Written evidence submitted by Tom Gray (#BrokenRecord Campaign) (PEG0181)

The #BrokenRecord Campaign began at the beginning of lockdown to highlight market failure in the digital music streaming business. The seriousness on the problem is highlighted by loss of touring income to artists and drop in income to creators from the closure of business premises that play licensed music.

Tom Gray, founder of the campaign, is as a founding member of Mercury Prize winning band Gomez and as a composer for TV, theatre and film. He is a board director of PRS For Music, a board director of The Ivors Academy and a Writer-Artist advocate for the Featured Artists Coalition.

Introduction

Covid-19 has put the UK music talent pipeline in sincere jeopardy, but there are structural and regulatory changes that could quickly and effectively remedy this. Across the creative community there is a deep sense of injustice in and around the remuneration from digital music streaming, but the UK economy and its culture are possibly big losers too. Unfettered behaviours of big tech and the US entertainment conglomerates combine to drain our citizens, cities and regions of music related income; income that could help rebuild a Post-Covid Britain. Our 'world-beating' UK music industry was the first to completely digitise and so offers not only the opportunity to correct its own structural problem for the benefit of UK plc, but also insight into what awaits other quickly digitising industries and lessons for the country about digital/cultural strategy and national investment.

The Landscape

- ☒ **We are at a pivotal moment for UK music creation.** As the committee considers post-pandemic economic growth, they should consider that issues in the music economy were already posing serious threats to the health of the talent pipeline, and Covid-19 has decimated many revenue streams. The UK has not adopted the European Copyright Directive that would unquestionably have improved the protection of UK music-makers and IP. Simultaneously we are entering into bilateral trade talks with the United States, who have considerably worse IP protections than our existing framework.

  UK music not only forms a huge part of the global brand of the UK, it has the capacity to grow the economies of our cities, regions and communities, and has a huge part to play in the rehabilitation of our national well-being. A post-pandemic approach can easily realise this potential through minimal regulation of corporations who profit at the expense of thousands of small British businesses.

"It's a very good moment for that: quite perfect, with such a severe disruption. It's time to talk about everything now. Everything is going to change, so it's a perfect moment."

Bjorn Ulvaeus of ABBA talking about the #BrokenRecord campaign. Music Ally, May 2020

- ☒ **Covid19 has exposed market failure in the recorded music business.** Without touring income and diminished licensing income from closed business premises, UK creators have little remaining income. This despite Sony[1] and Universal[2] reporting close to $1billion revenues from streaming in Q1 2020 and much other evidence of a thriving and growing streaming business.[3] Indeed without the discrete industry of live entertainment, there's little evidence of investment in, and return to, the UK economy from the recorded music business.

- ☒ **Drake, the most streamed artist in the world:** Streaming accounts for only 33% of his total income; touring 58%; publishing 6%; other sales 3%.[4]

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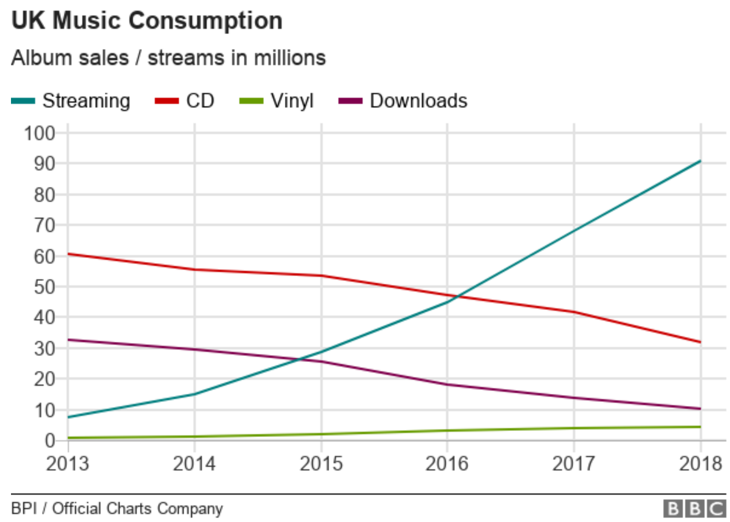
1 https://www.musicbusinessworldwide.com/another-billion-dollar-quarter-for-sony-music-as-streaming-revenues-jump-27-4/
2 https://www.musicbusinessworldwide.com/universals-streaming-revenues-topped-1bn-in-q1-with-total-recorded-music-up/
3 https://www.musicbusinessworldwide.com/universal-getting-close-to-generating-10m-per-day-from-streaming-services/
4 Billboard: Goldman Sachs Global Investment Research

☒ **The UK is *genuinely* 'world-beating' at music creation.** No major record labels are British owned, nor are any of the streaming services. It is our talent and talent pipeline that are the envy of the globe.

