

Written evidence submitted by The F-List for Music CIC

Response to the Call for Evidence, issued by the DCMS on
'Economics of Music Streaming'

Submitted on behalf of:

THE F-LIST FOR MUSIC CIC

Vick Bain* and Dr Metka Potočnik**

Terms of Reference:

The DCMS Committee is inviting written submissions to be submitted by 6pm on Monday 16 November 2020.

- What are the dominant business models of platforms that offer music streaming as a service?
- Have new features associated with streaming platforms, such as algorithmic curation of music or company playlists, influenced consumer habits, tastes, etc?
- What has been the economic impact and long-term implications of streaming on the music industry, including for artists, record labels, record shops, etc?
- 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?
- Do alternative business models exist? How can policy favour more equitable business models?

I. Introduction to The F-List for Music CIC

The F-List is the first directory of its kind to feature up-to-date information on UK-based female musicians, songwriters, and composers, in all genres of music. Built on a WordPress web-platform and with over 4,500 musicians including over 1,000 bands with women in them, it is a growing community, supported by a not-for-profit Community Interest Company which will be publicly launched on **23 November 2020**.

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** Dr Metka Potočnik is a Lecturer in Law (University of Wolverhampton), a qualified lawyer in Slovenia (since 2008), and a graduate of Queen Mary University London (PhD), King's College London (LLM) and University of Ljubljana (LLB). Recently her funded research focuses on the critical investigation of IP law through a feminist lens. Her focus is on the female creatives in the UK creative industries. More: <https://researchers.wlv.ac.uk/m.potocnik>

The board of directors consists of 13 women from across the UK, representing all genres of music and is diverse in terms of age and ethnicity. The board is committed to creating a future where gender equality is celebrated and represented throughout the music industry. It is still a fact that many female musicians do not receive the professional opportunities their male counterparts may enjoy. Recent analysis has shown 84% of the artists booked to headline 14 major UK festivals were of male only acts,¹ 86% of signed songwriters and publishers and just over 80% of signed artists on record labels in the UK are male.² This is despite just over 42% of 124,815 music degree students over the five-year period to 2018 being female.³

The F-List has been created as a solution to help UK female and gender minority musicians overcome structural barriers endemic in the music industry by providing training and facilitating professional and profile opportunities. **The F-List** is also committed to conducting research around the lived experience of women and gender minority artists in the music industries.

II. Comments to the Call

As a preliminary point, **The F-List for Music CIC** expresses its regret in the lack of empirical data to support its submission here. The deadline of 16 November 2020 was unfortunately much too short to collect and present the evidence from the female and gender non-binary musicians on its roster. At present, there are over 4,500 artists on its registry (all UK based).⁴ If given the chance, **The F-List** would like to have a further opportunity to share its' members lived experience on any aspect of commercialisation of intellectual property rights. Given the opportunity, The F-List aims to conduct surveys, interviews and focus groups with many of the artists on its roster. All but one of the UK music membership organisations have a majority of male members and therefore it is essential an analysis of the economics of music streaming on female and other gender minority musicians are sought and taken into consideration. Music streaming models are based on IP rights in the musical works. Through IP rights, commercialisation of the creative works, *ie.* music, occurs. There

¹ BBC Data Team analysis (2017) <https://www.bbc.co.uk/news/uk-england-40273193>. All links in this submission have been accessed 16 November 2020.

² Vick Bain, 'Counting the Music Industry, the Gender Gap' (2019) <https://countingmusic.co.uk>.

³ Data received from the Higher Education Statistics Authority (2019) <https://www.hesa.ac.uk/>.

⁴ The register available: <https://thef-list.uk/about-us/about-the-f-list/> (free, open, and web-based resource).

is an assumption that IP is gender neutral, but this is not the case and often hides bias.

The UK Creative Industries are biased, and lack of representation has been confirmed by numerous reports. As well as the statistics already highlighted above, in similar terms, Smith *et al* found that “women are missing from popular music.”⁵ Furthermore, Coogan Byrne finds underrepresentation of female musicians across British Radio Stations (2019-20).⁶ The boards of the UK music royalty collecting societies, PRS for Music and PPL remain resolutely male dominated, 88% and 94% respectively,⁷ because of the minimum earning requirements which act as a barrier for female musician representation. PRS for Music reports only 18.4% of its 145,000 strong membership are female.⁸ This means the gatekeepers in the music industry have been almost exclusively male for over a century and show little sign of progress. Given these practices across the UK music sector, research has started to investigate the role of IP law⁹ and law on neighbouring rights of artists in perpetuating the lack of diversity in the UK music industry.

