

Written evidence submitted by the Music Managers Forum and Featured Artists Coalition

MMF/FAC submission to DCMS enquiry into the Economics of Streaming.

The Music Managers Forum and Featured Artists Coalition are pleased to submit evidence to the DCMS committee inquiry into the economics of music streaming.

The **Music Managers Forum** is a community of more than 1000 music managers based in the UK who collectively manage global businesses on behalf of thousands of artists and songwriters, from new and alternative talent to some of the world's biggest music stars. Our members represent artists including Biffy Clyro, AJ Tracey, Dua Lipa, Ed Sheeran, Nile Rodgers, Robbie Williams, PJ Harvey, Peggy Seeger, Izzy Bizu, Paul McCartney, Arctic Monkeys, Bill Ryder-Jones and Blue Lab Beats.

The **Featured Artists Coalition** is the UK trade body representing the rights and interests of music artists. The FAC was founded in 2009 by a group of artists including Billy Bragg and Pink Floyd's Nick Mason. Today the FAC continues to serve a diverse membership of creators at all career stages, driven by a board of directors and an army of ambassadors both entirely made up of artists including Imogen Heap, Ed O'Brien (Radiohead), Sandie Shaw, Jack Savoretti, Aluna, Skin (Skunk Anansie), Ghostpoet, Johnny Marr, David Rowntree (Blur), Paloma Faith and Katie Melua.

EXECUTIVE SUMMARY

This submission focuses primarily on the inquiry's third question, i.e. the economic impact and long-term implications of streaming on the music industry, in particular how the shift to streaming has exacerbated long-term issues within the music industry.

This submission will highlight issues around transparency regarding the deals done between the music industry and the streaming platforms and social media services. This means artists, songwriters and their managers are unable to audit the royalties those deals generate, and do not know how advance payments are shared out between stakeholders.

It will also address issues with record contracts - especially legacy contracts - and how they have been applied in the streaming age. Those issues could be addressed by the record industry voluntarily adopting better practices, or through copyright law reforms, or by the payment of so-called performer equitable remuneration on streams.

Finally we will explain how complexities in the way songwriters are paid result in significant delays and deductions in royalty payments.

This submission is based on five years of research that MMF has undertaken on how the streaming business model works and the issues it creates, and a more recent consultation of the boards and committees of both MMF and FAC.

We note that this submission does not address music piracy, as we feel that - as the streaming industry has matured - the key debates have moved on from how we prevent piracy to how we better distribute the revenue generated by recent growth.

INTRODUCTION

The growth of music streaming over the last decade has dramatically changed the business of recorded music. Since 2015, revenue generated by streaming platforms has taken the record industry, in the UK and globally, back into growth after fifteen years of steep decline.

Because of the streaming boom, global recorded music revenues have grown 39% since 2015, with 8.9% growth in 2019. Spotify alone is now paying around £900 million per quarter to rights-holders around the world, and the major music rights companies like Sony Music, Universal Music and Warner Music are enjoying steady double-digit growth, with the owners of both Universal and Warner capitalising on this success by pursuing share sales.

Clearly music streaming is good business, and the music rights industry at large is a major beneficiary of this success. However, the music rights industry is made up of a number of stakeholder groups – including featured artists, songwriters, session musicians, record producers, record labels, music publishers and music managers. Not all of those groups have benefited to the same extent from the streaming success story.

The streaming market also continues to evolve, as do the issues associated with it. For example, as streaming platforms diversify the services they offer - adding more radio-like functions and content - and some traditional radio stations expand their on-demand options to become more like streaming services, such as BBC Sounds - we are seeing a shift in the nature of consumer listening behaviours.

These convergences - alongside the question of how algorithms increasingly shape and influence editorial choices - further impact on how artists and songwriters get paid now and in the future.

The streaming business model

The streaming business is complex. Which makes solving the issues associated with the business model complex too. There are various reasons for the complexities...