☒ **Streaming now accounts for around 75% of recorded music revenue in the UK.** Indeed, subscription streaming services (£1.003bn) now generate more than three times the amount of money spent on physical music (£318.1m) the UK.[5] See the rate of change below. A completely restructured market without any significant change in regulation.



☒ **According to ERA's preliminary stats, UK consumers spent £1.003bn in 2019**[6] on streaming subscriptions, but most of this leaves the UK economy through corporations domiciled in other nation states.[7]

☒ **Three record labels (based outside of the UK) enjoy 69.2% share of the total recorded music market**[8] and nearly 90% of the most streamed music (see below). Three streaming services (based outside of the UK) have 69%

Ownership of the Spotify Top 50 Playlist as of June 29, 2020

of

LABELS	Number of streams	Market Share
Universal	49, 660,054	48%
Sony	28, 257,678	27%
Warner	13,992,588	13%
Everyone else	12,130.633	12%

subscribers.[9]

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[5] As above.
[6] https://www.musicbusinessworldwide.com/uk-record-industry-grew-by-over-100m-last-year-but-is-streaming-starting-to-run-out-of-steam/
[7] https://mashable.com/article/major-music-labels-19-million-per-day-streaming/?europe=true
[8]https://www.musicbusinessworldwide.com/the-global-record-industry-generated-18-8bn-last-year-with-31-going-to-universal-music-group/
[9] https://www.statista.com/statistics/653926/music-streaming-service-subscriber-share/

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☒ **Major Labels pay 20-30% of revenues to artists.** Streaming services are paying approximately £0.005 per stream to labels.[10] Most artists on 20% deals (30% is known as the 'rockstar rate') will therefore enjoy £0.001 per stream, meaning 1 million streams generates only around £1000 income. However, if you are a major rights-holder earning 80% across many hundreds of thousands of copyrights you can easily generate vast revenues.[11]

☒ **According to Musicians Union data** 56% of surveyed musicians earn less than £20,000 per annum and only a quarter stated that revenues from copyrights were of real economic value to them.[12]

☒ **In 2019 the recorded music industry enjoyed its fifth consecutive year of growth.**[13] However, Covid-19 presents a severe threat to the UK talent pipeline. There are now more charitable investments in our talent than ever before,[14] at the same time as there appears to be more money in the industry than in a generation. How can that be?

☒ **The European Copyright Directive, supported by the then UK government**, but no longer part of legislative plans, gives artists the right to appropriate and proportionate remuneration, the right to auditing of labels and the right to a reversion of rights if their work is not exploited (Articles 18, 19 and 22). It also goes some way to make sure that free music streaming e.g. YouTube, would pay better to artists and labels. European artists are going to be at a competitive advantage to UK artists should the Copyright Directive be unadopted.[15]

☒ **This is happening as the UK is entering into a talks to form a bilateral trade agreement with the USA**. The United States has much worse IP protections for creators, permitting several commercial behaviours that would damage UK creators such as Corporate Authorship and Work For Hire.[16]

☒ **Songwriters only receive around 10% of streaming revenues and this figure becomes lower as money flows through foreign collection societies and sub-publishers**. Existing competition law stymies attempts from Performance Rights Organisations to renegotiate this value up despite the innate value of 'the song' seeming comparable to that of the recording. If the value was not in the song why would anyone ever record the ubiquitous 'cover version'?

[10] https://thetrichordist.com/2020/03/05/2019-2020-streaming-price-bible-youtube-is-still-the-1-problem-to-solve/
[11] https://www.statista.com/statistics/273044/universal-music-groups-annual-revenue/#:~:text=In%202019%2C%20record%20label%20Universal,Vivendi's%20most%20lucrative%20business%20segment.
[12] https://www.musiciansunion.org.uk/Files/Reports/Industry/The-Working-Musician-report
[13] https://musically.com/2020/05/05/spotify-should-pay-musicians-more-lets-talk-about-how/
[14] https://prsfoundation.com/projects-weve-funded/
[15] https://eur-lex.europa.eu/eli/dir/2019/790/oj
[16] https://www.copyright.gov/title17/

