

Written evidence submitted by Ben Sizer

About me

I'm Ben, I live in Nottingham, and I'm submitting in a personal capacity as a hobbyist musician.

Primarily I would consider myself a music fan, and particularly of heavy metal – a style of music born in the UK and exported successfully worldwide for several decades now. Although not popular enough to feature in the charts, it still features strongly in our culture and forms a thriving live and festival scene. I also play in several local metal bands, but this is treated as an expensive hobby and certainly does not generate a profit! Sadly, the current economic landscape for artists playing niche musical styles like this makes it almost impossible to do this as a job now, and I'll talk about that below.

I release all my music independently and do not at present have any direct or financial relationship with record labels or publishers. My day job is as a computer games developer, a role that is always likely to pay more than I could make as a musician. But I see many of my favourite bands, and bands I am friends with, struggling in an era when unprecedented global reach (reflected in their listener numbers) should mean they are thriving.

I'm lucky enough to work at the intersection of technology and creative arts. I've been a software engineer for almost 20 years, and have seen from the inside the way the tech landscape has evolved over that time period. I've also seen the scale and effects of piracy on software and how that has shaped the types of software we make and how we sell and distribute it to people. My interest and involvement in music means I've been able to make comparisons across the software and music industries, and hopefully might be able to bring some insight that might be missed by people with both feet either in the music industry or the tech industry.

Summary

- Success on streaming platforms is hugely influenced by whether an artist is on popular playlists or not – but the process of getting on these playlists is veiled in secrecy and subject to significant conflicts of interest, which appear to be growing as streaming services start charging artists for promotional opportunities.
- Streaming appears to have displaced individually purchased downloads as the primary “post-piracy” method of recorded music consumption, but the revenue generated is far lower than the “pre-piracy” days, making it harder for musicians to cover their costs.
- Streaming revenues seem to be distributed in such a way so that artists from the “middle” of the industry, averagely popular acts who hope to make a living but who are not at the level of pop-stars, are the hardest hit as the shift of emphasis from album sales to playlists and the upper cap on revenue per user severely reduces the income they will see from each fan.

- Artists not only have no means of negotiating a better rate for each stream of their music, but they are not even allowed to know how their rate is calculated. There is no functioning market in streaming rates and musicians have no influence over them.
- For almost any given performing band, the amount of revenue they can expect from streaming their new album is tiny compared to what they can expect from a typical live show, despite streaming providing more hours of entertainment to far more people. This is not because live shows are guaranteed money-spinners but because streaming revenues are so low as to be almost negligible to all but the top acts.
- Compared to other forms of entertainment such as video games, TV, and film, musicians have far less effective protection against copyright infringement, which weakens their hand in negotiations and also reduces the amount of revenue available to the streaming music industry.
- It's not clear which alternative business models could feasibly replace streaming given the current popularity of "all-you-can-eat" music at a fixed low price, but some improvement could come through increased transparency, better copyright protections, and perhaps consideration for some minimum payment levels.

(Details below)

Effects of streaming platform features

The importance of playlists

One shift I've seen over the ten years I've been releasing music is that streaming services, especially Spotify, place focus on the 'playlist' rather than on a single or an album. My Spotify figures suggest that my tracks which got placed onto an official Spotify playlist would see between 5x and 10x as many plays as the other tracks on the same album. This in itself is not too surprising and has similarities to radio where many people will hear the singles a lot but only the true fans will take the time to listen to the album. But it does highlight 2 things.

1. This massive popularity difference between playlisted tracks and unplaylisted tracks should make us wary of bias. When some people say streaming works for them, is this only because someone is putting them on these playlists with regularity?
2. The process of getting a track onto the playlists matters a lot since it can be the difference between popularity and obscurity, between a viable living and a trickle of pennies. Who owns and controls this process, and is it fair?

Streaming service playlists can broadly be divided up into 3 types: editorial playlists (created by employees of the streaming platforms), algorithmic playlists (created automatically by the platform software), and third-party playlists (created by other users of the platform, often individual listeners, sometimes organisations).

(This ignores playlists created by individuals for their personal use - they are unlikely to affect, or be affected by, commercial or artistic interests.)

In my experience, the editorial playlist is the most important by far. Pretty much any musical search term put into Spotify will return playlists where the largest ones are the editorial lists curated by Spotify themselves, alongside a handful of third-party playlists made by listeners or organisations. The curators of those popular playlists are effectively tastemakers on the platform and have great influence over how many streams you get.

