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Digital, Culture, Media and Sport Committee

Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report

Second Special Report of Session 2021–22

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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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Contacts

All correspondence should be addressed to the Clerk of the Digital, Culture, Media and Sport Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6188; the Committee's email address is dcmscom@parliament.uk.

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Second Special Report

On 9 July 2021, the Digital, Culture, Media and Sport Committee published its Second Report of Session 2021–22, *Economics of music streaming* (HC 50). The Government and Competition and Markets Authority Responses were received on 15 September 2021. Both responses are appended below.

Appendix 1: Government Response

The publication of the Committee's report is a key moment for the music industry. The Government welcomes it and thanks the Committee, and all those who contributed to its inquiry, for its work. This is a welcome opportunity to reflect on the relationships between artists, record labels and streaming platforms, and the role of the Government in supporting a thriving music industry.

The rise of digital technology has had a profound impact on the recorded music industry. It has made it easier for artists to record music and make it available online and has transformed how creators earn their income. It has also made music more accessible to consumers than ever before. On-demand streaming is now the main source of revenue for the recorded music industry in the UK. But, as the Committee's report highlights, many music creators are calling for reforms because they feel that they do not get a fair deal from streaming.

The Government will shortly publish the "Creators' Earnings in the Digital Age" research, which was commissioned by the Intellectual Property Office. It is the most comprehensive study of music creators' earnings ever completed in the UK and shows that the rise of streaming has brought great benefits to consumers and the music industry. Music lovers have access to a far wider range of music than ever before. Revenues from streaming continue to grow, and it has been central to the industry's recovery, with revenues approaching their pre-filesharing peak of 2001. There are also more music creators who can release their music.

But although overall music revenues are growing, many more creators are competing for a share of them, and there are many different and strongly-held views about how streaming revenue should be split to ensure fair outcomes. There is also concern that our regulatory frameworks, including copyright, have not kept pace with the changes brought about by streaming.

The evidence generated from the inquiry, the Committee's report and the independent creators' earnings research have provided invaluable insights into the streaming environment. They show that there is still work to be done to understand the problems musicians are facing, and what impacts the various solutions proposed might have on them and the wider music industry. More targeted research and evidence is needed before the Government can decide what action it should take on some of the issues highlighted by the Committee.

To this end, the Government will continue working closely with music creators, record labels, and streaming services to develop a work programme that includes the following measures:

- Establishing a music industry contact group with senior representatives from across the music industry. This group will convene this autumn and meet regularly over the next 12 months to drive action and examine stakeholder views on the key issues, including equitable remuneration, contract transparency, and platform liability rules introduced by the EU. This will complement separate ongoing work with industry to address broader welfare issues, such as bullying, harassment and discrimination, in the creative industries.

- Launching a research programme, alongside stakeholder engagement, in autumn 2021, with a progress update in spring 2022.

- Establishing two technical stakeholder working groups during the autumn of 2021. The first will work to agree standards for contract transparency and establish a code of practice for the music sector, and the second will address data issues and develop minimum data standards for the industry. Both will be expected to update on progress after six months. We will also commission and publish an industry guide on data management in the music industry.

Full details of these measures are in the relevant sections of this report. Next spring, the Government will take stock of its progress. It will update the music industry contact group and consider whether to take forward legislation in any areas. This review process will be repeated in the autumn of 2022.

The Government will also publish the IPO's IP Crime and Infringement Reduction Strategy, as well as the results of research assessing the use of Artificial Intelligence to combat IP infringement.

In its report the Committee outlined a series of concerns around the possible market dominance of the major music groups and the potential for contractual agreements between them and streaming services to stifle innovation in the streaming market.

The Government has directed the Committee's recommendation for a market study into these issues to the Competition and Markets Authority (CMA). As an independent competition authority, it is for the CMA to decide how best to use its resources to deliver its objectives in making markets work well for consumers and businesses. While remaining mindful of this, DCMS Minister of State for Digital and Culture, Caroline Dinenage MP, and BEIS Minister for Science, Research and Innovation, Amanda Solloway MP, have written to Dr Andrea Coscelli, the Chief Executive of the CMA, to request that the CMA gives consideration to the Committee's recommendation.

Responses to recommendations

Fair remuneration for creators and performers

Recommendation 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.

Recommendation 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.

