values on privacy".[609] However, it should be noted that this is not solely due to the presence and dominance of YouTube in the market. Both Spotify and Amazon conceded that their services would continue to operate their ad-funded, free-to-use tiers alongside their premium services given the counterfactual without YouTube.[610] Mr Gutierrez argued that "I do believe that the freemium service has value on its own":[611] this is likely both because of the industry's recent history of digital piracy,[612] as well as the fact that 60 percent of Spotify subscribers started on the ad-funded tier.[613]

171. **Safe harbour provisions that have been transposed into UK law have profoundly impacted the market for digital music consumption. YouTube's dominance of the music streaming market shows that the market has tipped. Safe harbour gives services that host user-generated content (UGC) a competitive advantage over other services and undermine the music industry's leverage in licensing negotiations by providing UGC-hosting services with broad limitations of liability. This has suppressed the value of the digital music market both in real and absolute terms even as these services generate multi-billion-dollar advertising revenues.**

172. **We note that the CMA has developed a pro-competition framework for tech companies with 'strategic market status' that dominate digital markets. *The CMA should consider exploring designating YouTube's streaming services as having strategic market status to encourage competition with its products.***

EU Directive on Copyright in the Digital Single Market

173. Evidence we received from the music industry often pointed to the European Union's Directive on Copyright in the Digital Single Market as one potential solution to the issues

606 Q541 [Raoul Chatterjee]
607 Q634
608 Qq627–35
609 Q642
610 Qq638–41 [Horacio Gutierrez, Paul Firth]
611 Q640
612 Q387 [Paul Pacifico]
613 Q628 [Horacio Gutierrez]

created by safe harbour. The Directive creates a new category of service, called online content-sharing service providers, whose "main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes".[614] Article 17 of the Directive provides that the limitations of liability for content hosting provided by the E-Commerce Directive do not apply where a service "performs an act of communication to the public or an act of making available to the public".[615] As such, a provider will be liable for copyright infringement on their service unless they can demonstrate that they have made "best efforts" to obtain authorisation (i.e. a license) and to remove works for which rightsholders have provided "the relevant and necessary information" to do so (known as notice and take-down), and "acted expeditiously" to remove infringing content and prevent future uploads (known as notice and stay-down).[616] Whilst the Directive does therefore retain a fundamental limitation of liability for these services, it creates additional obligations for them in order to maintain it.

174. The Government's position on the Directive on Copyright in the Digital Single Market has shifted in recent years. Prior to the UK's exit from the European Union, the UK contributed to and actively supported the passage of the Directive. In December 2018, the then-Minister for Digital and the Creative Industries, Margot James MP, told our predecessor Committee that she welcomed the Directive,[617] and in July 2019 said publicly she had met with bodies from the creative industries to discuss how best to implement it.[618] In January 2020, her successor as Minister for Sport, Media and Creative Industries, Nigel Adams, reaffirmed that the Directive "contains many protections for our creative sector" but indicated that a decision had not been taken on whether to adopt it.[619] Less than a week later, the Government clarified that its commitment not to extend the EU exit implementation period meant that it would not implement the Directive.[620] In evidence to our inquiry, Minister Dinenage, alongside Tim Moss and the Minister for Science, Research and Innovation in the Department for Business, Energy and Industrial Strategy, Amanda Solloway MP, stated that the Government would take a wait and see approach to the Directive's implementation but declined to provide a timescale.[621]

175. In response, the tech sector has welcomed the Government's position and called for "policy certainty" from the UK.[622] The Internet Association, which represents over 40 of the world's internet companies, "encourages both the Committee and UK government to take an evidence-based, deliberative approach to considering any potential changes to the UK copyright framework in general, and in particular changes similar to those created by the recent EU Copyright Directive".[623] YouTube's own submission argues that any changes to copyright law should not be introduced until "a full economic assessment can be made of the impact of Article 17".[624] It also claimed that its caution is shared by some in the music industry, arguing that:

614 Directive (EU) 2019/790, Article 2
615 Directive (EU) 2019/790, Article 17
616 Directive (EU) 2019/790
617 Digital, Culture, Media and Sport Committee, Ninth Report of the Session 2017–19, Live music, HC 733, para 112
618 Equity (EMS0173)
619 Equity (EMS0173)
620 Equity (EMS0173)
621 Qq751–4 [Caroline Dinenage, Amanada Solloway, Tim Moss]
622 YouTube (EMS0144); Q531 [Katherine Oyama]
623 Internet Association (EMS0164)
624 YouTube (EMS0144)

> some of the music rights holders have been concerned that the new laws could be so confusing that incidental rights holders—for more incidental uses in a music video such as a toy or the owner of a copyrighted design on a T-shirt—would be empowered to strike down their content and reduce their revenues. I think that is actually a legitimate concern.[625]

176. However, evidence we received affirms that the music industry remains broadly supportive of the Directive, as it did during our predecessor Committee's inquiry into 'Live music'.[626] First, many in the industry support the Directive's aim to normalise how music is licensed for UGC-hosting services.[627] Second, it supports the Directive's attempt to address the issue of piracy through the notice and stay-down requirements.[628] Many musicians, both independently and via the Musicians' Union and trade associations, have called on the UK "not to fall behind on basic rights and protections in regards to creators' work"; others have argued that this would ensure reciprocity and a level playing field with Europe in terms of copyright protections, which will similarly safeguard the interests of creators.[629]

177. The Copyright Directive is not a silver bullet to issues caused by safe harbour, however. Written evidence from the Beggars Group warns against the lobbying power of the tech industry, which has for example has caused member-state implementation such as the draft German implementation to rightsholders in a worse place than the status quo ante.[630] Several submissions have argued though that the Directive could go further, in order to tighten obligations on services.[631] Sonstream, for example, argues that the burden of enforcing the obligations described in the Directive must fall on services rather than rightsholders.[632] Dr Hayleigh Bosher, Senior Lecturer in Intellectual Property Law at Brunel University, similarly argues that "the main limitation of Article 17 of the Directive is the wording that platforms, such as YouTube—which the law intended to capture—merely need to make their 'best efforts' to obtain authorisation", which "they would argue that their current system of Content ID would be adequate to meet this threshold", thereby potentially undermining the aims of the Directive.[633] This instance could create a worse outcome, where YouTube, as an existing, dominant entity continues to operate as currently but new entrants that might compete for YouTube's market share may disproportionately face additional barriers to entry. Alongside calling for the implementation of notice and stay-down requirements, the BPI calls for know your business customer obligations (which already exist in principle in UK law and provide require digital services to reveal

625 Q532 [Katherine Oyama]

626 Digital, Culture, Media and Sport Committee, Ninth Report of the Session 2017–19, Live music, HC 733, para 112

627 International Federation of Musicians (FIM) (EMS0025); Marcus Cain (EMS0049); MIDiA Research (EMS0073); Helienne Lindvall (EMS0112); IMPF, Independent Music Publishers International Forum (EMS0121); Association of Independent Music (EMS0157); Council of Music Makers, Featured Artists Coalition (FAC), Ivors Academy, Music Managers' Forum (MMF), Music Producers' Guild (MPG), and Musicians' Union (MU) (EMS0172); Creators' Rights Alliance (EMS0187); Iain Archer (EMS0190); The Ivors Academy of Music Creators (EMS0197); Isaac Neilson (EMS0201); SCRIPT (EMS0205)

628 Ali Gavan (EMS0026); Beggars Group Limited (EMS0047); MN2S Label Services (EMS0055); Dr Gareth Bonello (EMS0069); DIUO (EMS0074); IMPF, Independent Music Publishers International Forum (EMS0121); Cognizant (EMS0134); Renee Sheehan (EMS0195); BPI (EMS0208)

629 Anna Neale (EMS0058); Musicians' Union (EMS0080); Joe Newman (EMS0083); British Copyright Council (EMS0139); PRS for Music (EMS0158); Equity (EMS0173); SCRIPT (EMS0205)

630 Beggars Group Limited (EMS0047)

631 Just East of Jazz (EMS0079); Musicians' Union (EMS0080); Sonstream Ltd (EMS0154); Adam Fenn (EMS0180); Dr Hayleigh Bosher (EMS0254)

632 Sonstream Ltd (EMS0154)

633 Dr Hayleigh Bosher (EMS0254)

the identity of their commercial partners and customers) to be adequately enforced to allow for more effective enforcement against copyright infringement and illegal content hosting with minimal burdens on legitimate businesses.