We have no real insight into who creates or curates playlists, especially the in-house editorial ones. There is theoretically a way that any artist can pitch via the "Spotify for Artists" website but there's no guarantee you'll be treated fairly. Some (maybe most?) record labels have direct contacts with Spotify and can pitch directly. Money might be changing hands. We don't know.

Given that the streaming platforms know that playlists are where most of the streaming takes place, this provides an incentive for them to control them tightly. The situation with so-called "fake artists"^[1] is a clear example of what can happen when a platform does not have to account to anyone for how playlists are curated or which ones appear in search results – the platform can simply opt to pack popular playlists with cheaper "own brand" music (but not labelled as such!) and save themselves some cash.

Platform-curated editorial playlists are like radio stations that own their own record label and record store! They can choose what gets played and control the market for everyone.

Algorithmic playlists come with a different set of problems. They may seem less corruptible on the surface, but while they may not deliberately discriminate they are certainly capable of bias. The biases in an algorithm are sometimes harder to identify and fix.

For example, most algorithmic playlists are what the tech industry calls “recommender systems”, and they attempt to understand the relationship between things so that they can perform extrapolations and predictions. For example, a streaming service might know there is a strong relationship between Robbie Williams and Take That, so if you listen to Robbie, it might put some Take That songs into your algorithmic playlist of recommendations because it thinks you will like them.

The problem is that the system has no real *understanding* of the relationship (i.e. Robbie Williams having previously been a member of Take That) – all the system knows is that a lot of people listen to both, and that therefore liking one is a strong indicator of liking the other. It makes generalisations based on other people’s listening habits. This ends up being biased towards already popular artists for whom the service has millions of people’s listening data about, and biased against new and emerging artists for whom the service has little or even zero data. In computing this is known as the “cold start problem”, and is widely known, but hard to combat. [2]

This means that a new artist won’t show up *at all* on anyone’s “Fans Also Like” page on Spotify, and most likely can never appear on other algorithmic playlists such as Release Radar or Daily Mix for similar reasons. This particular bias entrenches the established players like major record labels and creates barriers to new entrants. And since some major labels have stakes in streaming services, and the streaming services have big deals with those labels, there’s a strong vested interest against addressing this problem.

Third party playlists are not much better – usually these are nothing more than middlemen trying to make money from musicians desperate to get onto a popular playlist. Entities like Playlistic have numerous playlists on Spotify with many thousands of followers, but how you get on those playlists is secret. Their username there is ‘soundrop’ but the company Soundrop claims it’s an unrelated entity. [3] There seems to be no way of contacting them. Are they being paid to add artists to their playlists? Who knows.

Just like good DJs can help fans find new music, curated playlists can add value for streaming services. This goes double when it comes to emerging artists that will not benefit from algorithmic recommendations. But all we see in practice are opaque organisations who might be charging money for access, and Spotify prioritising their in-house playlists over user-created ones anyway, by only showing their own playlists on the Home page and the Browse view.

So there’s a real need for transparency regarding playlists. This is becoming more urgent as platforms start offering paid promotion to artists, such as Spotify Marquee[4]. Whenever an internet company makes advertising part of its business model then it has another conflict of interest – why allow free visibility on the platform when it makes money charging people for that visibility? The logical endgame is that the service will start making it harder for artists to reach people without paying, just as Facebook has done with its news feed. This will be even worse for emerging artists and those in niche genres.

In fact, even since I started writing this submission, Spotify have announced a new plan to allow musicians to opt for a lower payout in return for preferential treatment on their playlists, effectively fulfilling the prophecy of the previous paragraph.[5] At best, this would allow popular artists to further dominate the playlists by sacrificing some income to ensure visibility. At worst, the majority of artists will feel compelled to accept this new lower rate just to have a chance of being played. It

emphasises the fact that Spotify see playlists as an area where they get to exert control over artists and drive their payments down.

Economic impacts of streaming

In the iPod years, roughly 2005-2015, digital downloads started to replace some of the revenue lost to piracy, and with the iTunes store being open to independent artists (via distributors) we started to see cash returning into the pockets of artists across the popularity spectrum. Sadly, this has been almost entirely replaced by streaming, as fans who did not require physical products like CDs or vinyl were happier to receive the same digital music via streaming platforms at a smaller subscription price.

When this call for evidence first went out there was an accompanying video on Twitter which, if I recall correctly, suggested that artists get paid £0.009 on average per stream. In my experience, this is a significant overestimate. I have never seen average rates that high in the 7 years I've been on streaming services. While some services do pay a little more, the majority of paid streams are via Spotify, and my rates on Spotify were just under \$0.0075 when I started in 2014, and have declined to just over \$0.0045 as of 2019, or about £0.0035 at today's exchange rate. (This counts UK streams only – most other territories pay less.) As a fully independent musician who owns all their copyrights I have no record label taking a cut, and my distributor is paid a fixed fee in advance, so they don't take a cut either. This means I'm confident in this amount as a baseline for revenue per stream, and I'll use that figure in my calculations.