The Government notes the evidence presented to the Committee that the contractual arrangements between performers, labels and platforms appear to disadvantage some players in the streaming environment. This is corroborated by the Creators' Earnings research. It highlights the complexity of artists' remuneration, which is compounded by a lack of transparency. It shows that earnings from streaming are distributed unevenly, with the largest share going to recording rightsholders, and the most popular artists receiving a much greater share of streaming revenue than lesser-known artists.

Many music creators believe these revenue shares are unfair, and that the proportion being paid to them should increase. Our research suggests that a sustained achievement of around 1 million UK streams per month may be a minimum threshold for making a sustainable living out of music (alongside other sources of income). However, as the research notes, rewards in the music industry have long been skewed towards the most popular artists. Record companies justify their earnings based on their investment in the industry, including the significant risks they take on when signing new talent.

The Committee recommends legislation on equitable remuneration to improve performers' income. Many testimonies to the inquiry noted that this type of change might not be in the interests of all performers and could result in lower revenues for some. For example, some featured artists may receive better revenue under the current arrangement than they might under an equitable remuneration right. This suggests that changes could have significant impacts which are difficult to predict and must be investigated and better understood.

This is a complex area and the Government takes the concerns of music creators seriously. This is why we are launching work to better understand issues of fairness in creator and performer remuneration. As part of this work the Government will assess different models, such as equitable remuneration and the artist growth model, to explore how they are likely

to affect different parts of the music industry and how they might be achieved, including through potential legislation. It will also explore these issues through engagement with our music industry contact group and expects to update on progress in spring 2022.

Recommendation 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 [of the Committee's report] to ensure that all creators benefit from these reforms.

The Government agrees that song rightsholders are an important part of the music creation and music streaming process. As such, it wants to explore ways in which new and upcoming songwriters, composers and independent publishers can be better supported whilst ensuring it does not undermine the ability of the various players in the streaming environment to freely enter into commercial agreements.

To this end, as part of its wider work on fair outcomes in the music industry, the Government will bring together industry representatives to take views on these issues and inform any future action.

Recommendation 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 negotiating 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.

As with the Committee's recommendation on equitable remuneration, the Government considers that the impacts of these proposed new rights are uncertain and warrant further analysis. Evidence from the Netherlands on the contract adjustment mechanism suggests that it may have little impact in practice, partly because many creators and/or performers choose not to enforce the right against their contractual counterparts.

The Government will commission research on these issues, particularly into countries that have implemented similar measures. This will help to build the evidence base and improve our understanding of the impacts of such rights, which will inform whether and how to take them forward. We expect to update on our progress in spring 2022.

Transparency

Recommendation 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.***

Recommendation 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 than 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.

The Government recognises that transparency in the streaming sector is an issue and that action in this area could be of significant benefit to musicians. The Government's view is that this is an issue that the industry can, and should, seek to fix itself.

To improve transparency for the benefit of musicians, the IPO will convene an industry-led technical working group, with the aim of agreeing standards for transparency in the industry. These discussions would draw on experiences of transparency standards in other countries, including those introduced in EU countries under the recent Directive on Copyright in the Digital Single Market. These standards could then form part of a voluntary code of practice for the music sector. The technical working group will be expected to report on their progress after 6 months. If the Government considers that this process is not leading to a satisfactory outcome, it will consider whether legislative intervention is warranted.

The Government will not be taking forward the recommendation that it should require all publishers and collecting societies to publish royalty chain information. This is because it questions whether this approach is feasible or practical: these parties are unlikely to have oversight of the entire chain, so will not be in a position to publish all of this information. Collective management organisations (CMOs) are already subject to certain transparency obligations under the Collective Management of Copyright (EU Directive) Regulations

2016 (as amended following the UK's exit from the EU), which require them to publish annual transparency reports including details of money received from, and paid to, other CMOs.

The Government will consider whether there is scope to incorporate the Committee's recommendation on global licensing deals into its work on international trade policy.

Data

Recommendation 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.

The Government agrees that longstanding issues with the availability and quality of data hamper the ability of artists to be remunerated.

An IPO report "Music 2025 – the Data Dilemma" published in 2019 highlighted the problems surrounding the quality of metadata and the lack of understanding and awareness of the importance of getting data right at the point of creation. The emergence of a DIY culture, the ever-increasing number of self-released tracks onto streaming platforms, and increasingly diverse ways of creating, producing and distributing music have made it even more difficult to maintain data management standards.