178. **As we have acknowledged, the Government has repeatedly told us that it will not implement the Directive on Copyright in the Digital Single Market. However, to ensure that music creators and companies prosper in the globally important UK music market, the Government must provide protections for rightsholders that are at least as robust as those provided in other jurisdictions.** ***As a priority, the Government should introduce robust and legally enforceable obligations to normalise licensing arrangements for UGC-hosting services, to address the market distortions and the music streaming 'value gap'. It must ensure that these obligations are proportionate so as to apply to the dominant players like YouTube but does not discourage new entrants to the market. It must also ensure that existing obligations are being enforced as appropriate, and detail in its Response how it plans to address the recording industry's concerns regarding the enforcement of existing 'know your business customer' obligations.***

Payment models

Pro-rata system

179. Of the different models that have emerged to pay for streaming music, the predominant model that exists in some form for all major streaming services is the pro-rata system. Under this model, the service aggregates all net distributable revenue from a population and distributes monies according to the proportion of aggregate streams each rightsholder has achieved.[634] This can be expressed as *(net distributable revenue ÷ total number of streams) × pro rata share of total streams*. In oral evidence, streaming services stated that revenue is pooled depending on its source, so that the subscription and advertising revenue pools are calculated separately.[635] Will Page, former Chief Economist at Spotify, argues that the system is "inherently fair" as it is efficient, transparent (insofar as every stream is worth the same to the rights holder) and cost-effective to manage.[636] Mr Page does acknowledge that the model "does not, however, recognise that no two consumers necessarily value their streams equally—so those who stream more would effectively be subsidised by those who stream less".[637]

Alternative models

180. Many have called for revenue to be distributed by a user-centric payment system, including performers, songwriters and composers of various genres and their trade bodies, prominent academics, several record labels and publishers such as BMG, and other music businesses such as the Hipgnosis Songs Fund and Soundtrack Your Brand.[638] As Will

634 Will Page (EMS0166)
635 Q633
636 Will Page (EMS0166)
637 Will Page (EMS0166)
638 Qq54–7, 86, 90, 103, 106, 161, 195, 197; Iain Cameron (EMS0015); Dr Gary Sinclair (EMS0019); Ben Sizer (EMS0050); Anna Neale (EMS0058); Just East of Jazz (EMS0079); Musicians' Union (EMS0080); Steve Farris (EMS0131); Verity Susman (EMS0136); Professor David Hesmondhalgh (EMS0143); All Party Parliamentary Jazz Appreciation Group (EMS0161); Christian Castle (EMS0165); Creators' Rights Alliance (EMS0187); The Ivors Academy of Music Creators (EMS0197); SCRIPT (EMS0205); BMG (EMS0207); Incorporated Society of Musicians (EMS0223); Soundtrack Your Brand (EMS0228); Hipgnosis Songs Fund Limited (EMS0237); Musicians' Union (EMS0258)

Page explains, a user-centric distribution isolates each consumer's subscription fee and allocates it exclusively to the tracks streamed by that consumer.[639] However, whilst Mr Page, AIM and others argue that user-centric distributions would increase administrative and operational costs due to increasing complexities,[640] these would likely be well within the current processing limits of modern computer systems (which nonetheless continue to improve anyway). Tom Gray advocated user-centric distribution in oral evidence, arguing that it would better fund niche genres such as classical, jazz and regional and national music that would not otherwise aggregate a significant portion of total streams when considered pro-rata.[641] However, user-centric payments could (only) benefit acts to the extent their listeners were more likely than average to be listening to their tracks and not those which have larger than average pro-rata market shares for streams. It would not, of course, increase the average payment, nor the share to artists; to the extent that some artists would win from such a change, others would lose out. That said, evidence we received did make the case that, regardless, many consumers did wish to see the money from their subscriptions more directly reach the artists they listened to,[642] which may explain to some degree the growth of artists releasing content directly to fans on platforms like Patreon.[643] The Creators' Rights Alliance and AIM CEO Paul Pacifico have also noted that a user-centric system would also help guard against issues of fraud created by fake plays, whereby pro-rata shares of streams could be artificially inflated by fake and/or automated accounts.[644] Academic research also suggests that user-centric payments could provide greater clarity and address concerns regarding the allocation of rights payments, enhance artist-audience relationships and encourage greater ethical consumption amongst users.[645] Evidence from across the music industry, including performers, songwriters, composers, publishers and some independent labels, have subsequently called for user-centric payments or at least expressed positive sentiments about the system.[646]

181. As discussed in Chapter 2, it should be recognised that start-ups such as Resonate and Sonstream demonstrate the imaginative and dynamic solutions to artists' issues with the pro-rata status quo. Established streaming services, including Spotify, have also expressed an open-mindedness in exploring new payment models.[647] Members of the Entertainment Retailers' Association have similarly pledged "to providing data to enable the industry to analyse the effects of adopting user-centric licensing".[648] Recently, SoundCloud announced that it would trial what it calls fan-powered royalties for independent creators.[649]

182. In oral and written evidence, the major music groups were relatively agnostic about the introduction of user-centric payments, though did restate several critiques of the model. We note that Universal were most open to exploring alternatives, welcoming

639 Will Page (EMS0166)
640 Will Page (EMS0166); Association of Independent Music (EMS0285); Q353
641 Qq55–7; see also Q195 [Fiona Bevan]
642 Qq18–9 [Tom Gray]
643 Patreon, Inc. (EMS0110)
644 Creators' Rights Alliance (EMS0187); Q355
645 Dr Gary Sinclair (EMS0019); Professor David Hesmondhalgh (EMS0143)
646 Qq55–7, 161, 195, 353–6, 535, 590; Matthew Whiteside (EMS0022); Ben Sizer (EMS0050); Anna Neale (EMS0058); Dr Gareth Bonello (EMS0069); Just East of Jazz (EMS0079); Musicians' Union (EMS0080); Steve Farris (EMS0131); Verity Susman (EMS0136); All Party Parliamentary Jazz Appreciation Group (EMS0161); Christian Castle (EMS0165); Creators' Rights Alliance (EMS0187); The Ivors Academy of Music Creators (EMS0197); BMG (EMS0207); Incorporated Society of Musicians (EMS0223); Soundtrack Your Brand (EMS0228)
647 Qq535 [Raoul Chatterjee], 590 [Horacio Gutierrez]
648 Entertainment Retailers Association (EMS0081)
649 "SoundCloud goes user-centric with its 'fan-powered royalties'", Music Ally (2 March 2021)

"any proposal that maximizes fairness and transparency and supports market growth".[650] Sony, in both oral and written evidence, recommended caution, given that a user-centric approach necessarily would mean reallocating money from creators doing well through pro-rata to those that would do well through user-centric payments, and recommended "thorough and concerted impact assessments in order to establish an industry-wide support".[651] Both Sony and Warner did take the opportunity to assert in no uncertain terms that contractual agreements between industry and streaming services would not allow services to unilaterally change accounting methodologies without modifying license agreements.[652]

183. **The debate between the predominant pro-rata payment model and alternative methodologies such as user-centric has been compelling. It is positive that new services are inventing new and creative ways to address creators' and consumers' concerns about the fairness and transparency of creator remuneration from streaming. We are concerned, however, that current contractual agreements between the major music companies and streaming services have the potential to stifle further innovation if they are misused. *The CMA should consider in its case (recommended in paragraph 111) whether these agreements have the potential to (or indeed have already) prevented experimentation and innovation by streaming services.***

Livestreaming and digital music futures

184. As has been made clear throughout our inquiry, technological development has a significant impact on how music is consumed and, through initiatives such as the WIPO Internet Treaties and EU Directive on Copyright in the Digital Single Market, provokes concurrent (international) political responses to technology in turn. It is necessary to recognise that music consumption will not remain static and is likely to evolve as digital technology develops. As Nile Rodgers observed, "as the technology changes […], we should have a way of calculating that IP. We should have a way of understanding how the industry sets a price."[653]

185. One such change is already coming to the fore: the role of livestreaming as both a direct and indirect mode of music consumption. It is already becoming an area of contestation within the music industry and between the music and tech sectors. First, livestreaming offers new ways for performers to create music, given the reliance on live income. As Geoff Taylor, CEO of the BPI, posited, this has been further incentivised by the pandemic:

> livestreaming was not a huge business for artists in terms of concerts and obviously artists have had to get really creative about how they create new livestreams as a business model.[654]

Katherine Oyama, Director of Government Affairs and Policy at YouTube, described how livestreaming has been successful for some performers:

> We have been looking at livestreams. In the last couple of months, we have had livestream concerts—Blackpink is a good example. They just sold tickets