- There are two sets of music copyrights - the copyrights in the song (lyrics and composition) and the copyright in the recording – which are organised and managed differently.
- Streaming income derives from subscription and/or advertising revenue and is therefore a fundamentally different business model to the selling of physical discs and downloads. The allocation of that income amongst rights holders is a more complicated 'aggregate revenue-share based on aggregate consumption-share' model (as opposed to a 'per unit rate') involving billions of micro-payments.
- This means there aren't simple per-stream royalty rates. Average per-stream payments vary depending on the total income generated by the service, the total number of streams in any one month, and the consumer's territory and subscription type (premium, family plan, ad funded etc).
- Territorial music industry systems and conventions from a pre-digital world have been applied to an increasingly global digital business.
- Legacy record and publishing contracts written for the physical era have been applied to the digital era, not always in an equitable way.

Dissecting The Digital Dollar

Because of these complexities - and the need to understand them in order to address the issues - in 2015 the MMF launched its 'Dissecting The Digital Dollar' research project. This resulted in the publication of a book of the same name (now in its third edition) that has been sent to each committee member .

The Digital Dollar project has enabled managers - and the artists and songwriters they work with - to get to grips with how streaming works. It also identified a number of inherent challenges within the streaming business model.

Over the last five years, MMF has led a number of debates about those issues, subsequently identifying further research and campaigning for solutions.

As the issues around streaming came back into the spotlight earlier this year, mainly because artists and songwriters saw other significant revenue streams slump as a result of the COVID-19 pandemic, MMF and FAC held another series of roundtable discussions to identify the three biggest issues that continue to negatively impact on artists and songwriters. We hope the inquiry is able to consider and discuss these three issues.

1. TRANSPARENCY & ADVANCES

Historically, artists and songwriters would assign (often permanently) or license (for a set time) the copyrights in the recordings and songs they created to record labels, music publishers and collecting societies, in order to access investment, marketing and services. This meant the labels, publishers and societies were - and in many cases still are - the copyright owners.

Today artists and songwriters have more options when it comes to monetising and managing their rights. Depending on the level of up-front investment and marketing they seek from their business partners, artists and writers may be able to retain ownership of their copyright.

However, even if an artist or writer retains their rights, they still need to entrust labels (or music distributors in the case of self-releasing artists), publishers and/or collecting societies to get their music streaming. This is mainly because streaming services want to do as few licensing deals as possible, so prefer, and often insist on, dealing with companies or organisations that represent large catalogues of rights.

This means artists and songwriters are not directly involved in the licensing deals agreed between the streaming services and the music industry. These deals, meanwhile, are shrouded in secrecy as a result of non-disclosure agreements.

1.1 Key transparency issues

This creates a number of problems for artists and songwriters, not least...

- When artists and songwriters are deciding which labels, publishers and societies to work with, they are unable to compare the pros and cons of the different deals those organisations have done with each streaming service.
- Artists and songwriters – and their advisors – are unable to properly audit the digital royalties they receive from the labels and publishers they work with. An artist's accountant will usually hit an NDA while attempting to undertake a full scale audit.

Although the music industry has talked a lot about addressing its transparency issues – and some labels and publishers have made some improvements – if anything the streaming market has become less transparent as it has diversified.

1.2 Advances and lump sum payments

A particular problem is the lack of transparency around advances and lump sum payments from streaming platforms (such as Spotify or Apple) or social media services that use music (such as Facebook or TikTok). When new streaming services do their first licensing deals they usually pay multi-million pound advances to the labels and publishers.

With services of the Spotify model, advances paid to labels or publishers are seen as recoupable but not returnable. That means subsequent streams and the payments that would have been due to labels/publishers are reported and deducted from their balance. Additional payments begin once the advance has been recouped.

In some cases, it sometimes turns out that the advance received from a streaming platform exceeded what was actually subsequently due (known in the industry as “breakage”), meaning the label or publisher makes a profit.

In recent years major licensing deals have been agreed with social media services that utilise music, including Facebook, Instagram, Snapchat, TikTok and Triller.

With some social media services that are still working out how they plan to actually use music, the advance may be a one-off lump sum payment covering a set period of time. No additional payments are made during that time period and what music has actually been streamed may not be reported.