When Bain made the call in March 2020 on social media (Twitter) for all female musicians, wishing to get access to professional opportunities in the music sector, over 1,000 individual artists signed up on the registry within weeks. The energy behind this initiative was inspired and the need to collect women’s experience in the sector can no longer be ignored. It is argued here that IP law plays an important role in the artist’s success and their opportunity to ‘make a living’ of their music. With so many record labels, festivals and radio stations perpetuating practices, which exclude women musicians, the responsibility of getting to know the system, from the position of an outsider, rests on women artists as individuals, or perhaps, bound in membership organisations.

The F-List for Music CIC will aim to collect the lived experience of women and gender non-binary musicians, in order to submit empirical data to calls such as

⁵ Stacy L Smith *et al*, ‘Inclusion in the Recording Studio? Gender and Race/Ethnicity of Artists, Songwriters & Producers across 800 Popular Songs from 2012-2019,’ (2020) <http://assets.uscannenberg.org/docs/aii-inclusion-recording-studio-20200117.pdf>.

⁶ Linda Coogan Byrne and Women in CTRL, ‘Gender Disparity Data Report. An analysis of the Top 20 Most Played British Acts across British Radio Stations in the Period of June 2019-2020 and the Top 100 Radio Airplay chart in 2020’ (2020) <https://www.canva.com/design/DAEE37rIDuc/-7R8D7lzU7EMdcnv9Snw3w/view#1>.

⁷ Nadia Kahn ‘A Seat At The Table’ (2020) <https://womeninctrl.org/seatatthetable/>.

⁸ PRS for Music ‘100 Women Changing Music’ (2020) <https://www.prsformusic.com/press/2020/100-women-changing-music>.

⁹ Metka Potočnik, ‘Exposing Gender Bias in IP: The Music Industry’ (October 2020, Sixth Annual IP Mosaic Conference: The Arc is Hot! Using IP to Further Social Justice, US), <https://iipsj.org/programs/ip-mosaic/>. Full paper available on request (email: m.potocnik@wlv.ac.uk). Also, Metka Potočnik, ‘Out with the Old: a Feminist Approach to Intellectual Property’ (September 2020, Society of Legal Scholars Annual Conference, University of Exeter, Exeter, UK); and Metka Potočnik, ‘Hear Her Out: a Feminist Approach to Intellectual Property’ (June 2020, Annual Research Conference, University of Wolverhampton, Wolverhampton, UK).

this one. The economics of music streaming are based on contracts and commercialisation of IP rights. Given the underrepresentation of women signed on to record labels in the UK, most female and gender minority artists are left to negotiate the financials of any music streaming deals individually. This, as individuals, puts them at a disadvantage, as they are negotiating with much larger entities, such as online intermediaries (YouTube, Spotify, Apple Music, Amazon ...). Imbalance in negotiating power is therefore a barrier, which faces women and gender minority artists at a much greater proportion. Mostly, women and gender minority musicians are left with 'take it or leave it' terms to a music streaming contract. It is known that IP law does not have any rules, which would protect a weaker party in such negotiations. IP law, unlike other areas of the law, as for example consumer protection law, assumes equality of negotiating parties. Whereas that proposition might hold true in a relationship between a record label (publisher) and an online intermediary (streamer); the same does not hold true for individual artists (non-signed or self-releasing artists) and an online intermediary (streamer).

This disparity in negotiating power is highlighted in the large pay-gap between men and women in the music industry. Analysis of the most recent pay-gap reports of music companies published on the government's website, showed that UK music companies pay their female staff 73p for every £1, that is 27% less than men using the median midpoint. 72% of all women and 76% of all men receive bonuses, but women only receive 77p for every £1 a man receives in their bonus, or 23% less than men. Women work in 51% of the bottom quartile jobs but only 36.5% of the top quartile jobs thus highlighting the vertical hierarchy prevalent in these companies.¹⁰

Female musicians suffer even greater inequality because they are all self-employed. Although the UK music Collective Management Organisations have not made public their member earnings gaps other collecting societies around the world have, including Canada and Australia¹¹ where in 2018, female songwriters and composer members of APRA earned 88 cents for every dollar their male counterparts earned. Using American census data and other public US Government reports, Data USA¹² claims male musicians earned \$38,776 and female musicians earned \$24,853 in 2016 with 60% of US musicians and the related workforce being

¹⁰ Data accessed 8th July 2020 <https://www.gov.uk/report-gender-pay-gap-data>

¹¹ Ange McCormack, 'By the Numbers: The Gender Gap in the Australian Music Industry' (2019)

<https://www.abc.net.au/triplej/programs/hack/by-the-numbers-2019-the-gender-gap-in-australian-music-revealed/10879066>.