STREAMING SERVICE	Estimated Avg. payout to songwriter per stream	Number of streams for songwriter to earn one pound	Number of Streams for Songwriter to earn one working day at UK Minimum Wage (8 hours)	If Songwriter is one of three writers on a song (Closer to the norm of Pop Writing) to earn a day of UK Minimum Wage.
AMAZON	£0.0013	769	53,662	160,986
TIDAL	£0.001	1,000	69,760	209,280
APPLE MUSIC	£0.00076	1,316	91,789	275,367
DEEZER	£0.00063	1,587	110,730	332,190
GOOGLE PLAY MUSIC	£0.00062	1,613	112,516	337,548
SPOTIFY	£0.0004	2,500	174,400	523,200
PANDORA	£0.00022	4,545	317,091	951,273
YOUTUBE	£0.00017	5,882	410,353	1,231,059

[17]

☒ **The existing streaming remuneration system combines models which may be disadvantageous for the music and national economies of the UK**:

1. A physical sales model applied to the digital market: Major Labels contractually offer around 13% of streaming subscriptions to artists (for the life of copyright), but this figure is considerably lower once it has travelled through global intermediaries. Of a typical £9.99 subscription, 46p will go to all the artists a user listens to and £4.58 goes to record companies.[18] This, when streaming has demonstrably fewer of the costs associated with the physical era, such as manufacturing, distribution, storage and breakage, much of which would have utilised British infrastructure and industry in the past. The super-normal profitability of streaming for major rights holders (and scraping of value through global intermediaries), might be regarded as rent-seeking behaviour.

"The good news is that our [profit] margins are way better when compared to the last great era of profit 20 years ago; our margins are amazing now. Revenue, profit margin, market share, all of those things are a [balancing] act. At Sony [Corp], margin is really important and our margin is excellent. Are we perfect? Of course not, we have other areas to improve [in] — but the margin is not an issue. Obviously I'd like revenue and profit to be perfect, but the margin will not go down, it will get better."

Rob Stringer, CEO of Sony (Music Business Worldwide 2019)

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[17] Data: The Trichordist Streaming Bible
[18] https://www.facebook.com/PayPerformers/photos/a.103718721301274/130715635268249/?type=3&theater Data sourced by ADIMA.

2. Streaming uses a ‘revenue share’ system. The aggregation of rights is rewarded: all monies are pooled and shared via total consumption share. This model contains a Malthusian flaw: If subscriptions plateau (or are out paced by free use) and the amount of music increases exponentially[19], the value of an individual piece of music can only ever go down. Spotify average pro-rata payments have gone down nearly every year since its inception ($0.007 as of June 2011[20] and $0.0038 now). This means UK music creators are receiving less income year on year, with the inevitable diminution of GDP and tax revenue for the UK Government.

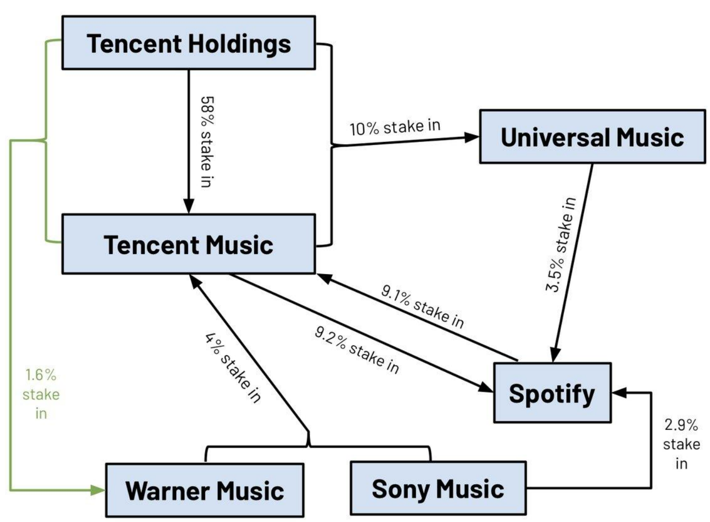
☒ **Competition authorities have tended to focus on the consumer when considering markets**. Streaming has not changed its pricing in 12 years (driving the value of music down in real terms by 26%) and it appears the consumer is getting a good deal. However, music-makers are captured in a situation comparable to the dairy farmers faced with the monopsonist purchasing power of the supermarkets. They determine the price of their product, and there is no transparency over how that price is arrived at (hence the Copyright Directive’s recognition of the need for auditing rights for creators).

☒ **However,** there is a potentially huge source of consumer welfare loss happening as the platforms affect the concentration and variety of content exposed to the consumer through playlisting and algorithms.

“Growing concentration in the streaming market, as well as other markets dominated by one or a few players, may create a need for scrutiny of how platforms exercise their power.”