650 Universal Music UK & Ireland (EMS0281)
651 Sony Music UK & Ireland (EMS0280); Q277 [Jason Iley]
652 Sony Music UK & Ireland (EMS0280); Warner Music UK (EMS0279)
653 Q169
654 Q463

> to a live concert on YouTube. They sold out about 20 times the capacity of the O2 arena for one concert. I think Niall Horan did one recently in the UK from the Royal Albert Hall; he had about 150,000 customers, at maybe $20 each. It is about diversifying and looking at whether we can monetise livestreams more. A lot of artists are turning to their channels to sell their own merchandise, or even their own vinyl records. Some are experimenting with memberships on their channels. I think there will be more opportunities like that.[655]

Despite these opportunities, livestreaming has already provoked controversy within the music industry. In December 2020, PRS implemented a tariff on its members of eight to 17 percent on livestreams, an increase on its usual tariff of 4.2 percent for live shows, and announced flat fees for shows that generate less than £500 and £251 regardless of takings.[656] The move was subsequently criticised by industry groups for penalising grassroots performers and performer-songwriters and would not deliver the desired benefit to grassroots songwriters,[657] and PRS later backed down from its flat fee proposals.[658] In May 2021, PRS for Music was also criticised for a ten percent backdated livestream tariff "to support the live sector during its forced closure" on livestreams with revenues of over £1,500.[659] As livestreaming becomes more popular, with potential implications for the future of live music, these issues could continue to arise.

186. Second, as livestreaming continues to grow in other contexts, such as gaming, entertainment and other cultural sectors, so does the potential for copyright infringement. This could be an infringement by those creating the stream. In November 2020, for example, Twitch published a blog post responding to its own creators' frustrations regarding "a sudden avalanche of notifications" as "representatives for the major record labels started sending thousands of [Digital Millennium Copyright Act] notifications each week that targeted creators' archives, mostly for snippets of tracks in years-old Clips", of which more than 99 percent were for tracks that streamers were playing in the background of their streams.[660] However, this could also be infringement enabled by livestreaming (correctly licensed and legitimately used) content. As Geoff Taylor explained, this form of piracy is enabled by stream-ripping:

> At the same time, illegal streaming of live content, or illegal streams, weren't a huge part of the piracy problem. We have seen that tick up, but particularly what's called stream-rippers. Services like YouTube, which aggregate huge amounts of content, don't protect that content properly, and then you have these hostile applications called stream-rippers, on mobile devices, that will just turn a livestream into a download, effectively—so you have got that song for free, forever.[661]

187. **As technology continues to evolve, the Government must ensure that copyright law is fit for purpose and that appropriate mechanisms are in place for rightsholders to**

655 Q549
656 "UK music industry outraged over licence fee cost for live-streamed events", The Guardian (28 January 2021)
657 "Music industry hits back at new PRS tariffs for livestream performances", NME (28 January 2021)
658 "PRS for Music backs down on livestream licence fee plan", The Guardian (1 February 2021)
659 "PRS Issues a 10% Backdated Livestream Tariff—Not Everyone's So Thrilled With the 'Discount'", Digital Music News (7 May 2021)
660 Twitch, Music-Related Copyright Claims and Twitch (11 November 2020)
661 Q463

enforce their rights. The Intellectual Property Office must not be a passive witness but an active player, particularly in areas of systemic contestation between rightsholders or where rightsholders believe that their rights are being systematically infringed. ***We recommend that the Government set out a clear position on livestreaming, both regarding remuneration of rightsholders and the live sector and explain what actions it is taking to support rightsholders in tackling copyright infringement. It should also explain what it and the IPO are doing to identify emerging threats to rightsholders enabled or caused by new technologies.***

Annex 1: Glossary of terms

Table 1: Relevant glossary of terms

Term	Definition
Aggregator	An intermediary company that submits music to DSPs for companies.
AIE	Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual. A Spanish collecting society operating globally through 98 reciprocal agreements with collecting societies in 57 countries.
AIM	Association of Independent Music. A UK trade organisation for the independent music community, representing over 1000 independent record labels and associated businesses.
Assignment	Where rights ownership is transferred from one party to another.
Anglo-American Repertoire	Commonly refers to songs registered with collecting societies in the UK, Ireland, United States, Canada, Australia, New Zealand and South Africa.
Artist	Someone who performs the work written by a songwriter or composer during the recording of the track (see featured artist/ performer and non-featured artist/performer). Also referred to as a performer or recording artist.
Author	A catch-all term for composers and songwriters.
BPI	British Phonographic Industry Limited. A UK trade organisation representing the recorded music industry, including the three major record labels and over 400 independent record labels.
CMA	Competition and Markets Authority. The UK's competition regulator that works to promote competition for the benefit of consumers, both within and outside the UK.
CMO	Collective Management Organisation (see collecting society).
Collecting society	A non-governmental body created by copyright law or private agreement which licenses copyright works on behalf of the creators and engages in collective rights management. Also known as a copyright collective, copyright society, copyright collecting agency, licensing agency, copyright collecting society or collective management organisation (CMO).
Collective licensing	When rightsholders license their rights together as one entity, appointing a collecting society to enforce and administer these rights on their behalf. Often subject to additional regulation to address competition law concerns.
Collective rights management	The licensing of copyright and related rights by organisations acting on behalf of rightsholders.
Composer	Someone who writes music and lyrics for songs of any genre.
Compulsory licensing	When the law obliges rightsholders to provide a license to (a certain group of) licensees, usually managed by collecting societies.
Communication to the public	A form of copyright control exploited by broadcasters where there is "any communication to the public of their works by wire or wireless means".
Creator	A catch-all term referring to composers, songwriters, artists, performers and producers.
Distributor	An intermediary company that gets recorded music to relevant (physical and digital) markets.

Term	Definition
DSP	Digital Service Provider. In the music industry, a DSP is a company that provides digital music services, such as downloading and streaming.
ERA	Entertainment Retailers' Association. A UK trade organisation formed to act as a forum for the physical and digital retail and wholesale sectors of the music, video and videogames industries.
Equitable remuneration	A performer right where performers (including non-featured performers) enjoy an automatic, unalienable, non-transferable statutory right to share in recording revenues. The right to equitable remuneration only applies in certain circumstances, as established in the Copyright, Designs and Patents Act 1988.
FAC	Featured Artists' Coalition. A UK trade organisation representing the specific, collective rights and interests of featured artists, with a global membership of creators at all stages of their careers.
Featured artist/ performer	A performer whose name the performance or recording is released under, as opposed to a non-featured artist/performer. Record labels will sign deals with featured artists.
Freemium	A hybrid music streaming service that incorporates both a basic, ad-funded streaming service free of charge alongside one or more premium services offering additional or enhanced functionality.
IFPI	International Federation of the Phonographic Industry. A trade association that promotes the interests of the international recording industry worldwide. It has over 8,000 members across more than 70 countries.
IMPALA	Independent Music Companies Association. An international trade organisation for independent music companies. Formerly the Independent Music Publishers and Labels Association.
IMPEL	An international hub for independent music publishers who collectively license their mechanical rights to a wide range of streaming services.
IMPF	Independent Music Publishers' Forum. A trade association representing independent music publishers globally, based in Brussels. It has more than 90 members throughout the world including the leading independent music publishing companies in the UK.
Independent music company	A company which, together with the companies in its group, has less than five percent of the world market in recording and publishing.
Internet Association	A trade association that represents the global interests of over 40 of the world's internet companies.
Ivors Academy	A trade association representing professional songwriters and composers to support, protect and celebrate music creators, including through its internationally respected Ivors Awards. Formerly named the British Academy of Songwriters, Composers and Authors (BASCA). Now named for Ivor Novello, a Welsh composer and actor.
Making available right	A form of copyright control exploited by services (e.g. streaming services) where the user "may access [music] from a place and at a time individually chosen by them".
Major music company	A multinational company which, together with the companies in its group, has more than five percent of the world market in recording and publishing.