¹² Data USA (2016): <https://datausa.io/profile/soc/musicians-singers-related-workers>.

male. And research published last year by Honeybook,¹³ a management and invoicing platform used by freelancers, analysed over 350K invoices issued by 1,800 of its users and found female musicians had earned only 38% of what their male colleagues had earned. These pay gaps contribute to the low percentages of women making a living out of creating and performing music, the Office of National Statistics Employment by Occupation report (2018)¹⁴ with data sourced from the Labour Force Survey shows only 19.35% of approximately 50,000 musicians currently working in the UK are female.

Artists on **The F-List for Music CIC** are not privy to the same knowledge on IP law, or music contracts as artists, who have the backing and support of record labels and their legal teams. Particular effort should be placed in linking the public institutions (such as the Intellectual Property Office) or the legal representatives, with individual artists. This, it is suggested here, is best done through an establishment of a new consortium, which would serve as an umbrella for all organisations, freelancers or individual musicians. An example of such an action is the WIPO for Creators Consortium,¹⁵ which aims to “objective of the Consortium is to raise awareness and increase knowledge of creators’ intellectual property rights and related processes required for creators to be fairly acknowledged and compensated for their work, regardless of their geographical, cultural or economic conditions.”¹⁶

As with all of the sections above, initial evidence¹⁷ suggests that IP law and music contracts are at present unknown, or when known, complex and resultingly inaccessible to female musicians. This further links to the inaccessibility of enforcement mechanisms and expert legal scholars for (at least two) reasons: inaccessibility of information and the cost attached with the action. Initial pilot studies confirm that IP law and its enforcement are seen as highly complex, and prohibitive for female and gender non-binary artists.¹⁸ Moreover, the rules on commercial exploitation of copyright and moral rights are seen as inadequate in the pursuit of creative autonomy of artists. Further research is needed, in particular a critical

¹³ Honeybook (2019): <https://www.honeybook.com/risingtide/2019-gender-pay-gap-report>.

¹⁴ Office of National Statistics (2018)

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentbyoccupationemp04>.

¹⁵ Collaboration between WIPO and Music Rights Awareness Foundation (reported on 10 August 2020): https://www.wipo.int/pressroom/en/articles/2020/article_0016.html.

¹⁶ The Charter: https://www.wipo.int/export/sites/www/copyright/en/management/charter_of_wipo_for_creators.pdf.

¹⁷ Metka Potočnik, “Breaking Monopolies: a Feminist Approach to Intellectual Property Law in the Creative Industries,” (September 2019 – August 2020), <https://researchers.wlv.ac.uk/m.potocnik>.

¹⁸ Potočnik (n9).

investigation of IP law through a feminist lens, in order to evaluate the effects of IP law on women and gender non-binary artists.

As seen from the start of the submission, industry reports confirm that the commercial music industry is not a welcoming place for many female musicians. Female musicians face many barriers men do not, not least in that they very often earn far less than their male counterparts¹⁹ and this can prematurely end their careers in music or means they must seek income elsewhere. All musicians have, over the past two decades in the age of digital music, struggled to enforce their IP rights especially on platforms which do not have good systems for independent musicians such as YouTube, but this impacts female musicians significantly more. Having an easily accessible and a transparent economic module of music streaming, which offers adequate payment to the artist, could form an essential part of their ability to continue to make a living from their music.

The F-List for Music CIC is of the opinion that collecting further empirical evidence from women and gender minority artists, inquiring as to their experience of economic models of music streaming, is instrumental to inclusive music industries, which promote and protect all groups of creatives, which are currently underrepresented. In order for such collection to be informative and instructive, it is suggested time and funding is needed to support systemic, and large-scale collection. **The F-List for Music CIC** is aiming to conduct such research in the coming months, with the support of the right strategic and research partners.

¹⁹ Bain (n2).