# Written evidence submitted by AEPO-ARTIS

**UK Parliament Digital, Culture, Media and Sport Committee Call for Evidence**

**"Economics of Music Streaming"**

**AEPO-ARTIS contribution**

**Introduction**

AEPO-ARTIS is a non-profit making organisation that represents 36 European performers' collective management organisations from 26 different countries. The number of performers represented by the 36 member organisations of AEPO-ARTIS can be estimated at between 400,000 and 500,000.

AEPO-ARTIS wishes to contribute to this call for evidence to highlight the precarious and highly inequitable position of performers within the current music streaming market.

1. **What are the dominant business models of platforms that offer music streaming as a service?**

At the outset, it should not be overlooked that all business models rely primarily on the creative contribution of a number of categories of rightholders, including performers. Without this contribution, no platforms would exist. Regrettably, not all of these contributions are fairly remunerated.

With regard to existing business models, some platforms such as Spotify and Deezer offer a business model which is based on a both a subscription service and a free service. As well as containing advertising, the free service will have reduced functionality such as the inability to "skip" songs on an unlimited basis, the inability to select specific songs and the inability to download songs.

Other services such as Apple Music and Tidal operate on a purely subscription basis.

Each service has its own peculiarities, which distinguishes itself slightly from its rivals. For example, Apple Music heavily features radio style content including interviews with artists e.g. discussing their favourite music or influences. Tidal offers a lot of exclusive content, not available on other platforms

Amazon Music Unlimited features interoperability, which ties in with Amazon hardware such as Amazon Echo speakers.

Other more "niche" platforms such as Soundcloud (free and also subscription based) exist, which are aimed more at undiscovered artists and thus have a catalogue of music very different to the platforms referred to above.

User generated content sites such as YouTube (not to be confused with the music streaming site "YouTube Music") of course offer music, albeit accompanied by audiovisual content.

Finally, there are numerous sites offering unauthorised musical content, usually funded by advertising.

One thing that these models have in common is that in almost all circumstances, performers receive no additional payment when their performances are used in the online environment. Platforms benefit from the use of these performances, without giving anything back to those who contributed to them. EU, and corresponding national law, has failed to protect performers. Under EU law, performers are granted an "exclusive right" by Directive 2001/29/EC, which means that they must give their consent if they wish to allow their performances to be made available on demand online. However, the practical reality is that performers are forced to transfer this right to producers (record companies, film studios etc.) for a one-off, symbolic fee, or even for no additional payment at all.

The legal status quo cannot be allowed to remain if there is to be an equitable economic basis for streaming and for the profits derived therefrom to be shared in a similarly equitable manner.

**2. Have new features associated with streaming platforms, such as algorithmic curation of music or company playlists, influenced consumer habits, tastes, etc?**

Clearly, platforms aim to please their users and increase their number of subscribers. The proliferation of more and more new features reflects customer demand. Studies exist showing the huge popularity of playlists, both those curated by the platform and by algorithms.

What is of great concern to performers is that these features more and more resemble traditional radio broadcasting. This has highly important legal implications for performers.

When a song is played on the radio, the relevant EU Directive is Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property and in particular its article 8(2). The Directive has been implemented in all EU countries and the provisions of the Directive are mirrored in the Copyright, Designs and Patents Act 1988 at section 182D which provides performers with a **remuneration right** that cannot be assigned (other than to a collecting society):

> **182D Right to equitable remuneration for exploitation of sound recording.**
>
> (1) Where a commercially published sound recording of the whole or any substantial part of a qualifying performance—
>
> (a)is played in public, or
>
> (b)is communicated to the public otherwise than by its being made available to the public in the way mentioned in section 182CA
>
> the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording or, where copyright in the sound recording has expired pursuant to section 191HA(4), from a person who plays the sound recording in public or communicates the sound recording to the public…
>
> (2) The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.

As a result of this legislation, there is a successful model in the UK and EU whereby broadcasters such as radio stations pay an equitable amount of remuneration to collective management

organisations (CMOs) who then fairly distribute the remuneration collected to the relevant rightholders including performers. This model has functioned for decades and by and large all involved parties are generally content with it.