Term	Definition
Mechanical rights	How publishers refer to reproduction rights, particularly when exploited through the recording and distribution of songs.
MMF	Music Managers' Forum. A UK trade organisation with a membership of over 1,000 that engages, advises and lobbies industry associates and wider industry on issues that are relevant to music managers.
MPA	Music Publishers' Association. A UK trade organisation that represents the music publishing sector, acting on behalf of 240 members ranging from the UK's major music publishers to independents and start-ups and representing close to 4,000 catalogues.
MPG	Music Producers' Guild. A UK trade organisation representing and promoting the interests of all those involved in the production of recorded music, including music studios, producers, engineers, mixers, remixers, programmers and mastering engineers.
MU	Musicians' Union. A trade union for performers, songwriters and composers run by its 32,000 members.
Non-featured artist/performer	A performer who is only credited on a recording in small print, such as back-up singers or session musicians.
Performer	Someone who performs the work written by a songwriter or composer during the recording of the track (see featured artist/performer and non-featured artist/performer). Also referred to as an artist or recording artist.
Performer rights	The specific rights of performers over sound recordings of their performances that co-exist with the rights of the rightsholder where the performer does not own the relevant rights to their performance. This includes the right to equitable remuneration.
Performing rights	A specific copyright control regarding the public performance and communication of works.
PPL	Phonographic Performance Limited. A collecting society that collects royalties on behalf of over 110,000 record companies and performers. It licenses recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio). This includes when their recorded music is played around the world through a network of international agreements with other collecting societies.
PRO	Performing Rights Organisation. A collecting society that specifically focuses on performing rights.
PRS for Music	A collecting society that is responsible for the collective licensing of rights in the musical works of 150,000 composers, songwriters and publishers and an international repertoire of 28 million songs. The Mechanical-Copyright Protection Society (MCPS) collects for 'mechanical' reproduction rights and the Performing Right Society (PRS) collects for public performance rights.
Publisher	A music company that owns and controls song rights, so called because they historically published sheet music books.
Record label	A company that markets recorded music and corresponding videos, invests in new artists and enforces copyright, so called because of the circular label that appeared on the cover of physical sales. Also known as a record company.
Recording rights	Copyright in sound recording of a performance. Also known as master rights.

Term	Definition
Reproduction rights	A specific copyright control regarding the reproduction and distribution of works.
RIAA	Recording Industry Association of America. A trade organisation that represents the recorded music industry in the United States.
Safe harbour	A statutory limitation of financial and pecuniary liability for internet service providers (including music streaming services that host user-generated content) where the provider "has neither knowledge of nor control over the [infringing] information which is transmitted or stored".
Song rights	Copyright in the song lyrics and music.
Songwriter	Someone who writes music and lyrics for songs of any genre.
Streaming	The process whereby music multimedia is accessed by consumers over the internet.
Synchronisation (sync)	When film, TV and game producers incorporate music into audio-visual productions.
techUK	A UK trade association for technology companies with over 850 members.
UK Music	An industry-funded trade organisation established in October 2008 to represent the collective interests of the recorded, published and live arms of the British music industry.
Work	The underlying music composition, comprising music and lyrics.
Writer	A catch-all term for composers and songwriters.

Source: Dr Nicola Searle (EMS0041); IMPF, Independent Music Publishers International Forum (EMS0121); The Ivors Academy of Music Creators (EMS0197); IFPI (EMS0209); Chris Cooke, *Dissecting the Digital Dollar*, 3rd edition (Wrocław, 2020)

Annex 2: Music streaming service models

1) This annex will provide a broad overview of different ways to categorise streaming services to complement the discussions in Chapters 2 and 5.

Consumer pricing strategy

2) The majority of music streaming is accessible in one of two ways: through premium services, whereby users pay a (typically) monthly subscription, or through free services, which are funded by third-party advertising that is targeted to users by processing their personal data.[662] Basic premium services, such as Spotify, Apple Music, YouTube Music, Tidal Premium, Deezer Premium and SoundCloud Go+, typically cost £9.99, with student and family plans for £4.99 and £14.99 respectively (though Spotify has recently raised its student, duo and family plan prices to £5.99, £13.99 and £16.99 respectively).[663] Some services offer more granular premium tier structures with certain service restrictions (such as limits on track skipping, device registration and catalogue access for cheaper tiers) or extras (like high fidelity sound for more expensive tiers) to supplement the baseline premium offering.[664] Free services are typically more basic, with additional frictions for consumers such as audio and display adverts, usage-limits and online-only playback. Moreover, some services, like Spotify, Amazon, SoundCloud and YouTube, offer a 'freemium' pricing strategy, providing a hybrid service that incorporates both a basic streaming service (with the frictions described above) free of charge alongside one or more premium services offering additional or enhanced functionality.[665]

3) Whilst the free, premium and freemium pricing strategies are the most prevalent, some services are innovating either to leverage other services or differentiate themselves from their competitors. Amazon bundle a basic streaming service called Amazon Music Prime with their broader Amazon Prime subscription, which gives users on-demand ad-free music streaming of a limited catalogue of two million songs alongside shopping benefits and a video streaming offering.[666] Other platforms offer alternatives to the subscription model altogether. Resonate, a co-operatively run British music streaming service, has developed what it calls a 'stream2own' model, where users add credits to their account and pay a fee (starting at 0.002 cents), which doubles for every subsequent stream to a total of nine streams, after which a user will have paid approximately the same price as an Apple download (€1.022) and can then listen for no additional charge.[667] A Stoke-based start-up called Sonstream similarly charges micropayments every time a user listens to a song, which means that some users might pay significantly more or less than £9.99 depending on their usage.[668] Finally, the BBC, which is currently funded by the licence fee and the commercial income it generates through its subsidiaries BBC Studios, BBC Global News and BBC Studioworks, has also pivoted its own audio-only content to respond to the challenges of music streaming, offering both live and on-demand music, podcasts and speech through its BBC Sounds app.[669]

662 Dr Nicola Searle (EMS0041); Dr Gary Sinclair (EMS0019); DIUO (EMS0074)
663 "Spotify to increase prices for families and students", The Telegraph (27 April 2021)
664 Allison Noble (EMS0115); BBC (EMS0227)
665 Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133); Incorporated Society of Musicians (EMS0223)
666 Amazon, What is Amazon Music Prime?, accessed 26 March 2021
667 Resonate Co-operative (Resonate (Beyond Streaming) Ltd) (EMS0169)
668 Sonstream Ltd (EMS0154); Q27
669 Music Managers' Forum and Featured Artists' Coalition (EMS0128); BBC (EMS0227)

Consumer access

4) Most services considered in this Report, such as Spotify, Apple Music, Amazon Music, SoundCloud and Tidal, specialise in offering music consumption, be it through music streaming only or alongside a digital downloads store (as, for instance, in the case of Apple's integrated iTunes Store). YouTube (and YouTube Premium) exists as an outlier, as music streaming is largely incidental to its broader video-hosting service, despite the fact that it both dominates the music streaming market and offers its own bespoke music streaming service in YouTube Music. However, these services are all similar in that they offer all-you-can-eat streaming services to music consumers in some capacity (either for free or at a premium or both).[670] This means that consumers have access to a service's entire catalogue with little-to-no content restrictions or consumption limits placed upon them.

5) However, after over a decade of music streaming being available, alternatives to the all-you-can-eat model are beginning to emerge. Music streaming services are, for example, complimented by community-oriented services that allow users to consume the creative output of specific creators. Tech companies like Patreon and Bandcamp have allowed artists to create fan communities and monetise this fanbase independently of corporate partners by offering exclusive or early access to creative content, merchandise, and other benefits.[671] American artist Cardi B, for example, announced in August 2020 that she would be releasing behind-the-scenes content from her single 'WAP' on subscription service OnlyFans.[672] Finally, tech companies that offer social media services have also started exploring how they can offer digital music services as well. Major licensing agreements have been reached with social media services like Facebook, Instagram and Snapchat,[673] whilst Twitch, a video streaming platform owned by Amazon, and TikTok, the short-form video-sharing app, are reportedly also developing music content strategies.[674]

Content hosting

6) Most streaming platforms host recorded music that is commercially created and officially licensed from the music industry itself,[675] whether this is via record labels, aggregators and distributors or collecting societies (which represent rightsholders when they license music collectively to third parties). However, some platforms permit users to upload content themselves. This user-uploaded content (UUC) can either be user-generated content (UGC), which can be entirely original or incorporate commercially created audio and/or video (where this is permitted),[676] or otherwise straightforwardly a copy of commercially created content.[677] The distinction between the two models of content hosting is important. Sites that host UUC are exempted from legal liability for copyright infringement (among other things) unless and until they obtain "actual knowledge" of infringing activity, after which they must act expeditiously to remove or to disable access to the information.[678] In the European Union, these companies, along with

670 DIUO (EMS0074)
671 MIDiA Research (EMS0073); DIUO (EMS0074); Patreon, Inc. (EMS0110)
672 MIDiA Research (EMS0073)
673 Music Managers Forum and Featured Artists Coalition (EMS0128)
674 Will Page (EMS0166)
675 BPI (EMS0208)
676 Copyright, Designs and Patents Act 1988, sections 29–30A
677 BPI (EMS0208)
678 SCRIPT (EMS0205)

social media companies like Facebook and Twitch where music streaming is incidental to their overall service, will acquire new obligations under the European Union's Directive on Copyright in the Digital Single Market[679] as services that "store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes";[680] the UK Government has stated its intention not to implement the Directive in the near future.[681]