A big problem is that streaming currently is a single consumption model with a single price (or two, if you want to include the ad-supported free tier.) There has been too much focus on *“what if some of the people who listened to radio or who pirated music will now pay £10 per month?”* and not enough on *“what if most of the people who happily used to spend £30 or £40 on CDs or downloads each month will now just pay £10 instead?”* And that seems to be what we see – the pop artists who you'd hear on the radio get the lion's share of streaming revenue, but the 'album artists' who relied on selling albums to devoted fans have seen the rug pulled out from under them. This may well explain why major labels, who primarily deal in mainstream artists who are less reliant on album sales and instead have individual songs targeted at the more casual music fan, are not complaining so much about streaming as you might expect.

In the CD age, these “album artists” would expect to see £10 to £15 of revenue from most fans when an album was released. In the iTunes age, those acts might expect to see £8 to £12 of revenue at release time. But now, in the streaming age, fans might listen to the album a few times shortly after release – let's say 10 listens of each of the 10 songs on the album, as a reasonable baseline – and this generates maybe £0.50 (35p for the band, and 15p for the streaming service, assuming the rough 70/30 split often talked of.) Maybe over time that will inch upwards. But hardly anyone listens to an album 200 times, which is what you'd need for the streaming to pay about as much as buying the download would. Streaming simply doesn't pay comparably.

Why is this? It's easy to get bogged down in looking at stream counts, per-stream rates, pro-rata calculations, and the like, but if a streaming service's maximum revenue per user per month is £10, then there just isn't going to be much cash to go around, however you slice it. But it's worse than that - with Spotify the *average* is nearer to \$4.79, or £3.60 at the time of writing [6] due to the free tier, 'family' packs, and student discounts. Great for their investors who mostly just wanted to see increased market share, less good for musicians who needed to see actual revenue.

The result of all this is that ‘middle’ of the music industry has been financially gutted as the amount that dedicated fans spend on music has dropped. This started before streaming, and has not been significantly helped by it. I think it’s important to note that while some statistics might indicate that musicians “*earned an average income of £23,059 in 2018*” [7] this is statistically-censored data – it does not account for the masses of musicians that are touring and gigging regularly but who earn far less than that, who hold down a day job to fund their expensive music habit, and who therefore do not record their career as a musician and will not therefore show up in the statistics. Of all the UK musicians that perform at our heavy metal festivals such as Download, Bloodstock, or Damnation, almost none of them are full-time musicians. So the reality is even worse than the numbers indicate, and the typical recording and performing artist is earning far, far less than that.

Streaming rates

It’s worth noting that musicians not only have no bargaining power when it comes to streaming rates, but they get no information about the arrangement at all. (I calculated my rates above by putting my distributor’s data into a spreadsheet and working out what I was paid.) We do not get to negotiate directly with platforms and must go via a distributor [8], and the distributors do not tell artists how their royalties are calculated. We just get to sign up, wait for the first payments to come through, and then decide whether it was worth it or not.

The only way we know anything about how the money is allocated is through industry insiders leaking details, such as Jeff Price’s ‘Definitive Guide to Spotify Royalties’.[9] What little we do know of the revenue model is that it scales payouts relative to the streaming services own revenues, rather than having any regard to how much music is on the service or how many streams take place. This in turn means that the loss of revenue incurred by special offers such as Spotify’s Family subscription or their 1 month free trial is passed directly on to artists.

More absurdly, if every musician were to encourage all their fans to use the services twice as much, the effective per-stream rate would halve and musicians would get exactly the same payout, despite the streaming service seeing twice the usage. It’s no wonder Spotify’s CEO is telling musicians they need to release more music more frequently and keep driving people to the platform [10]. It costs Spotify nothing to have more music and more listeners but it obviously increases the value and importance of their platform. Meanwhile, artists are pitted against each other in a promotional arms race to fight over the fixed pool of cash. Success in the music world has always been contingent on capturing attention, but now musicians have to run as fast as they can just to stay in place.

This could be improved somewhat by what is being called a ‘user-centric’ system, where each subscriber’s money is allocated to the music they listen to, rather than being thrown into the ‘big pot’. This way, a fan of niche music would see their £10/month go to the bands they listen to, rather than being mostly spread out across pop artists. Whether this would make a significant difference to the actual outcomes is hard to tell – pop artists are more popular, after all! - but at least users would be assured that their cash directly supported the bands they love to listen to. *If* there is a big unfairness here, e.g. between fans who pay for subscriptions because they like niche artists vs. fans who use the ad-supported free tier who only like pop artists, this would be rectified by such a system.