The Government thinks the most practical way of addressing this is to improve awareness of the importance of data within the music industry, so musicians understand the benefits of getting their data right when they create music. To help address this, earlier this year, the IPO published 'Music Copyright Explained'. It provides creators with accurate signposting and accessible information on how and where to assign their creative works. Building on the success of this, the IPO will shortly commission a separate piece of work to deliver an accessible guide to the importance of data for creators 'Music Data Explained'. The IPO is leading the way internationally, working closely with the World Intellectual Property Organisation's 'WIPO for Creators' initiative to deliver accessible content for an educational platform to support artists and creators globally.

However, it is not just about educating creators. It is important that all parts of the industry work to ensure that the quality and timeliness of data is improved so that it is accurately recorded to allow for remuneration and attribution of creators. The Government agrees it has a role in facilitating these industry discussions. To this end, the IPO and DCMS will

work closely with partners on a music industry initiative 'Credit's Due' to develop options for a minimum data standard. Work is already underway to convene a cross-industry technical working group. The group will be expected to report its progress after 6 months and our aim is for a minimum standard to be agreed after 12 months.

It is also important to consider the role that technology may play in helping to empower artists by giving them greater control over their data, improving data quality, and making it easier to manage rights. The Government is engaging with technology businesses to encourage innovative solutions to this issue.

The Government will not be taking forward the Committee's recommendations relating to black box revenues because the use of black box revenues by collective management organisations is already regulated by the Collective Management of Copyright (EU Directive) Regulations 2016 (as amended following the UK's exit from the EU). Under these Regulations, collective management organisations are obliged to ensure that there are appropriate and effective mechanisms for members to participate in their decision-making processes, including in relation to policies on non-distributable revenue. If any party considers that a collective management organisation is not complying with this obligation, they may submit evidence to the IPO which has the power to investigate possible breaches and enforce the Regulations.

Recommendation 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.

The Government agrees with this recommendation. It has engaged with the Advertising Standards Authority (ASA) who have highlighted that every instance of the interaction of commercial and editorial expression requires consideration on its own merits. Disclosure requirements already exist across a range of media where advertising and editorial content intersect, as well as in relation to product placement and commercial references within programmes in broadcast services. However, there are circumstances where requirements may vary or be applied with a lighter touch by a media regulator rather than the advertising regulator. The Government has also engaged with Ofcom, which has pointed out that, although the Broadcasting Code specifically prohibits payment (or other commercial arrangements) influencing the selection or rotation of music played on Ofcom-licensed radio services, it has no role in regulating streaming services.

The case for further intervention needs to be carefully considered and the Government will look to gather further evidence to explore this complex issue further.

Recommendation 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.

The Government agrees with this recommendation. It agrees that there would be value in conducting further research on recommendation algorithms used by streaming services and takes the growing role of algorithms seriously. The Centre for Data Ethics and Innovation (CDEI) published the final report of its review into bias in algorithmic decision-making in November 2020, and the Government responded to this report in July 2021 setting out how we are implementing several recommendations. In addition, the Creators' Earnings research highlighted this as an area of further research that would be beneficial for the Government to undertake. This research suggested an investigation into whether adjustments to recommendation algorithms may alter the distribution of streaming revenue, so that less popular artists receive a greater share.

The CDEI will be asked to lead on conducting further research relating to this recommendation.

Recommendation 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.

The Government agrees that rightsholders should be properly remunerated when their works are used and shared online, for example on user-generated content platforms like YouTube. It also recognises that many testimonies to the Committee's inquiry outlined some of the difficulties rightsholders face when their works are shared on these platforms and the complexity of licensing negotiations. These negotiations are a private commercial matter between the parties, so the Government has no direct role in them. However, it agrees that rightsholders should be able to enter into licensing negotiations with platforms with the aim of securing mutually agreeable terms.

The Committee's recommendation draws some direct parallels with the provisions under Article 17 of the EU Digital Single Market Copyright Directive ('the Copyright Directive'). As the Committee notes in its report, the UK Government has been clear that it has no intention of implementing the Copyright Directive. But, as government representatives explained in the oral evidence session on 22 March 2021, we have a unique opportunity to learn lessons from EU Member States that have implemented the Directive, as well as from approaches taken by other countries. The fact that many Member States have not yet implemented the Directive despite the deadline to do so, reflects the complexity of its provisions – in particular Article 17, which was hotly contested in negotiations and has been criticised by some rightsholders, free speech advocates and the technology sector.

To understand the issues better, the Government will analyse how EU Member States have implemented Article 17. It wishes to understand what actual impacts the provision is having on different parts of the music industry, on other creative sectors, on user-generated

content platforms, and on consumers. In particular, it will be speaking to stakeholders to see whether any of these approaches have improved the position of rightsholders entering into licensing negotiations with user-generated content platforms. The Government will also consider approaches taken by countries outside the EU. It will update on its progress to the music industry contact group in spring 2022.