Types of content

7) Similarly, most music streaming services tend to be audio-only or audio and video. By contrast, companies that primarily offer social media services tend to allow video because music streaming is incidental to their broader service offering. By design, SoundCloud offers audio-only music streaming, whilst Spotify and Apple Music allow users to stream both audio-only tracks and official music videos where available. YouTube's basic service, by contrast, is video-only (and mobile users can only listen/watch with the app open), though its YouTube Premium service and YouTube Music premium tier allow for background/audio-only playback. This Report predominantly considers the economics of recorded music and music video. However, social media services like Twitch, YouTube and Facebook allow users to 'livestream' music performances, where media content is simultaneously recorded and broadcast in real-time. Livestreaming has become increasingly popular in response to the absence of live music due to social distancing and lockdown measures throughout the pandemic, with some artists hosting virtual gigs funded via off-platform 'ticket' sales.[682] Livestreaming may prompt another long-term change in music consumption as it becomes increasingly accessible and popular.[683]

Payment model

8) The dominant payment distribution model in the music streaming market is the 'pro-rata' system. Will Page, former chief economist at Spotify, explains that the pro-rata system "aggregates all consumption and spend from a country's subscriber population and distributes royalties to rights holders 'pro-rata' to their streams". Therefore, if one artist's tracks accounted for a specific share of all subscription streams in that country in that month, that artist would receive that share of all the streaming service's net distributable revenue from that country.[684] Page himself argues that whilst the system "is inherently fair insofar as it produces an efficient and transparent outcome where every stream is worth the same to the rights holder, and the model is relatively cost-efficient to manage", it does not account for the fact that "no two consumers necessarily value their streams equally—so those who stream more would effectively be subsidised by those who stream less".[685]

9) One alternative to this approach is the 'user-centric' payments system. Under a user-centric payment system, the revenue generated by each individual user is distributed to rightsholders on the basis of share of that user's own individual music consumption.[686] Artists, songwriters and industry professionals have all expressed support for user-centric

679 Directive (EU) 2019/790, Article 17
680 CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)
681 Qq750–2
682 YouTube (EMS0144)
683 MIDiA Research (EMS0073)
684 MIDiA Research (EMS0073)
685 MIDiA Research (EMS0073)
686 Professor David Hesmondhalgh (EMS0143); All Party Parliamentary Jazz Appreciation Group (EMS0161)

payments, or at least expressed an interest in undertaking further research.[687] However, record labels provided a more nuanced perspective on user-centric payments. Sony Music described it as "a very difficult conversation" because they have "different artists that favour the two different options" and as such "would be favouring one subset of artists over another".[688] Independent labels, meanwhile, ranged from broad opposition to caveated support: Yvette Griffith of Jazz Re:freshed posited that "user-centric not going to work for the indie sector", whilst Rupert Skellett of Beggars Group mused that "feels fairer to us philosophically" but was "not sure user-centric is a panacea".[689] During our inquiry, SoundCloud announced that it would introduce a user-centric payments system, albeit limited to independent and emerging artists.[690] French streaming service Deezer has previously expressed an interest in similarly introducing user-centric payments across its catalogue.[691] The Resonate Co-operative's 'stream2own' model and Sonstream's pay-per-stream model similarly function on a user-centric basis, as users pay based on their own usage.[692]

10) Another alternative is the 'artist growth' model proposed by the Association of Independent Music. This model values a track's streams in tiers on a log scale, where the first streams are the most valuable and subsequent streams are tiered as therefore paid incrementally less.[693] They argue that this would encourage labels to take greater risks on emerging creators, rather than consolidate around historically successful tracks.

11) Finally, jazz saxophonist, MC and composer Soweto Kinch discussed the potential for artist-centric models of music streaming, whereby artists "could offer something that is more bespoke to a listener, […] some higher-level broadcast quality, WAV files or some other level of interaction" as currently "there is no ability to set your own prices as an artist on streaming platforms".[694] Given the emergence of fan-based communities discussed above, we would be interested to see whether the market could produce and support a viable artist-centric service in future.

687 Qq54–9 [Tom Gray], 161 [Maria Forte], 195 [Fiona Bevan], 535 [Raoul Chatterjee], 590 [Horacio Gutierrez]; All Party Parliamentary Jazz Appreciation Group (EMS0161); Creators' Rights Alliance (EMS0187); The Ivors Academy of Music Creators (EMS0197); BMG (EMS0207)

688 Q277 [Jason Iley]

689 Qq352–5

690 "SoundCloud launches 'transformative' user-centric payments system", Music Week (2 March 2021)

691 "Deezer still pushing for user-centric payouts: 'We will continue fighting…'", Music Ally (1 October 2020)

692 Sonstream Ltd (EMS0154); Resonate Co-operative (Resonate (Beyond Streaming) Ltd) (EMS0169)

693 Association of Independent Music (EMS0271)

694 Q199

Conclusions and recommendations

The dominance of digital music

1. Streaming has undoubtedly helped save the music industry following two decades of digital piracy but it is clear that what has been saved does not work for everyone. The issues ostensibly created by streaming simply reflect more fundamental, structural problems within the recorded music industry. Streaming needs a complete reset. (Paragraph 41)

Creator remuneration

2. *We urge Universal and Warner to look again at the issue of unrecouped balances with a view to enabling more of their legacy artists to receive payments when their music is streamed.* (Paragraph 46)

3. The pitiful returns from music streaming impact the entire creative ecosystem. Successful, critically acclaimed professional performers are seeing meagre returns from the dominant mode of music consumption. Non-featured performers are frozen out altogether, impacting what should be a viable career in its own right, as well as a critical pipeline for new talent. Those that provide specialist support for creators, either based on commission or working as salaried staff as part of an artist's business or technical expertise, are also affected, meaning that fewer jobs will be sustained by an otherwise growing sector. (Paragraph 58)

4. The major music companies and independent record labels have consistently asserted that music streaming is straightforwardly 'making available', and therefore performers should be remunerated as though it was a sale. However, this classification does not consider the complexities of streaming that sets it apart from other modes of consumption. For example, it also has the characteristics of a rental and a broadcast, which are consumed by exploiting copyright controls that provide performers with a statutory right to equitable remuneration. Furthermore, this classification creates inconsistencies in comparison to the song rights. Finally, precluding the making available right from equitable remuneration does not capture the realities of costs associated with the distribution of digital music. *We recommend that the Government addresses these inconsistencies and incongruities by exploring ways to provide performers with a right to equitable remuneration when music is consumed by digital means.* (Paragraph 69)

5. The right to equitable remuneration is a simple yet effective solution to the problems caused by poor remuneration from music streaming. It is a right that is already established within UK law and has been applied to streaming elsewhere in the world. A clear solution would therefore be to apply the right to equitable remuneration to the making available right in a similar way to the rental right. As such, an additive 'digital music remuneration' payment would be made to performers through their collecting societies when their music is streamed or downloaded. This digital music remuneration would address the issues of long-term sustainability for professional performers and the cannibalisation of other forms of music consumption where equitable remuneration applies, whilst also retaining the benefits of direct licensing. (Paragraph 76)

6. *We recommend that the Government legislate so that performers enjoy the right to equitable remuneration for streaming income. Amending the Copyright, Design and Patents Act 1988 so that the making available right does not preclude the right to equitable remuneration, using the precedent set by the co-existence of the rental right and right to equitable remuneration in UK law, would be an effective solution. This would be relatively simple to enact and would appropriately reflect the diminished (and increasingly externalised) marginal costs of production and distribution associated with digital consumption. Furthermore, were the Government to do this by echoing existing UK law, this remuneration right would apply to the rightsholders (i.e. the record labels) rather than the streaming services.* (Paragraph 77)

7. Despite being an important part in the music creation and music streaming process, song rightsholders are not effectively remunerated for their work. *The Government should work with creators and the independent publishing sector to explore ways in which new and upcoming songwriters and composers can be supported to have sustainable careers and independent music publishers remain commercially viable. As part of this, and in the context of increasing digital music consumption through streaming, we urge them to consider how to ensure that the song is valued in parity with the recording. If necessary, the Government should bring forward legislative proposals alongside the introduction of equitable remuneration for performers proposed in paragraphs 76–7 to ensure that all creators benefit from these reforms.* (Paragraph 88)

