Written evidence submitted by Bournemouth University

Economics of Music Streaming

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Written evidence submitted by Professor Ruth Towse, on behalf of Bournemouth University, to *DCMS Committee* call for evidence on *Economics of Music Streaming*.

I Introduction

This submission summarises the salient features of the economic organisation of music streaming. It is intended to provide an *analytical framework* from which to evaluate the roles of the various participants in the music industry. Music streaming builds a top layer on a long established industry and many of the problems for artists' payments must be seen in that context.

The submission is organised as follows:

- Economic organisation of the music industry
- Contractual arrangements in the music industry
- Platform economics and business models in music streaming
- Music streaming services as platforms
- Empirical evidence on music streaming
- Conclusions and policy implications

II Economic organisation of the music industry

1. On the supply side, the music industry consists of composers and song-writers who produce original musical works; arrangers and copyists who prepare scores; music publishers who organise the publication and distribution of musical works; sound recording producers and record labels who organise the production and distribution of sound recordings by performers; singers and musicians, the performers, who may be employed (e.g. in an orchestra, band or ensemble) or self-employed (soloists or ensemble members e.g. a pop group); other workers, such as managers, production personnel and roadies, who assist with the supply of live or recorded music, various sales outlets and copyright management organisations (CMOs).

2. Live music is supplied in a variety of settings great and small by professional, semi-professional and amateur performers. Recorded music is likewise supplied via the record industry which ranges from large international oligopolistic corporations at one end of the spectrum to individuals creating, recording and distributing their own work online, which is highly competitive. Almost all these individuals and enterprises have copyright and related

rights (performers' rights) in their work. Copyright law accordingly plays a vital role in the economic organisation of the music industry.

3. The top layer of the distribution of recorded music is now dominated by online platform-based music streaming services, which may specialise (such as Spotify or Tidal) and others, such as Apple and Amazon which supply multiple goods and services. The former are two-sided platforms and the latter, multi-sided platforms. Accordingly economic analysis of the music streaming industry is dealt with by a mixture of traditional industrial economics that deals with competition and platform economics that recognises the dynamic interaction between music streaming services, the sale of other related or unrelated goods and services and the generation and value of users' data.

4. Two basic types of markets for music are identified: the primary market, in which the right to the work is sold or its use transferred directly to the user with a royalty being paid in accordance with the contract between the parties; and a wide range of secondary markets, such as broadcasting or play in venues (gyms, hairdressers, etc.) in which CMOs or collecting societies, organise the pricing, monitoring and payment for use of copyright works on behalf of their members. In the UK they are PRS for Music acting for authors' rights and PPL for performers' rights. These markets are the source of copyright earnings for composers and song-writers and performers.

5. Copyright bestows the right to control the use of their works on authors (song-writers etc) and performers via performers' rights.[i] The various rights in copyright (publication, distribution etc) are assigned or transferred 'down the line' within the music industry from the song-writer or composer through the various stages of production to the final user. These rights are applied contractually, making contracts the lynchpin of the music industry. Understanding the nexus of contracts is the key to the economics of music streaming. Copyright law also constrains consumers' usage by prohibiting copying.

III Contractual arrangements in the music industry

6. The many contracts involved differ in the extent to which they require or request the assignment or outright sale of rights and which rights are concerned. In general, publishing contracts seem to be more flexible than recording contracts in respect of which rights are included. It has to be said, however, that systematic research on contracts in the music industry is very difficult as these are private documents and even if a few persons can be persuaded to share their content and terms, it is not possible to know how representative they are.

A useful, perhaps crucial, contribution the inquiry could make would be to request submissions of actual contracts in order to ascertain how the various rights are treated and how they are likely to impact on royalty payments to authors and performers.

7. That said, there are some 'standard' contracts that are utilised in specific circumstances. One that is widely acknowledged is the 'buy-out' contract signed by recording session players in studio recordings e.g. in the recording of film music, also the 'backing' players for popular

music. Another is the 'synchronisation' contract for composers of film music. These are, however, exceptions and most are royalty contracts which vary in both the rights they incorporate, the term (duration) of the deal, the advance to be made (if any) and the royalty to be paid.

8. The publishing contract may be for the life of the copyright (70 years plus life of the author) for all rights, for a selection of rights and /or for a lesser period, possibly even just on year.[ii] Publishers' duties include seeking deals with potential users, including of course, record labels and live performance but also providing printed copies for sale or rental – their traditional role. The recording contract appears to be less flexible and reputedly mostly requires the transfer of all rights of the performers for the term of their rights (now 70 years after the fixation of the recording – see note 1).

9. The issue for music streaming is whether the contracts included or envisioned that mode of distribution at the time at which they were signed. Clauses stating words to the effect of 'for all known or future uses' may or may not be deemed to be sufficient to cover it. The main point here, though, is that the *power to control the streaming of music is lost to the performer or song-writer if right has been signed away* to a record label of other producer. If the record label holds the distribution rights (as most apparently do) the streaming service then contracts with the record label for the royalty to be paid and other contractual terms. So far it seems that these are typically non-exclusive contracts, which, while hardly promoting competition in the oligopolistic market of streaming services, at least has not (yet?) created bilateral monopolies. A future development could well be the horizontal and/or vertical integration of music streaming with other stages in the chain of production, reducing competition still further.