However, when a song is "**made available on demand"** on a streaming platform a different legal provision applies. The relevant EU Directive is Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, and in particular its article 3(2). This Directive has been implemented in all EU Member States. The relevant provision for the UK is to be found in in the Copyright, Designs and Patents Act 1988 at section 182CA, which grants performers an **exclusive right**:

> **182CA Consent required for making available to the public**
>
> (1)A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

The essential difference between the **remuneration right** in section 182D and the **exclusive right** in section 182CA is that the remuneration right cannot be assigned to any party other than a CMO. Accordingly, performers are guaranteed to receive equitable remuneration.

On the contrary, the **exclusive right is assignable** and indeed in commercial practice it almost always is assigned to producers (i.e. record companies). Due to the overwhelming contractual power that record companies hold, this exclusive right is invariably assigned to the record companies with in the vast majority of cases no, or negligible, payment being made to performers.

It can be seen therefore that the law differentiates between: 1) the communication to the public (e.g. playing a song on the radio) where section 182D applies, and 2) the making available on-demand of a song, where section 182CA applies.

Bluntly, the effect is that when section 182D applies, performers get paid. When section 182CA applies, performers do not get paid.

**The "new features associated with streaming platforms"**

AEPO-ARTIS believes it is crucially important and welcomes the fact that the committee has identified that streaming platforms have new features. Platforms that were originally designed to be "on-demand platforms" (to which section 182CA would apply) have now become hybrid platforms that contain some features to which section 182CA applies **and some features to which section 182D applies.**

In practice, the profits derived from these new features do not filter down to performers, despite the fact that they legally ought to.

For this and other reasons, it is vital that a right to remuneration for making available on demand for performers - for both audio and audiovisual - paid by online platforms and subject to mandatory collective management is introduced in UK legislation. This is addressed further below.

3. **What has been the economic impact and long-term implications of streaming on the music industry, including for artists, record labels, record shops, etc?**

As indicated in the question, the "industry" is made up of various categories of rightholders. The implications of streaming impact upon these rightholders in vastly differing manners.

This is evidenced in statistics released in October 2020 in a report published by CISAC (the "International Confederation of Societies of Authors and Composers") entitled "*Covid-19: Crisis, Resilience, Recovery:* ***CISAC Global Collections Report 2020***". The report states:

> "Digital revenue continued to rise sharply in 2019, driven by increased streaming subscriptions and the strengthening of licensing agreements with digital platforms."

While the "**increased streaming subscriptions**" have benefitted the **platforms** and the "**strengthening of licensing agreements**" has benefitted **record companies**, regrettably, performers did not share in this digital revenue.

Today, most performers, both in the audio and audiovisual sector, are not remunerated when their performances are exploited via streaming and downloading platforms such as iTunes, Spotify, Amazon Prime and Netflix. With little bargaining power, they often have no choice but to transfer all economic rights on those productions, in return for a one-off payment and regardless of how successful the exploitation is in the end.

Accordingly, it is clear that streaming is creating vast revenues, but these revenues are not shared fairly with those creating the music that generates these revenues.

4. **How can the Government protect the industry from knock-on effects, such as increased piracy of music? Does the UK need an equivalent of the Copyright Directive?**

Certain categories of rightholders within the industry are far more in need of protection than others. As indicated above, platforms and record companies already benefit massively from streaming in the music sector.

The EU Copyright Directive introduced an important principle into EU law: appropriate and proportionate remuneration should be guaranteed to performers for all exploitations, including online. This has been welcomed by AEPO-ARTIS. However, in order to ensure that it is effective **in practice**, a right to remuneration for making available on demand for performers paid by online platforms and subject to mandatory collective management should be introduced into UK national legislation.

5. **Do alternative business models exist? How can policy favour more equitable business models?**

Radically alternative business models are not required. Existing business models can very simply be adapted into equitable business models. Policy can achieve this by supporting the introduction in UK legislation of a right to remuneration for making available on demand for performers paid by online platforms and subject to mandatory collective management. This is an extremely simple solution

that would mean that a thriving music streaming market would become an **equitable** and thriving music streaming market.