When a label or publisher profits from an advance that exceeded the actual usage - or where it received a one-off lump sum payment - a very big question is posed: how does that money get shared out with artists and songwriters? There is no industry consensus on if and how that money is shared out, and what systems are employed are rarely communicated.

1.3 Addressing issues around transparency and advances

Many of the issues described in this section could be addressed by the music industry adopting new policies and practices, including the following...

- Labels, publishers and societies should, as a matter of course, explain in clear terms to artists and writers the structure of every deal they enter into with a streaming service which directly impacts its business relationship with each artist or writer.
- Where you have monies not directly linked to specific usage of music, they should clearly publish the method they are using to distribute that money, and communicate how those payments will be reported.
- An artist's accountant should, on request but subject to NDA, have sight of specific deal terms where that information is required to properly audit an artist's royalties.

Parliament could codify these transparency obligations into copyright law. As a starting point, it could consider implementing transparency obligations similar to those outlined in article eighteen of the 2019 European Copyright Directive.

That article was very much a compromise that did not go as far as most artists, songwriters and managers would have liked, but it provides a basic framework for how copyright law reforms might address the issues around transparency.

2. RECORD CONTRACTS AND REVENUE SHARE

Streaming is a revenue share business, with various stakeholders sharing in the revenue generated by the platforms. The revenue sharing happens on two levels.

2.1 How streaming revenues are shared

First the streaming service shares its revenue with labels, publishers and societies, based on what percentage of overall listening each of those entities' catalogues have accounted for in any one month, and the revenue share agreements set out in each licensing deal.

Second, the labels, publishers and societies share the money they receive with the artists and songwriters. With labels and publishers, what share any one artist or songwriter receives depends on each individual record and publishing contract. Not-for-profit collecting societies will pass monies on to writers minus their commissions.

The biggest issue here is with record contracts, which were traditionally skewed very much in the label's favour, partly because of the upfront investment made by the label at the outset of the deal - especially when physical product was being manufactured - and partly because labels have much stronger negotiating power until an artist reaches a certain level of fame.

The issue here is slightly different for newer and older record deals.

2.2 New record deals

Even today, many modern record contracts will routinely pay artists a royalty rate below 20% plus the label will be able to initially recoup any cash advance and, normally, other costs incurred out of the artist's share. Some record contracts will also have extra complexities, including additional discounts and deductions, especially on international income.

However, artists do now have more choices when picking a business partner to work with on their recorded music. Artists looking for a lower cash investment, and/or with managers able to lead on marketing, can choose to work with distributors or label services companies on deals that will see the artist getting 50-80% of net revenue. Because of market pressure, some labels will now also work with artists on these more favourable terms.

And whereas old fashioned record contracts saw labels owning the copyright in any recordings they released for 'life of copyright', some (though by no means all) new record deals return rights to artists after a number of years.

2.3 Legacy record deals

Artists who signed record deals in the pre-streaming age face the biggest problems. These were often life of copyright deals paying royalties at much lower rates, and with additional deductions and discounts designed for physical sales. This could cut an already nominal royalty in half.

Artists locked into these deals may also still be paying off old advances and costs, sometimes because they were actively releasing new music in an era where labels were prone to overspend on things like recording costs or video costs and then pass that

expenditure onto their artists. It's also worth noting that, because of the way traditional deals are structured, the label often goes into profit on a record release - in that it has covered all the costs it incurred - long before an artist has paid back any recoupable costs.

Many artists locked into these unfavourable deals have seen their old recordings revitalised in the streaming age. Digital streaming has removed logistical and transactional barriers when it comes to monetising catalogue. This makes the record industry's catalogue more valuable than ever. Unfortunately, however, the artists who made those historical recordings are often paid much lower royalties, meaning that labels not artists are benefiting from this increased value in catalogue.

2.4 Addressing issues with legacy deals

Unfair and out-dated terms in legacy record contracts covering newly lucrative catalogue is where the biggest inequities in streaming occur. Some labels have taken some action. Beggars has reviewed royalty rates and written off unrecouped balances on older contracts. BMG is currently reviewing (and in some cases changing) its contracts for out-of-date business practices.