The Government recognises that intellectual property rights only have value if they are enforceable. In the case of the interaction between limitations to liability, notice and takedown processes and licensing, the normal course for enforcement would be for rightsholders to take legal action where they believe obligations are not being met. Although the Government has no direct role in civil actions of this type, it does believe that the justice system needs to work for everyone in society. To this end the IPO has recently concluded a call for views looking at access to justice issues for intellectual property cases, and identified a number of improvements to guidance and administration that may make it easier for rightsholders of any size to seek redress where required.

The importance of 'know your business customer' (KYBC) obligations for intellectual property enforcement is also something that the Government believes warrants further attention. The upcoming IP Crime and Infringement Reduction Strategy includes some consideration of this issue, and the IPO plans to work with other departments across government to identify where and how improvements might be made.

Recommendation 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 [of the Committee's report] 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.

Recommendation 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 [of the Committee's report]), 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.

The Government believes that transparency and fairness in the global streaming environment are important and is very aware of the pressures on music creators.

The Government notes the DCMS Select Committee's concerns about the possible market dominance of the major music groups and the potential for contractual agreements between the major music companies and streaming services to stifle innovation in the

streaming market. However, it also notes that the digital era has created many new and alternative ways for artists to create and release their music into the market place which were not possible in the physical era, including many independent labels, artists' service companies, and the possibility for artists to upload their content directly on to streaming platforms such as Spotify. This is a complex area, so it is vitally important that any action by the Government be led by robust evidence.

The CMA is an independent regulator. There may be value in a market study, but it is for the CMA to decide how best to use its resources to deliver its objectives in making markets work well for consumers and businesses. We have written to the CMA on this recommendation.

In addition, the Government notes the recommendation for the (statutory) Digital Markets Unit to consider designating YouTube with Strategic Market Status (SMS). The Government launched its consultation on the pro-competition regime for digital markets in July, including proposals for the scope of the regime and approach to designation, and will legislate as soon as Parliamentary time allows. We propose that it will be for the DMU to determine which SMS designation assessments to undertake, subject to specified prioritisation criteria. Though not yet in statute, SMS designation will follow a robust, evidence-based assessment of substantial and entrenched market power in an activity that provides it with a strategic position. This methodology will be applied by the independent Digital Markets Unit within the CMA.

Recommendation 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.

The Government disagrees with this recommendation. The aim of the Music Export Growth Scheme (MEGS) is to overcome the market failure of UK independent music small and medium enterprises (SMEs) having insufficient funds to run high-quality marketing campaigns to break into new territories. It is not a scheme that has a remit to address structural and commercial issues within the music industry, such as the management of artists' rights.

With regard to a focused fiscal incentive for the independent music sector, tax policy is the responsibility of the Chancellor of the Exchequer and HM Treasury. In addition, fiscal measures are considered at fiscal events as part of a wider assessment of the public finances and of the economy.

Recommendation 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.

The Government launched its consultation on the new pro-competition regime for digital markets in July 2021. The proposals include new rules to ensure consumers and businesses are treated fairly, and measures to drive a more vibrant and innovative economy across the UK.

The regime will be overseen by the Digital Markets Unit within the Competition and Markets Authority. It will be empowered to tackle both the consequences and the underlying sources of market power. The Digital Markets Unit will be given robust powers, including tough new fines, to enforce the regime, protect consumers and reduce barriers to entry for entrepreneurs. The consultation will close on 1 October 2021.

In April this year, the Digital Markets Unit was launched within the CMA in non-statutory form to prepare for the new regime. The Government will legislate to put the Digital Markets Unit on a statutory footing as soon as Parliamentary time allows.

Recommendation 20: The Government must ensure that the challenges posed by music streaming to the UK's prominence regime are duly considered.

The Government agrees with this recommendation. As this report and the Committee's report into the 'Future of public service broadcasting' have set out, a major shift is taking place in the way that people are discovering and accessing audio-visual and audio content which are presenting new challenges to the Public Service Broadcasting (PSB) ecosystem.

The Government recognises the importance of ensuring that high-quality PSB content is discoverable and widely available to UK audiences as far as possible. That is why as part of its strategic review of public service broadcasting the Government is considering how the prominence regime for audio-visual content can be updated to reflect a modern and sustainable PSB system that can continue to meet the needs of UK audiences in the future. The Government has also committed to acting on Ofcom's prominence recommendations including through legislation as soon as the legislative timetable allows.