8. Metadata issues compound the poor terms on which creators are remunerated. Whilst there is a significant challenge, it is not insurmountable. *First, the Government must oblige record labels to provide metadata for the underlying song when they license a recording to streaming services. Second, it should push industry by any means necessary to establish a minimum viable data standard within the next two years to ensure that services provide data in a way that is usable and comparable across all services. Third, it should work with industry to end the practice of distributing black boxes pro rata and, instead, place obligations on collecting societies that mean that this revenue is reinvested in the industry, such as to support creative talent and or develop solutions to revenue distribution issues. The Government should concurrently commission an exploratory audit of black boxes to achieve greater clarity as to what is genuinely impossible to allocate and what is mis- or un-allocated due to a lack of will. Finally, the Government should explore the practicalities of creating or commissioning a comprehensive musical works database and task the IPO with co-ordinating industry work on a registration portal so that rightsholders can provide accurate copyright data to necessary stakeholders easily.* (Paragraph 94)

9. The licensing and royalty chains of song rights causes considerable confusion and complexity to the system, and songwriters and composers pay the price. There is no single solution to create more efficient and timely royalty chains but the Government can work with industry to facilitate this. *The Government should require all publishers and collecting societies to publish royalty chain information to provide transparency to creators about how much money is flowing through the system and where problems are arising. This should be done periodically, and in a way that is practical and useful to other stakeholders, including other collecting societies and publishers. It should also require publishers and collecting societies to put in place efficient, practical alert systems to inform creators and representatives about data*

conflicts. Finally, the Government should leverage the size of the UK market to explore how global licensing deals could be made possible by policymakers around the world, including in trade deals, which would support creators both domestically and abroad. (Paragraph 97)

The market for music rights

10. There is no doubt that the major music groups currently dominate the music industry, both in terms of overall market share in recording and (to a lesser extent) in publishing, but also through vertical integration, their acquisition of competing services and the system of cross-ownership. *We recommend that the Government refer a case to the Competition and Markets Authority (CMA), to undertake a full market study into the economic impact of the majors' dominance (see paragraphs 129, 134 and 183 for further recommendations). The Government must also provide the CMA with the resources and staffing to undertake this case to ensure that it can dedicate the necessary resources to this work whilst not impacting the pre-existing work it is currently undertaking.* (Paragraph 111)

11. The Government must make sure that UK law is not enabling the outcome of market dominance. This means that independent labels must be supported to challenge the majors' dominance and creators must be empowered to offset the disparity in negotiating power when signing with music companies. *The Government should expand support for the Music Export Growth Scheme to allow British music companies to compete with the multinational majors and provide the resources needed for them to survive and thrive in export markets. This scheme must be appropriately targeted at independent British companies. To prevent the further acquisition of successful rights by the majors and ensure greater competition, the Government and BPI should also place clauses in grant funding awards that a company or artists' rights cannot be acquired by the major music companies for a certain period of time. Moreover, the Government should bring forward proposals for a focused fiscal incentive for the independent music sector, similar to that which exists in TV, animation, film, theatre and gaming.* (Paragraph 122)

12. *We recommend that the Government concurrently expand creator rights by introducing a right to recapture works and a right to contract adjustment where an artist's royalties are disproportionately low compared to the success of their music into the Copyright, Designs and Patents Act 1988. These rights already exist elsewhere, such as in the United States, Germany and the Netherlands, and would give creators greater leverage when negotiation contracts with music companies. We suggest that the right to recapture should occur after a period of twenty years, which is longer than the periods where many labels write off bad debt but short enough to occur within an artist's career. This would create a more dynamic market for rights and allow successful artists to go to the market to negotiate better terms for their rights. The right to contract readjustment should similarly be implemented as soon as practically possible to ensure that rights for UK creators do not fall behind rights for European creators.* (Paragraph 123)

13. Despite the general consensus that direct licensing between the record industry and streaming services is positive, there are ongoing concerns about the majors'

position in negotiation, which allows them to benefit at the expense of independent labels and self-releasing artists, particularly regarding playlisting. This is further evidence that a referral to the CMA is needed (as recommended in paragraph 111). (Paragraph 129)

14. As long as the major record labels also dominate the market for song rights through their publishing operations, it is hard to see whether the song will be valued fairly as a result. It is well-evidenced that redressing the disparities in relative value between the song and recording has occurred infrequently in the last few decades. Whilst the major music groups dominate music publishing, there is little incentive for their music publishing interests to redress the devaluation of the song relative to the recording. In its reference to the CMA (as recommended in paragraph 111), the Government should urge the CMA to consider how the majors' position in both recording and publishing has influenced the relative value of song and recording rights. *In its reference to the CMA (as recommended in paragraph 111), the Government should urge the CMA to consider how the majors' position in both recording and publishing has influenced the relative value of song and recording rights.* (Paragraph 134)

15. Artists and their representatives face a systemic lack of transparency from both music companies and the streaming services that license their works. This exacerbates the inequities of creator remuneration by creating information asymmetries and preventing them from undertaking their right to audit. Creators and their representatives have a right to know about the terms on which their works are exploited and verify the outcome of these agreements. It is also deeply concerning that this norm is challenging academic research efforts, including and in particular taxpayer-funded projects, despite efforts to positively engage music companies and streaming services in this endeavour. (Paragraph 139)

16. The Government has repeatedly told us that it will not implement in UK law provisions akin to those established by the Directive on Copyright in the Digital Single Market. We accept that the Directive is not a silver bullet to the music industry's problems, but it is a step in the right direction in terms of protections and rights for rightsholders. *The Government should ensure that creators in the UK are not worse served that they would have been had the UK remained in the European Union. As a minimum, the Government should introduce a right for performers (or their representatives) to have sight of the terms of deals where their works are licensed, on request and subject to non-disclosure. There should also be notification requirements, requiring relevant parties to provide clear information and guidance to creators about the terms and structures of every deal where creators' works are licensed, sold or otherwise made available, and the means and methods by which monies that are being distributed to them are calculated, reported and transferred.* (Paragraph 142)

The music streaming market

17. Music curators play an important role in the discovery and consumption of digital music and are influential in how creators are remunerated. It is, therefore, unsurprising that music creators are putting more resources into catching the eye of these curators. *Where curators are paid or receive benefits in kind for playlisting,*

we recommend that they are subject to a code of practice developed by the Advertising Standards Authority, similar to social media influencers, to ensure that the decisions they make are transparent and ethical. (Paragraph 151)

18. Algorithms are fundamental to the operation of streaming services. However, many questions remain about how they influence music consumption and how much oversight exists. *The Government should commission research into the impact of streaming services' algorithms on music consumption, including where creators are forgoing royalty payments in exchange for algorithmic promotion.* (Paragraph 153)

19. The market for streaming services itself is fiercely competitive. However, there is the potential that companies may leverage other aspects of their business or elsewise use vertical integrations to gain a competitive advantage; indeed, some jurisdictions have considered that this is already happening in some areas. It is important that the UK has a regulatory regime to respond to these challenges. We are encouraged that the CMA has already launched its Digital Markets Unit, which is undertaking important work in this area within the scope of the CMA's current powers, but to ensure proper compliance the DMU needs to be put on a statutory basis as soon as possible. *The Government should launch its consultation on the new pro-competition regime for digital markets by the time it has responded to this Report and commit to a reasonable timeframe (to which it can be held accountable) for when it reasonably expects legislation to be brought forward thereafter.* (Paragraph 159)

20. *The Government must ensure that the challenges posed by music streaming to the UK's prominence regime are duly considered.* (Paragraph 160)

21. Safe harbour provisions that have been transposed into UK law have profoundly impacted the market for digital music consumption. YouTube's dominance of the music streaming market shows that the market has tipped. Safe harbour gives services that host user-generated content (UGC) a competitive advantage over other services and undermine the music industry's leverage in licensing negotiations by providing UGC-hosting services with broad limitations of liability. This has suppressed the value of the digital music market both in real and absolute terms even as these services generate multi-billion-dollar advertising revenues. (Paragraph 171)

22. We note that the CMA has developed a pro-competition framework for tech companies with 'strategic market status' that dominate digital markets. *The CMA should consider exploring designating YouTube's streaming services as having strategic market status to encourage competition with its products.* (Paragraph 172)