However, given the increased value of catalogue in the streaming age, and the fact labels and their shareholders often earn more from older recordings, some labels are not motivated to voluntarily make these progressive moves.

It is also worth noting that life-of-copyright assignments on recordings (covering the full copyright term of 70 years from release date) are still common-place with both indie and major labels, and such lifetime agreements mean artists who may have signed deals whilst still teenagers are often unable to renegotiate outdated rates decades later.

There are simple steps labels could take to address these issues...

- Pay a more favourable royalty to artists on all recordings - for example, so that legacy artists are paid the same royalty rate on old recordings as most new artists are on newer recordings.
- Ensure that no discounts or deductions – most of which related to physical releases – are ever applied to any streaming income.
- After a set period of time, eg fifteen years, labels should write off any unrecouped costs that the artist is still paying off. In practice, most businesses write off bad debt after six years as per the statute of limitations, but an artist's debt to a label continues in perpetuity.

Parliament and government could also consider...

- Limiting by law the length of time of a corporate partner can legally own the copyright in a work, eg to 20 years, as opposed to an in perpetuity agreement. Returning rights to artists or songwriters after a set period of time would allow artists to subsequently seek new deals around their recordings that are more competitive, follow modern industry practices and are designed for modern music consumption trends.
- Undertake a government-led review of legacy contracts looking for and addressing common contract terms that only made sense in previous eras, or which were the result of institutionalised prejudice and discrimination in the record industry.

2.5 Paying performer equitable remuneration (ER) on streams

If record labels are unwilling to address these inequities, the other solution is to introduce so called equitable remuneration on streaming.

Whenever sound recordings are broadcast or played in public, artists have a statutory right to payment, even when they do not own the copyright in those recordings and regardless of any deal they may have with the copyright owner. This equitable remuneration right stems from global copyright treaties. However, this principle does not currently apply to streaming even though it is accepted that streaming partly exploits the so called 'performing rights' of the copyright, just like radio and public performance.

If it did, artists – including session musicians who do not usually receive any ongoing royalty payments from labels - could be guaranteed a minimum share of monies generated by the streaming of their music, which would not be subject to recoupment or any discounts or deductions set out in a record contract. This ER income would be collected and distributed by the performers' collecting society – which is PPL in the UK.

There are both pros and cons to this approach.

The law does not specifically state what share of broadcast and public performance monies from recordings should be paid to performers, although industry agreement is 50%. With regards to digital streaming however there has yet to be an agreed industry rate. In the small number of countries where ER is already paid on streams, a much lower share applies, usually a single figure percent of total streaming income.

There is also the issue of how efficient the collection and distribution of this money would be, especially if foreign societies administered ER income in other territories (as they do for broadcast and public performance).

If any form of ER was to be implemented, it is essential that it is done so in a manner which does not incur unnecessary administrative financial deductions. While artists on unfavourable record deals would likely benefit from this system either way, new artists who have partnered with their managers and distributors or label services companies on their recorded music might actually be worse off if an ER system created new administrative costs and the risk of lost income as a result of inefficiencies in other markets.

Despite these issues, many established artists and managers support the introduction of ER on streams. In some cases, this is because they do not trust labels to do the right thing regarding outdated and unfair contract terms. If label contracts were reformed then the need for ER as a solution would lessen.

3. ROYALTY CHAINS & UNALLOCATED ROYALTIES

Many managers report that songwriters are yet to see the benefit of streaming, even though publishing deals are much more generous to writers than record deals are to artists.

Why is this? Well, because the streaming model was influenced by how monies were shared on a CD sale, a much smaller portion of streaming income is allocated to the song. So on average 10-15% of streaming revenues goes to songwriters and publishers, compared to 50-55% for labels and artists.

That said, the percentage share allocated to songs on a stream is now often double what was allocated on the sale of a physical disc. So why aren't songwriters seeing at least some benefit from the streaming boom?

