

Written evidence from the Ivors Academy of Music Creators MiM0055]

The Ivors Academy is the UK's independent association representing professional songwriters and composers. As champions of music creators for over 70 years, the organisation works to support, protect and celebrate music creators including through its internationally respected Ivors Awards.

We previously provided written evidence to committee on 15 July 2022 at the start of this enquiry which set out how the Ivors Academy has been addressing inclusion and the historical lack of diversity in the music industry, how we are working to creating a safer and more inclusive environment, and recommendations that we suggest the Committee includes in their final report which we hope will call on the music industry and government to take actions to solve the scourge of misogyny, bullying, and sexual harassment in the music industry.

This submission also draws on written evidence we provided to the Legal Services Board 'call for evidence: misuse of non-disclosure agreements (NDAs)' earlier this year, which is exploring the scale, extent, and nature of the misuse of NDAs; the impact of misuse; and the steps that should be taken to prevent future misuse. We recommend that this Committee approaches the Legal Services Board to request that they share the information it has gathered from this call for evidence, as far as practicably possible.

There are three main scenarios when NDAs or confidentiality agreements are used in the music industry, two of which we would see as legitimate:

- (i) Agreements that protect initial discussions concerning creative ventures and projects. These agreements provide a safe and confidential structure for such discussions and protect against intellectual property (IP) theft.
- (ii) NDAs are used as part of agreements between rights holders (consisting of record labels and music publishers) and other parties who wish to use music on their platform. These can be a Digital Service Provider (DSP) such as a streaming service e.g. Spotify or Apple Music or a website that hosts user-generated content (UGC) where content is created by a platform's users e.g. YouTube or TikTok.

For reasons of commercial sensitivity and competition law, the detailed commercial terms of such deals that are reached between music rights holders and these platforms using their content reached have to remain confidential. We do not dispute the legitimacy of NDAs in this scenario, it is right that commercially sensitive information including "price" should not be disclosable in order to prevent distortion of competition. However, this has led to opacity as to rates, and confusion (particularly for music artists or writers). This is due to the fact that writers are often unable to ascertain what payments have been made to their record label or publisher in respect of their songs and there is a lack of information to be able to properly verify and contest their royalty statements, despite having audit rights under their own contracts.

The representative of music makers, major labels and publishers are currently in discussions, under the auspices of the Intellectual Property Office (IPO), to create and publish a 'Voluntary Code of Good Practice for the UK music industry' that will provide standards of good practice for contract transparency in the industry. This code currently includes provisions reaffirming music makers' right to have a contractual right to audit royalty accounting provided by Labels, Publishers and Distributors, but noting that underlying data (including agreements under which royalties are payable by music users) may include trade secrets, and other commercially sensitive or protected data. It is therefore recommended that "auditors should enter into reasonable non-disclosure agreements at the request of the relevant Reporting Party".

This reflects the principles which we believe must be present to make an NDA (or any part of it) legitimate; that it can only apply to information that is unique to the relationship between the NDA parties and which is commercially sensitive, that disclosure can nevertheless take place where there is a legitimate reason (such as an audit right), and ongoing confidentiality can be secured.

NDA's may also be used when someone is leaving a job, this can be done to keep details of that role confidential or if there has been a dispute resulting in that person's departure. This use of an NDA can potentially be problematic and can sometimes be less legitimate than the previous two examples. In this scenario NDAs may be, and have previously been, used in this scenario to cover up unethical or bad practices by employers or their senior staff.

The music industry is one where personal contacts and your reputation are incredibly important to your professional livelihood. This, combined with the fact that 70% of those working in the industry do so as freelancers compared to 15% of the wider workforce¹ might mean that those who have suffered abuse or harassment in their workplace might feel they have no option but to sign an NDA to ensure they receive future work in the music industry.

This is resulting in a situation where those who are engaging in bad or potentially illegal practices are protected rather than punished and their victims are punished.

The Creative Industries Independent Standards Authority is in the process of being formed following a series of roundtables hosted by Creative UK to discuss issues of bullying and harassment in the creative industries. It is hoped that this cross-industry body will uphold and build on existing best practice across the sector, including providing additional wellbeing support and insight, policy initiatives, advocacy, influence and reporting. As part of this we hope that CIISA could also provide guidance into the misuse of NDAs and provide support to creators if they feel that they are being pressured to sign an NDA to cover up bad or illegal practices.

The Ivors Academy does not hold quantitative evidence on the prevalence of the use of NDAs to silence victims of gender-based discrimination, sexual harassment, and abuse in the music industry. We suspect that due to the fact that people who have signed an NDA may be unwilling or cautious about revealing that they have done so that the quantitative data on the extent of NDAs, and their misuse, may be underreported.

December 2023

¹ <https://www.gov.uk/government/statistics/dcms-sectors-economic-estimates-2019-employment/dcms-sectors-economic-estimates-2019-employment>