23. As we have acknowledged, the Government has repeatedly told us that it will not implement the Directive on Copyright in the Digital Single Market. However, to ensure that music creators and companies prosper in the globally important UK music market, the Government must provide protections for rightsholders that are at least as robust as those provided in other jurisdictions. *As a priority, the Government should introduce robust and legally enforceable obligations to normalise licensing arrangements for UGC-hosting services, to address the market distortions and the music streaming 'value gap'. It must ensure that these obligations are proportionate so as to apply to the dominant players like YouTube but does not discourage new entrants to the market. It must also ensure that existing obligations*

are being enforced as appropriate, and detail in its Response how it plans to address the recording industry's concerns regarding the enforcement of existing 'know your business customer' obligations. (Paragraph 178)

24. The debate between the predominant pro-rata payment model and alternative methodologies such as user-centric has been compelling. It is positive that new services are inventing new and creative ways to address creators' and consumers' concerns about the fairness and transparency of creator remuneration from streaming. We are concerned, however, that current contractual agreements between the major music companies and streaming services have the potential to stifle further innovation if they are misused. *The CMA should consider in its case (recommended in paragraph 111) whether these agreements have the potential to (or indeed have already) prevented experimentation and innovation by streaming services.* (Paragraph 183)

25. As technology continues to evolve, the Government must ensure that copyright law is fit for purpose and that appropriate mechanisms are in place for rightsholders to enforce their rights. The Intellectual Property Office must not be a passive witness but an active player, particularly in areas of systemic contestation between rightsholders or where rightsholders believe that their rights are being systematically infringed. *We recommend that the Government set out a clear position on livestreaming, both regarding remuneration of rightsholders and the live sector and explain what actions it is taking to support rightsholders in tackling copyright infringement. It should also explain what it and the IPO are doing to identify emerging threats to rightsholders*

enabled or caused by new technologies. (Paragraph 18

Formal minutes

Thursday 8 July 2021

Members present:

Julian Knight, in the Chair

Kevin Brennan

Steve Brine

Julie Elliott

Rt Hon Damian Green

Rt Hon Damian Hinds

Heather Wheeler

Draft Report (*Economics of music streaming*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 187 read and agreed to.

Summary agreed to.

Annexes agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134.

Adjournment

Adjourned till Tuesday 13 July 2021 at 9.30 am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 24 November 2020

Tom Frederikse, Partner, Clintons Solicitors; **Tom Gray**, Founder, #BrokenRecord Campaign, and vocalist, guitarist and songwriter, Gomez; **Colin Young**, streaming auditor and accountant, CC Young & Co — Q1–69

Guy Garvey, Singer and songwriter, Elbow, and BBC 6 Music presenter; **Ed O'Brien**, Guitarist, Radiohead, songwriter, singer and musician; **Nadine Shah**, Singer, songwriter and musician — Q70–110

Tuesday 8 December 2020

Maria Forte, Managing Director, Maria Forte Music Services Ltd; **Kwame Kwaten**, Manager, record producer and owner, Ferocious Talent; **José Luis Sevillano**, Director General, Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) — Q111–164

Fiona Bevan, Singer and songwriter; **Soweto Kinch**, Jazz alto-saxophonist and rapper; **Nile Rodgers**, Songwriter, producer and artist — Q165–202

Tuesday 19 January 2021

Peter Leathem, Chief Executive, Phonographic Performance Ltd; **Andrea Martin**, Chief Executive, PRS for Music — Q203–237

Tony Harlow, Chief Executive, Warner Music UK; **Jason Iley**, Chairman and Chief Executive, Sony Music UK & Ireland; **David Joseph**, Chairman and Chief Executive, Universal Music UK & Ireland — Q238–330

Thursday 4 February 2021

Yvette Griffith, Co-Chief Executive and Executive Director, Jazz Re:freshed; **Paul Pacifico**, Chief Executive, Association of Independent Music; **Rupert Skellett**, General Counsel, Beggars Group — Q331–416

Wednesday 10 February 2021

Roberto Neri, Chair, Music Publishers Association; **Geoff Taylor**, Chief Executive, BPI — Q417–489

Graham Davies, Chief Executive, Ivors Academy; **Horace Trubridge**, General Secretary, Musicians' Union — Q490–527

Steve Bené, General Counsel, Twitch; **Raoul Chatterjee**, Vice President for Content Partnerships, Soundcloud; **Katherine Oyama**, Director, Government Affairs & Public Policy, YouTube — Q528–579

Tuesday 23 February 2021

Paul Firth, Director of International Music, Amazon; **Horacio Gutierrez**, Head of Global Affairs and Chief Legal Officer, Spotify; **Elena Segal**, Global Senior Director of Music Publishing, Apple Inc — Q580–709

Monday 22 March 2021

Caroline Dinenage MP, Minister for Digital and Culture, Department for Digital, Culture, Media and Sport; **Amanda Solloway MP**, Minister for Science, Research and Innovation, Department for Business, Energy and Industrial Strategy; **Robert Specterman-Green**, Director of Media and Creative Industries, Department for Digital, Culture, Media and Sport; **Tim Moss**, Chief Executive, Intellectual Property Office Q710–787

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

EMS numbers are generated by the evidence processing system and so may not be complete.

1 #BrokenRecord Campaign (EMS0218)

2 #PayPerformers (EMS0064)

3 Adams, Neil; Sarah Ramage; Caleb Evans; and Paul Deacon (EMS0225)

4 AEPO-ARTIS (EMS0051)

5 All Party Parliamentary Jazz Appreciation Group (EMS0161)

6 Amazon (EMS0289)

7 Anderson, Isaac (EMS0101)

8 Anonymous, (EMS0199)

9 Antal, Daniel; Amelia Fletcher; and Peter Ormosi (EMS0286)

10 Apple (EMS0290)

11 Archer, Iain (EMS0190)

12 Arqiva (EMS0116)

13 Artistas Intérpretes o Ejecutantes, Entidad de Gestión de Derechos de Propiedad Intelectual (AIE) (EMS0133)

14 Association of Independent Music (EMS0285)

15 Association of Independent Music (EMS0271)

16 Association of Independent Music (EMS0157)

17 BBC (EMS0227)

18 BECS (EMS0113)

19 BMG (EMS0207)

20 BPI (EMS0282)

21 BPI (EMS0208)

22 Baron, Mr Chris (EMS0222)

23 Basho Records (EMS0148)

24 Beggars Group Limited (EMS0047)

25 Bennett, Gordon (EMS0245)

26 Bird, Henry (EMS0132)

27 Blakey, Mr Colin (EMS0255)

28 Bolt, Miss Rachel (Freelance viola player, Rachel S Bolt Ltd) (EMS0070)

29 Bonello, Dr Gareth (EMS0069)

30 Boorman, Mr Phil (EMS0024)

31 Bosher, Dr Hayleigh (EMS0254)

32 Bourne, Robert (EMS0291)

33 Bournemouth University (EMS0048)

34 Brassroots (EMS0252)

35 British Copyright Council (EMS0139)

36 Brocklebank, MR Aubrey (EMS0211)

37 Bucknall, Mr Francis (EMS0247)

38 Bucks Music Group Limited (EMS0269)

39 CC Young & Co Limited (EMS0077)

40 CMU (EMS0183)

41 CREATe: UK Copyright and Creative Economy Centre, University of Glasgow (EMS0189)

42 Cain, Marcus (EMS0049)

43 Cameron, Mr Iain (EMS0015)

44 Castle, Christian (EMS0165)

45 Clarke, Ms Josienne (EMS0159)

46 Clews, David (EMS0089)

47 Cognizant (EMS0134)

48 Coldea, Horatiu (EMS0263)

49 Council of Music Makers; Featured Artists Coalition (FAC); Ivors Academy; Music Managers' Forum (MMF); Music Producers' Guild (MPG); and Musicians' Union (MU) (EMS0172)