3.1 Issues and complexities with the song royalty chains

The licensing of song rights and the processing of song royalties in the streaming domain is so much more complicated than the licensing of recording rights and the processing of recording royalties. There are various reasons for this, outlined in the 'Song Royalties Guide' section in the 'Digital Dollar' book.

These complexities mean that song royalties flow from the platforms to songwriters down multiple 'royalty chains', therefore payment on a single stream of a single song might be split into three, and those three payments then flow down different chains. As money flows down the chains there will be delays and deductions.

There may also be disputes over the ownership of a song in some countries - often unbeknownst to the writer - which halts payments. The songwriter is also entirely reliant on the first link in the chain to identify what songs have been streamed based on recordings data provided by the platform, in order to then claim the royalties that are due.

We estimate that around 20-50% of songwriter payments from streaming services are affected by these issues, i.e. never claimed, lost to deductions, or delayed for possibly years because of data disputes and other inefficiencies.

3.2 Unallocated royalties and market share distribution

These complexities also mean that a portion of the money paid by the platforms every month cannot be accurately matched to the songs that have been streamed.

ICE, the digital licensing hub co-owned by UK songwriters collecting society PRS, estimates over 100 million euros for Europe alone was unmatched in 2019. And the problem is potentially much worse in non-European markets.

What happens to that money varies from country to country. But often it is ultimately distributed to rights-holders based on market share, benefiting big corporate rights owners and superstar songwriters.

This takes place despite the fact the big corporates and superstars will have the appropriate systems in place - or should do - to ensure they have accurately claimed the royalties they are due.

3.3 Addressing issues around royalty chains and unallocated royalties

The music publishing sector is very aware of these issues and some publishers and collecting societies are seeking to address them.

Though change is happening slowly and, once again, a total lack of transparency means most songwriters – and even their managers – are in the dark about specific issues, the financial impact of those issues, and possible solutions.

The following measures would help address these issues...

- All music publishers and collecting societies should publish royalty chain information for all services in all countries, explaining what delays and deductions occur at each link of the chain so we can see how much money is flowing through the system and how much is leaking out in admin payments.

- Publishers and collecting societies should seek to do truly global licensing deals – which are not currently the norm - so that the royalty chains are the same for each service on a global basis. This reduces the number of chains and the number of links in the chains, and means songwriters are no longer reliant on distant and sometimes unknown entities to claim their royalties in the first place.
- Collecting societies should routinely share data they hold relating to what songs are contained in what recordings, and who controls each song in each country.
- Streaming services, collecting societies and music publishers should have systems in place to alert artists and their managers to any data conflicts in the system which could result in payments being halted.
- Royalties that cannot be accurately allocated to specific songs should be used to fund data, educational and grass roots initiatives, rather than rewarding corporates and superstars who have already claimed, or should have claimed, all their royalties, thus motivating those corporates and superstars to tolerate a broken system.

Because transparency is again part of this problem, if Parliament was to codify transparency obligations into copyright law, consideration should be given to the specific transparency issues caused by the royalty chains and unallocated royalties.

Matters around royalty chains and unallocated royalties involve collecting societies as well as music publishers, and societies were not subject to the transparency obligations in article eighteen of the Copyright Directive. Obviously, to have meaningful impact, any transparency obligations in this domain would need to apply to societies as well as publishers.

CONCLUSION

We hope this submission will help the committee in its discussion on the economic impact and long-term implications of streaming on the music industry.

In particular, it should assist in identifying the key issues around advances paid by streaming platforms and social media services, record contracts and revenue share, and the issue of unnecessary delays and deductions on the royalty chains.

We also ask the committee to consider our call for greater transparency throughout the music industry and take into consideration our suggestions for possible solutions.

We hope the inquiry will be able to make formal recommendations as to how changes in music industry policies and practices could address these issues, while also considering what copyright or contract law reforms might be appropriate.

We also urge the committee to recommend to the government that the Intellectual Property Office fully review the existing legal copyright framework post-Brexit in light of the issues outlined.

The MMF and FAC are happy to provide suggested witnesses - artists and managers - to give evidence in person to the inquiry sessions.