The Digital Radio and Audio review is also looking at the impact of connected audio platforms on UK radio and audio production, including the issue of prominence of UK radio and audio services on connected smart speaker devices. The Digital Radio and Audio review will report its conclusions in the autumn.

Recommendation 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.

The IPO is aware of some of the concerns raised by musicians about the livestreaming tariff applied by PRS earlier this year. It has met with PRS to discuss these concerns and to understand the steps being taken to mitigate them. This is an area that the IPO is keeping under review.

The Government agrees with the need to be proactive in identifying emerging threats to rightsholders where new technology is making copyright infringement easier or more prolific. It is working with enforcement partners, domestically and internationally, to make sure that its framework is as robust as possible, thereby helping to prevent illegitimate businesses from using online services to infringe copyright. Recent collaborations have proven very successful, with the Police IP Crime Unit working with intermediaries to block websites making copyright infringing material available to consumers, and the disruption of associated advertising revenues. The UK has also facilitated successful voluntary collaboration between rightsholders and technology firms. These include an agreement with leading search engines to demote infringing content, and more recently, roundtable discussions with social media platforms, online marketplaces, and digital advertisers.

The Government has also held horizon scanning workshops with stakeholders and engaged with experts in a range of emerging technologies. We will use these insights and issues raised in the workshops to map out long-term operational and policy impacts on IP enforcement, which will help shape our focus over the next few years. We are also conducting research into artificial intelligence and IP, and the opportunities and challenges in this area.

Appendix 2: Competition and Markets Authority Response

The CMA notes the Committee's recommendation to the government regarding a market study examining the dominance of the major music groups. The CMA is liaising with relevant Departments on this issue, and it is expected that this recommendation will be addressed in the government's response. The remainder of this note responds to the recommendation that the Committee addressed directly to the CMA; namely, that "the CMA should consider exploring designating YouTube's streaming services as having strategic market status to encourage competition with its products".[1]

Current status of the proposed new pro-competition regime for digital markets

1. The proposed new pro-competition regime for digital markets to be operated by an independent Digital Markets Unit (DMU) within the CMA has not yet been finalised. It is currently the subject of a consultation which ends on 1 October 2021.[2] Under these proposals, SMS designation would involve three main components: a code of conduct that sets out clearly how an SMS firm is expected to behave in relation to the activity motivating its SMS designation; the ability of the DMU to impose pro-competitive interventions (PCIs) to address the source of that market power and open up greater competition (such as through data access remedies),[3] and a distinct set of merger rules to ensure closer scrutiny of transactions.

2. The consultation currently underway seeks views on a number of aspects of how the proposed regime will operate, including the powers of the DMU and the criteria and mechanisms that will identify which firms have SMS and in relation to which activities. It is envisaged that SMS designation may apply to a firm which has substantial and entrenched market power in at least one activity which provides it with a 'strategic position', namely one where the effects of that market power are particularly widespread or significant.[4] The assessment mechanism for SMS designation is being consulted on, including whether it should be activities-focused without a formal market definition (which is the government's preferred approach) or whether a formal market definition should be undertaken.

3. Under the proposals, the SMS designation will apply to the whole firm but the code of conduct will apply only in connection with particular designated activities (for example Facebook's social media platforms). That is to ensure that the regime is proportionate and targeted at the activities which may cause most harm. PCIs will also generally relate to the designated activity but may also be implemented in relation to a non-designated activity, provided the intervention is made in relation to a concern in a designated activity.[5]

4. In the case of Google, which owns YouTube, the CMA's market study into online platforms and digital advertising, which reported in July 2020,[6] considered that Google

1 Final report of the House of Commons Digital, Culture, Media and Sport Committee on the Economics of music streaming published 15 July 20.
2 A new pro-competition regime for digital markets - GOV.UK (www.gov.uk).
3 Appendix D: The SMS regime: the pro competition interventions (publishing.service.gov.uk).
4 Paragraph 66 of the consultation. The existence of substantial and entrenched market power on their own are not sufficient to justify the imposition of an ex-ante regime. Competition problems which derive from such market power which is not 'strategic' is more proportionately addressed through competition law.
5 DMU consultation, Figure 2, paragraph 54.
6 Online platforms and digital advertising market study - GOV.UK (www.gov.uk)

would be likely to be designated with SMS status in relation to its activity in open display advertising.[7] If Google were so designated in relation to this activity, an SMS code would govern Google's conduct relating to that activity (the SMS designated activity). If the DMU were minded to explore whether Google may have SMS in relation to a separate activity, it would need to carry out a separate assessment and apply the SMS test to that activity. Our understanding of the evidence presented to the Committee is that the concerns relating to the advantages which YouTube may derive from the 'safe harbour' regime are not primarily market power concerns but relate to market distortions and the music streaming 'value gap' under the current copyright regime. These may potentially be better addressed by revising the copyright obligations which apply to user-generated content, something which the Committee itself has recommended.