10. The implication of these arrangements is that the once-direct stream of payment to the author and performer from the record label has been diverted by music streaming. Record labels, having initially resisted it, failed to obtain a good deal from the music streaming platforms. The artist lost control of an increasingly significant use of their work and what is paid for it.

IV Platform economics and business models in music streaming

11. Platform economics applies to the digital world in which plenty replaces scarcity: increasing returns to scale (scalability) mean that there is no technological limit to the size of an enterprise. Moreover, synergies in platform distribution imply that the larger the scale, the more successful the platform is in the market, thus creating a dynamic for ever-increasing growth. Intangible products are easily distributed jointly making multi-sided platforms highly successful; there are also spillovers between online supply of different goods and services which the platform can capture. AI technology enables cheap and easy mining of data on features of consumers using the platform which allows it to use those data to sell its own goods and services and also to sell the data to other enterprises.

12. Music streaming services are platforms: as distributors, they do not bear the upfront fixed costs of producing digitally recorded music. They acquire the right to distribute titles and offer them to end users (final consumers or others) for a subscription at a price they set as well as for free paid for by advertisers (the classic two-sided market). The subscription fee is set not with respect to the market for recorded music but in relation to those by competing platforms. So far there has been no price war between music streaming services which charge an identical price of 9.99 in more or less most currencies.[iii] Some degree of competition exists between music streaming platforms in terms of the size of the catalogue. On that point, consumers do not appear to be sensitive to actual size and anyway very few view more than a small percentage of titles available on their subscription.

13. Record labels, therefore, are no longer the main distributor of their products. Price signals between producer and consumer have been severed by platform distribution.

14. Initially, platforms distributing streamed music specialised, i.e. they were two-sided markets. Now multi-sided platforms are becoming dominant in world music streaming markets. I contend that the underlying economic logic of platform economics (only briefly described here[iv]) is that two-sided platforms specialised in music streaming will be competed out of the market (or bought out) by multi-sided platforms. 'Big gets bigger' is the economic logic of the digital economy.

V Empirical evidence on music streaming

15. Recent research in Norway is suggestive of future trends in music streaming. Norway is a high income country with very high connectivity and music streaming was established very early on; Spotify has the largest number of subscriptions though Tidal is based in Norway.

16. The 2019 Polaris Norway survey on music consumption patterns in the population showed that:

- 21 % downloaded music and 15 % purchased CDs.
- 88 % streamed music: 50 % with a paid subscription; 38 % on a free service
- 69 % listened on YouTube; 58 % on Spotify; 25 % on Facebook; 15 % on iTunes; 11 % on Instagram.

17. Streamed music in Norway had grown significantly over the previous five years though growth in subscriptions was slowing down and it is believed that the market has become saturated. That may spell a warning for the UK market. Live concerts are very popular in Norway and made a significant contribution to royalties paid to song-writers and performers. That, of course, will have been reduced by Coronavirus restrictions.

VI Conclusions and policy implications

18. The main message from this submission is that the economic organisation of the music industry is largely determined by the underlying contractual arrangements which in turn

have come about through copyright law. Contracts are the means whereby copyright is applied copyright in practice for music publishing and performance. They therefore are the lynchpin of the music industry. Institutionalised arrangements within the industry determine payments to artists and revenues to music publishing and record labels. Streamed music has entered as a 'top layer' to this structure.

19. Two-sided platforms are under competitive pressure from multi-sided platforms for which music is just one more product. There has been a reluctance to tackle the oligopolistic and oligopsonistic aspects of platforms (and the record industry) through competition law.[v] In my view that is a more effective route to ensuring better rates of payment to artists than tinkering with copyright law - the approach that has been adopted so far – which not only can have unintended consequences in the marketplace but also fails to tackle the contracts made to apply it. Music streaming has added the top to a payment pyramid with composers, song-writers an already disadvantaged broad base.

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Ruth Towse is Professor of Economics of Creative Industries in the Centre for Intellectual Property and Management at Bournemouth University and CREATe Fellow in Cultural Economics (University of Glasgow). She has researched the economics of the music industry over the last 20 years with the emphasis on the role of copyright as a source of earnings for authors and performers, recently with a team from the University of Oslo, Norway. Over the years, she has consulted on the subject for WIPO, EUIPO, ACE, British Council, Spanish Authors' Society and Industry Canada.

https://microsites.bournemouth.ac.uk/cippm/2014/04/30/ruth-towse/

[i] An exception is for the use of a recorded performance in a secondary market for which equitable remuneration is paid; www.gov.uk/government/publications/performers-rights/performers-rights. Details are also explained in a short video 'Going for a Song' available on www.copyrightuser.org/create/creative-process/going-for-a-song/.

[ii] See Towse, R. (2017) 'Economics of music publishing: copyright and the market', *Journal of Cultural Economics*, 41 (44): pp 403-20.

[iii] There are some minor variations; for example Spotify offers a family subscription. See R. Towse 'Dealing with digital: the economic organisation of streamed music', *Media, Culture & Society* 42 (7-8):1461-78. Available at https://doi.org/10.1177/0163443720919376.

[iv] Platform economics is explained in Towse (2019) *A Textbook of Cultural Economics*, Cambridge University Press, 2nd edition.

[v] https://publications.parliament.uk/pa/ld201719/ldselect/ldcomuni/299/299.pdf