The value of music – streaming revenues vs live

It is commonly said these days that “the real money is in live shows and merchandise”, but this is not because they are intrinsically more lucrative than recordings. In the past, live shows would often be loss leaders to drive record sales, and record companies would pay “tour support” to cover these costs. Now, recorded revenues are currently so low that most musicians now have to disregard them as a reliable income source.

My own band is not particularly popular but has a small and dedicated following of people who like that particular genre. Our shows around the UK might typically command a modest £5 on the door and bring in 20 to 100 people – let’s say 50 on average. So the venue would take £250 on behalf of us and any other bands that played. Obviously there are venue costs and the like, but £250 is broadly the value of the entertainment of one evening’s music. So why has the same band earned less than £130 in *six years* on Spotify?

I have a friend in a more popular metal band who typically play shows to between 100 and 300 people, and at £20 a head, they might take £4000 on the door at a typical show, before costs. They released an album this May, and in August they announced that the songs on the album had reached 500,000 plays on Spotify. I calculate that to mean £2500 in revenue, including the platform’s share. This means their new album has, in 3 months, earned only a little over half what their typical show would yield on a single night. With the help of label backing and getting on the playlists they’re doing better than my band – but the disparity is still striking. The fact that any given band’s live revenues, playing to a small crowd, massively outstrip their streaming revenues from their music being played to orders of magnitude more people, indicates a clear market failure.

Given that listening to recorded music is the main way most of us enjoy music, it doesn’t make sense that this primary source of value and entertainment should now be the loss leader for live performances – especially given that live performances are by no means guaranteed to be profitable anyway. Several popular bands in the metal genre have been on record as saying that even regular touring does not translate to viable income. [11]

Finally, not all recording artists *should* be expected to have a significant live career. A requirement to play live discriminates against people with disabilities or similar limitations on their ability to perform or put on a stage show, those who live in remote places and who can’t easily get to where the fans are, those in larger bands and ensembles where travel and accommodation overheads are higher, etc. Even just attempting to have a family life is going to be hard to do if there is pressure to be on the road all the time. It is perverse that the technological benefits of the internet that should allow artists to reach growing numbers of people despite geographical and physical boundaries are actually causing musicians to be more affected by those boundaries than ever before.

Copyright and Piracy

Obviously one major reason that streaming services keep their prices so low is that the alternative – in the eyes of both fans and musicians – is piracy or other infringement. So it is right to examine this as part of the issue.

In my opinion, the UK absolutely does need an equivalent of the new EU Copyright Directive. One large component of why streaming services are able to offer such low rates to record labels and artists is because those artists would rather receive pennies from a legitimate service than nothing at all from the illegitimate ones. [12] Almost every musician, myself included, has seen their work get

uploaded to YouTube within hours of release, generating no revenue for us but generating value for Google. We then have to fill in onerous digital paperwork to get the music taken down, including accepting the threat that they will give our personal contact details to the uploader, then wait a day or two for it to be taken down – only for the cycle to repeat a day later when someone else uploads it again.

It is indicative to look at the relative pricing for music streaming versus TV or film services. These services tend to only offer a subset of all the shows available, with many works either not available at all on a given platform or only available on a time-limited basis. As such, many households subscribe to more than one service - e.g. Netflix, Amazon Prime, Now TV, Disney+ - on top of the BBC's iPlayer, subsidised by the licence fee. There is healthy competition in the market and consumers who want the widest access to films and shows will be paying more, that revenue eventually supporting TV and film-makers. This is possible because the TV and movie industries are able to invest in policing the internet and getting their works removed from illegal sites.

In the world of video games, there is even less available on the subscription services, which are generally run by console manufacturers such as Microsoft and Sony to promote their hardware. Most games are still bought individually, at a price chosen by the developer (plus a platform percentage, of course). Again, consumers who want the widest access to games are paying more and that supports developers. Game developers have this power to set their own prices because they can control piracy by programming access controls into the games themselves, and have a strong bargaining hand when dealing with the various stores and subscription services.

The music world is unique – almost every streaming platform has almost every song and album available, always. As such there's little to choose between them and almost nobody will pay for 2 subscriptions. This is arguably because almost every song is also available for free on YouTube and on various pirate sites. The price is therefore depressed from both sides – the demand side, where streaming services know they have to operate cheaply or they will be undercut by illegal downloads and streaming – and the supply side, where musicians know they can't afford to withhold their work from the few places that will actually pay them.