5. The SMS regime, as proposed, may also enable the DMU to impose PCIs in activities outside the SMS designated activity in certain circumstances but only where it is intended to address concerns in the SMS designated activity. For example, if Google's activities in music streaming (a non SMS designated activity) were, on further investigation, found to be one of the root causes of its substantial and entrenched market power in an SMS designated activity (such as open display advertising), the DMU might be able to impose PCIs but with a view to opening up more competition in digital advertising. This would need careful examination.

6. In the consultation, the government has set out its proposals for how SMS designation assessments might operate. It is consulting on an appropriate length of assessments which would balance a robust designation process with efficiency and speed. It is seeking views on the merits of a designation process of nine or 12 months. The government is also seeking views on how designation assessments should be prioritised under the new regime to focus on digital activities where there is the highest risk of competition concerns and the strongest case for intervention. The government has proposed that the DMU have regard to the following factors when prioritising designation assessments:

- A firm's revenue (whether UK or global) as an indicator of the scale of harm that could result from a firm's market power and to provide clear demarcation for designation decisions.
- The characteristics of the activity. The government proposes that the DMU should prioritise designation assessments for activities where there are likely to be significant network effects, economies of scale and scope, and/or high fixed costs to entering the market. This is on the basis that these are the activities most likely to tend towards concentration and entrenched market power, and therefore where potential SMS firms could emerge, and which are most likely to require the tools of the new regime.
- Whether a sector regulator is better placed to address the issue of concern. The government proposes that the DMU should deprioritise designation assessments for activities where an existing regulatory regime is better placed to address the harm.

7 DMU consultation, paragraph 54.

7. We await the outcome of that consultation which will affect how the DMU will prioritise these assessments in the new regime. After the consultation, the government has committed to putting forward legislation when Parliamentary time allows.

Immediate priorities for potential SMS designations

8. Pending legislation, there is no mechanism to designate firms with SMS status. Since April this year, the DMU has existed in shadow form within the CMA. Its role has been to help Government develop the legislation and ensure it can be brought into operation as quickly and effectively as possible once the legislation is in place. This has involved a range of activity such as working closely with Government to design the regime and establish the appropriate legislative framework,[8] and engaging with regulators nationally and internationally.[9] The CMA also proposes to use this time to gather evidence to inform any future possible SMS designation assessments, subject to prioritisation principles.

9. In this period while the legislation is under development, the DMU has no statutory powers of its own. It is reliant on the powers and tools of the CMA to gather evidence such as through general information-gathering projects,[10] market studies, merger control and competition enforcement. An example of this approach is that, on 15 June 2021, the CMA launched a market study into Apple's and Google's mobile ecosystems over concerns they have market power which is harming users and other businesses.[11] The Statement of Scope explains how evidence obtained should better enable consideration of whether Apple or Google should be designated with SMS in relation to any specific activities examined in the study, namely the supply of mobile devices and operating systems, the distribution of mobile apps, the supply of mobile browsers and browser engines and competition between app developers.[12]

Conclusion

10. The CMA cannot at this stage consider designating YouTube's streaming services as having strategic market status, because the framework is subject to the government's proposals following the current consultation, and to Parliament's subsequent decision on those proposals. However, the CMA is grateful to the Committee for the evidence it has brought to bear on these important issues – evidence that it will be able to draw on at such point as the new digital markets framework comes into force.

September 2021

8 For example, governance and decision-making structures, and how it will interact with existing CMA functions. It also includes work to ensure the DMU's operational preparedness, including staff resources and skills including any specialist IT support

9 Such as through the Digital Regulation Cooperation Forum (DRCF), and G7.

10 The Advice of the Digital Markets Taskforce was carried out using the CMA's general information-gathering powers in the Enterprise Act 2002

11 Mobile ecosystems market study - GOV.UK (www.gov.uk)

12 Statement of scope (publishing.service.gov.uk)