Luis Aguiar, Joel Waldfogel [21]

☒ The Major Labels all offer the same kinds of deals to artists, the same cost to the consumer, the same structure of licensing deals: this ‘market alignment’ displays little signs of competitive behaviour and is worthy of investigation. See the complex web of cross-ownership of services and labels below:



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[19] https://www.musicbusinessworldwide.com/nearly-40000-tracks-are-now-being-added-to-spotify-every-single-day/
[20] https://thetrichordist.com/2015/09/03/spotify-per-stream-rates-continue-to-drop-00408-more-free-users-less-money-per-stream/
[21] Platforms, Promotion, and Product Discovery: Evidence from Spotify Playlists (JRC Digital Economy Working Paper, No. 2018-04)
[22] Cherie Hu - Water & Music

☒ The independent recording sector have already started to question how this cross-ownership will affect their business:

*"Its move (*Tencent's*) to acquire a significant part of Universal is really significant because it's a shift in structure of the music market and in the way strategic alliances are built. How will that affect the ability of the independent sector to compete effectively internationally, in Europe and in China in markets where Tencent is so, so powerful?"*

Helen Smith, Executive Chair IMPALA

☒ The committee should consider mandating the implementation of **an alternative model** to the existing 'revenue share' system called '**User-Centric Payment System**' or 'UCPS'. An individual user's subscription is simply split between what they choose to listen to. The French Government have already shown great interest in the model. It has several key benefits:

1. Consumers have their rights restored: In the existing system, of an average user's subscription, upwards of 50% can remunerate music that the user *does not* listen to. This raises questions: Do consumers want their money invested in music they not only dislike, but may have ethical and/or philosophical opposition to?

2. A 'fair trade': the author gets direct compensation for the use of their art.

3. Presently a record label can use their bargaining power to negotiate the value of their music (highlighting competition issues). Two pieces of music of the same quality and popularity can be remunerated differently simply because they are owned by two different labels. UCPS could end this, making the relationship between the labels and services closer to that of a manufacturer and retailer, rather than licensor and licensee: All music priced by dividing the consumer's subscription (not necessarily through the value garnered in the broad licensing of works).

4. The present system is easily cheated. 'Farming' of streams has long been a problem. UCPS ends this. Individual accounts can no longer rack up many thousands of streams in the hope of greater remuneration as it simply breaks their subscription into ever tinier payments.[23]

5. UCPS appears to benefit regions/national tastes and therefore domestic artists. Therefore more income stays in regional and national economies.[24]

A key benefit of changing the existing system of remuneration is the ability to redraw the licensing landscape with all the key lessons of the past 12 years in hand.

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[23] https://www.theregister.com/2018/02/23/bulgarian_spotify_scam/
[24] https://musically.com/2019/09/11/deezer-steps-up-its-efforts-to-introduce-user-centric-payments/

The music industry presents an example for all digital markets.

Not only was it the first to digitise (with even the product becoming digital), but we now have a mature digital market that can be used as a blueprint for the understanding and regulation of other markets.

As it stands music is controlled by a small number of global corporations who hold all the data with little or no transparency granted to creators for the exploitation of their work or the understanding of their audience, and the value of their work cannot be negotiated. The argument for investigating, and subsequently regulating where appropriate, the music industry is wider than simply the issues affecting its internal behaviour. The lessons learnt from the music industry can be applied to a wider understanding of whether existing digital strategy and competition law is fit for purpose.

There are only a few areas in which the UK can genuinely be evidenced to be ‘world beating’. Music is most certainly one of them. UK plc and brand UK, both benefit from our brilliant, innovative community and music has been a huge source of comfort for our country through very difficult times. We are now presented with the opportunity to protect that incredible legacy for generations to come.

Recommended actions for government

- ☒ **Instigate a review of the existing remuneration model (relating to music streaming) with national investment in regions and the talent pipeline as policy priorities.**

- ☒ **Ask the Competitions and Markets Authority to investigate competition in and regulation in the recorded music business.**

- ☒ **Consider changes to existing competition framework that will allow collective rights management organisations to negotiate the value of their work in a more reciprocal way to the major rights-holding record companies.**

- ☒ **Enshrine the right to fair and appropriate remuneration into law (as addressed in the EU Copyright Directive).**

- ☒ **Legislate for quarterly auditing and data transparency protections for creators.**

- ☒ **Introduce into law a reversion right for creators so that the rights to unexploited work have the capacity to be returned to them.**

August 2020