As such, it is absolutely imperative to close the loopholes that allow internet companies like YouTube to hide behind anonymous uploaders, where nobody is held accountable for the industrial-strength infringement on the platform and where the platform has no incentive to address it but plenty of incentives to allow it.

Ideally the UK would implement laws equivalent to the recent EU directive so as to provide consistency across the two markets. From a musician's perspective the key aspect here is to ensure that digital service providers become liable for unauthorised works shared by users of their platform if they haven't taken adequate measures to take the works down and keep them down. This is not unreasonable - sites like YouTube know copyright infringement is rife on their platform, and already have technology to identify the content – there just needs to be a duty on them to extend this to all content creators, not just the ones that choose to participate in their advertising programmes.

Similarly they could - and arguably should - expose a way for people to quickly flag material as unauthorised uploads and have the moderation system remove it. This process already exists for many other categories of unwanted content, and the only reason it doesn't apply for copyright is simply that they can hide behind existing "safe harbour" laws such as those in article 14 of the EU

Directive 2000/31/EC and the Copyright Act section 97A that followed. This allows them to legally enjoy the benefits of leaving the infringing work up until the creators complain about it.

It might be prudent to consider copyright protection's relationship to the work on "online harms". Intellectual property was judged to be outside the scope of that consultation, but there are strong parallels worth considering. While obviously of lesser importance than terrorism or child safety, the necessary solutions are likely to be remarkably similar, in that we need to impose a duty of care on these platforms that rely so heavily on user-generated content. Almost all the enforcement suggestions in section 6 of the white paper [13] could apply equally well to issues of copyright infringement.

Alternative Business Models

It's hard to imagine what alternative business models would look like because consumers are now so used to the "all-you-can-eat for £10 per month" approach that breaking free of that will be met with resistance. Like many other musicians, I enjoy moderate success on Bandcamp, a website that sells digital downloads on our behalf, lets us set the price, and takes a 15% cut. But it makes us acutely aware of the inequities – I get over half of my music revenue from Bandcamp, but more than 100x more people are listening to my music on Spotify than are buying it on Bandcamp. They enjoy the cheaper option.

I don't see any great solutions to the business model issue, except what was implied above:

- Making streaming rates more transparent might lead artists and record labels to withdraw from low-paying platforms, putting upward pressure on revenues
- A minimum per-stream or per-minute payout might also form some sort of safety net – but also risks being a lower bound above which no service would need to go, unless artists were willing to switch services
- Clamping down on unauthorised access to music might help restore the perceived value of the product and allow providers to raise prices, offer premium tiers, etc

End note

I appreciate this may not be as data-filled a submission as you might get from a record label or an industry body, but I know there will be many struggling artists up and down the country in non-mainstream genres whose individual situation might not be captured clearly, and I wanted to give an insight into what I know of their situation, based on my own experiences as a musician. Although by no means an expert, I'd be happy to elaborate on any of the points I raise above.

References

- [1] <https://www.musicbusinessworldwide.com/spotify-denies-its-playlisting-fake-artists-so-why-are-all-these-fake-artists-on-its-playlists/>
- [2] [https://en.wikipedia.org/wiki/Cold_start_\(recommender_systems\)](https://en.wikipedia.org/wiki/Cold_start_(recommender_systems))
- [3] <https://twitter.com/grxtesque/status/1101728218187362305>
- [4] <https://artists.spotify.com/marquee>
- [5] <https://musically.com/2020/11/02/spotify-artist-tool-boost-streams-discounted-royalty-rate/>
- [6] <https://www.businessofapps.com/data/spotify-statistics/>
- [7] https://www.ukmusic.org/assets/general/Music_By_Numbers_2019_Report.pdf
- [8] <https://artists.spotify.com/faq/popular#how-do-i-get-my-music-on-spotify>
- [9] <https://audiam-public.s3.us-east-1.amazonaws.com/The%20Definitive%20Guide%20To%20Spotify%20Royalties%20By%20Jeff%20Price.pdf>
- [10] <https://musically.com/2020/07/30/spotify-ceo-talks-covid-19-artist-incomes-and-podcasting-interview/>
- [11] <https://metalinjection.net/its-just-business/peripherys-misha-mansoor-says-he-cant-making-living-from-just-the-band>
- [12] https://medium.com/@nturkewitz_56674/out-to-sea-safe-harbors-the-unmooring-of-the-foundations-of-a-healthy-online-music-marketplace-b2e5d90f0302
- [13] <https://www.gov.uk/government/consultations/online-harms-white-paper/online-harms-white-paper#enforcement>