50 Creators' Rights Alliance (EMS0187)

51 Cronshaw, Andrew (EMS0035)

52 DIUO (EMS0074)

53 Dalton, Mr Morgan (EMS0060)

54 Davies-Patrick, Mr Nigel (EMS0005)

55 Davis, Mr Snake (EMS0082)

56 Dean-Revington, Mr AJ (EMS0192)

57 Deegan, Rik (EMS0117)

58 Department for Business, Energy and Industrial Strategy (EMS0288)

59 Department for Digital, Culture, Media and Sport (EMS0078)

60 Digital Media Association (DiMA) (EMS0233)

61 Donovan, Florence (EMS0065)

62 Entertainment Retailers Association (EMS0081)

63 Equity (EMS0173)

64 Farris, Mr Steve (EMS0131)

65 Fenn, Mr Adam (EMS0180)

66 Firman, Mr Robin (EMS0017)

67 Flavell, Mr Roger (EMS0042)

68 Foakes, Mr Kevin (EMS0240)

69 Foster, Miss Kadian (EMS0168)

70 Fran, Mr (EMS0105)
71 Garratt, Mr Loz (EMS0258)
72 Garrett, Dr Steve (EMS0045)
73 Garvey, Mr Guy (EMS0138)
74 Gavan, Ali (EMS0026)
75 Generator North East Ltd (EMS0171)
76 Green, Martin (EMS0127)
77 Guirey, Mr Sagat (EMS0220)
78 HHMUSIC LLP (EMS0248)
79 Hamer-Hodges, Mr Anthony (EMS0206)
80 Hamilton, (EMS0262)
81 Harwood, Mr Chris; Angus Mansell; Lewis Harwood; and Joe Jenner (EMS0224)
82 Haslam, Mr Elliott (EMS0151)
83 Henry, Mr Julian (EMS0137)
84 Herbert, Dr Matthew (EMS0097)
85 Herlihy, MR Gavin (EMS0001)
86 Hesmondhalgh, Professor David (EMS0143)
87 Hickman, Mr Matthew (EMS0100)
88 Hipgnosis Songs Fund Limited (EMS0237)
89 Hughes, Ed (EMS0033)
90 Humphreys, Fenella (EMS0124)
91 IFPI (EMS0209)
92 IMPF, Independent Music Publishers International Forum (EMS0121)
93 International Federations of Musicians (FIM) (EMS0025)
94 Incorporated Society of Musicians (EMS0223)
95 Internet Association (EMS0164)
96 Irish Music Rights Organisation CLG (EMS0162)
97 Jana, Ashley (EMS0011)
98 Jones, Mr Daniel (EMS0261)
99 Julian, Oliver (EMS0219)
100 Just East of Jazz (EMS0079)
101 Kirkland, Ms Wendy (EMS0037)
102 Lasky, Simon (EMS0274)
103 Leaone, (EMS0054)
104 Lee, Mr Mark Christopher (EMS0241)
105 Lee, Mr Wayne (EMS0167)
106 Lindvall, Helienne (EMS0112)
107 MIDiA Research (EMS0073)

108 MN2S Label Services (EMS0055)
109 MacRae, Stuart (EMS0053)
110 Madness (EMS0174)
111 Magill, Mr Joshua (EMS0153)
112 Mathers, Dave (EMS0092)
113 McCall, Mr Ian (EMS0006)
114 McCambridge, Mr Mark (EMS0111)
115 McConville, Mr Davo (Musician, Freelance) (EMS0214)
116 McNaughton, Drew (EMS0099)
117 Medcraft, Tim (EMS0266)
118 Media IP Rights Ltd (EMS0103)
119 Menzies, Mr Mark (EMS0020)
120 Mike Purton Recording Services (EMS0056)
121 Millwood, Dr Sasha Valeri (EMS0275)
122 Mitchell, Madeleine (EMS0106)
123 Mogis, Dr Jay (EMS0256)
124 Moore, Mr Garret (EMS0108)
125 Murphy (EMS0268)
126 Music Managers Forum; and Featured Artists Coalition (EMS0128)
127 Music Producers Guild (EMS0202)
128 Musicians' Union (EMS0257)
129 Musicians' Union (EMS0080)
130 NMC Recordings Limited (EMS0251)
131 Napier, MR Findlay (EMS0016)
132 Neale, Anna (EMS0058)
133 Neilson, Mr Isaac (EMS0201)
134 Nelson, Dr Simon (EMS0023)
135 Newman, Joe (EMS0083)
136 Ninja Tune Limited (EMS0063)
137 Noble, Allison (EMS0115)
138 NutCase Theatre Limited (EMS0260)
139 OCL (One Click Licence Ltd) (EMS0043)
140 One Media iP PLC (EMS0182)
141 Ormosi, Dr Peter; and Dr Franco Mariuzzo (EMS0076)
142 Oxer, MR Peter (EMS0031)
143 PRS for Music (EMS0158)
144 Pace, Mr Elio (EMS0175)
145 Page, Mr Will (EMS0166)

146 Parker, Mr Andrew (EMS0095)

147 Parker, Mr Niall (EMS0267)

148 Patreon, Inc. (EMS0110)

149 Peixe, Igor (EMS0059)

150 People Music Promotions (EMS0052)

151 Phonographic Performance Ltd (EMS0292)

152 Phonographic Performance Ltd (EMS0278)

153 Pure Records (Yorkshire) Ltd (EMS0210)

154 Rees, Mr Huw (EMS0004)

155 Reith, Ms Angela (EMS0029)

156 Resonate Co-operative (Resonate (Beyond Streaming) Ltd) (EMS0169)

157 Richards, Tim (EMS0221)

158 Rixhon, Mr Philippe (EMS0146)

159 Robertson, Mr Gordon (EMS0216)

160 Ruddy, Andy (EMS0094)

161 SCRIPT (a law and technology research centre based at Edinburgh Law School within the University of Edinburgh) (EMS0205)

162 Sagna, Ibrahima (EMS0039)

163 Scottish Trades Union Congress (STUC) (EMS0231)

164 Seamless Entertainment (EMS0242)

165 Searle, Dr Nicola (EMS0041)

166 Shaw, Malcolm (EMS0246)

167 Sheehan, Ms Renee (EMS0195)

168 Shilling, Mr Lindsay (EMS0044)

169 Sinclair, Dr. Gary (EMS0019)

170 Sizer, Ben (EMS0050)

171 Slavid, Peter (EMS0002)

172 Smith, Mr Bill (EMS0084)

173 SonicData Limited (EMS0283)

174 Sonstream Ltd (EMS0154)

175 Sony Music UK & Ireland (EMS0280)

176 SoundSurf (EMS0007)

177 Soundtrack Your Brand (EMS0228)

178 Spotify (EMS0287)

179 Starkey, Mr Jonathan (EMS0142)

180 Sun, Dr Hyojung; Prof. David Hesmondhalgh; and Dr Richard Osborne (EMS0149)

181 Susman, Verity (EMS0136)

182 Sweetinburgh, Mr Joe (EMS0243)

183 Sweetinburgh, Mr Joe (EMS0239)
184 Taylor, Ms Kirstian (EMS0198)
185 techUK (EMS0276)
186 Thacker, Simon (EMS0040)
187 The F-List for Music CIC (EMS0119)
188 The Ivors Academy of Music Creators (EMS0277)
189 The Ivors Academy of Music Creators (EMS0197)
190 The Music Publishers Association (EMS0179)
191 The state51 Music Group (EMS0203)
192 Tombling, Mr Chris (EMS0093)
193 Tong, Matthew (EMS0155)
194 Tru Thoughts (EMS0091)
195 Tyree Records LTD (EMS0181)
196 Universal Music UK & Ireland (EMS0281)
197 Verity, Thomas (EMS0152)
198 Warner Music UK (EMS0284)
199 Warner Music UK (EMS0279)
200 Wayte, Dr Gavin (EMS0200)
201 Webster, Jon (EMS0102)
202 West, Mr Jamie (EMS0250)
203 Whiteside, Mr Matthew (EMS0022)
204 Whitten, Mr Chris (EMS0096)
205 Wierzbicka, Miss Natalia (EMS0160)
206 Wilkinson, Tim (EMS0259)
207 Williams, Luke (EMS0191)
208 Willis (EMS0186)
209 Willowhayne Records Ltd (EMS0067)
210 Woodroffe, Pete (EMS0018)
211 Woollcombe, Mr John (EMS0185)
212 YouTube (EMS0144)
213 Young, Mr John (EMS0087)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021–22

Number	Title	Reference
1st	The future of UK music festivals	HC 49

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Number	Title	Reference
1st	The Covid-19 crisis and charities	HC 281
2nd	Misinformation in the Covid-19 Infodemic	HC 234
3rd	Impact of Covid-19 on DCMS sectors: First Report	HC 291
4th	Broadband and the road to 5G	HC 153
5th	Pre-appointment hearing for Chair of the BBC	HC 1119
6th	The future of public service broadcasting	HC 156
1st Special	BBC Annual Report and Accounts 2018–19: TV licences for over 75s Government and the BBC's Responses to the Committee's Sixteenth Report of Session 2017–19	HC 98
2nd Special	The Covid-19 crisis and charities: Government Response to the Committee's First Report	HC 438
3rd Special	Impact of Covid-19 on DCMS sectors: First Report: Government Response to Committee's Third Report	HC 885
4th Special	Misinformation in the Covid-19 Infodemic: Government Response to the Committee's Second Report	HC 894