

Written evidence submitted by Professor David Hesmondhalgh

Submission to the House of Commons Digital, Media, Culture and Sport Committee (DCMS) Inquiry into the *Economics of Music Streaming*

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My name is David Hesmondhalgh and I am Professor of Media, Music and Culture at the University of Leeds. I have published research on the music industries, and the cultural and creative industries more generally, for some 25 years. This research includes a study of change and continuity in *The Cultural Industries* since the 1980s, now in its fourth edition (2019); a major study of working conditions in the cultural industries, *Creative Labour* (2011); and a book on the value of music (*Why Music Matters*, 2013). More detail about the issues discussed below is provided in a recent article I have published in a leading peer-reviewed journal; the article is available by open access.¹

Executive summary

- Recorded music is not the only way in which musicians earn money but it is extremely important.
- Music streaming now dominates the recorded music business, and the new system centres on the interdependent relationship between rights-holders (mainly record companies and music publishers) and music streaming services.
- Current controversy over musicians' earnings from streaming is clouded by confusion and misunderstanding, and one major problem is the mistaken belief that streaming services pay musicians and/or rights-holders according to a 'per-stream' rate.
- The way the system actually works is that music streaming services pay rights-holders on a 'pro-rata' basis, whereby payments are made according to i) the proportion of total streams within a given period achieved by streams of recordings owned by rights-holders, and ii) licensing agreements between those rights-holders and streaming services.
- The major factors determining musicians' earnings from the streaming of recorded music are i) the total amount paid by streaming services to rights-holders; ii) the proportion of total streams achieved by recordings and songs for which musicians are entitled to receive royalties from rights-holders; iii) musicians' contracts with rights holders.
- The key questions that ought to be addressed in considering the fairness of payments to musicians are therefore the following, each of which is discussed further below:

¹ David Hesmondhalgh, 'Is music streaming bad for musicians? Problems of evidence and argument', *New Media & Society*, <https://journals.sagepub.com/doi/full/10.1177/1461444820953541>

Are consumers paying enough for streaming? Are musicians' contracts with rights-holders fair? How much variability is there in the earnings of musicians from recorded music across the whole range of musicians? How many musicians can make a sustainable living out of music now and how does this compare with earlier periods?

1 Introduction:

1.1 In this submission, I address the third of the questions asked by the Inquiry: '**what has [sic] been the economic impact and long-term implications of streaming on the music industry, including for artists, record labels, record shops, etc?**'. I focus on implications for 'artists' (using the term 'musicians' here), a topic of great debate and controversy in recent years, but one shrouded in confusion. I also consider the ecology of the system that is the basis of musician earnings, thereby also addressing the first, second and fifth questions asked by the Inquiry.

1.2 Musicians are clearly the primary workers in the music industries; their work as composers and performers is fundamental in a way that even the important efforts of others, such as managers, marketers and A&R people, cannot match.

1.3 Musical labour markets have long been characterised by what some economists would call an 'over-supply' of willing workers, drawn to music by the opportunities it offers for creativity and expression.

1.4 It seems unlikely that there could ever be a situation in which everyone who wants to work as a professional musician can do so. Nevertheless, if we value music as an activity that promotes human flourishing in distinctive ways, there are reasons to think that such flourishing might be enhanced by arrangements in which a greater number of people are able to earn income through music. Other things being equal, it is better if more people rather than fewer can make a living through music, within the limits of what a particular system can sustain. The idea that music is inevitably an activity that must involve insecurity and struggle for a majority of practitioners may be an outdated notion based on ideas of artistic suffering derived from romanticism.

1.5 At the same time, the music-industry organisations and individuals that finance, promote and market music, most notably record companies and publishers, plus distributors and 'label services', need also to bring in revenue to meet their costs. In this context, it should be recognised that music organisations take risks, and the recorded music industry is a risky business - as are the cultural industries generally. Partly because consumers treat cultural goods as markers of their difference from others, music consumption is prone to volatile changes in fashion, making it difficult to predict which music and musicians will be successful.²

2. Musicians, streaming and the recording industry

2.1 Over the century and more that recorded music has existed, it has become increasingly central to how musicians can earn a living through music.

² On the distinctive economic features of the cultural industries, see David Hesmondhalgh, 2019, *The Cultural Industries*, 4th edition, London: SAGE, pp. 30-38.

2.2 There are at least three main ways in which recorded music is vitally important for musicians' earnings. First, recordings themselves generate a considerable amount of income, through the various revenues associated with recording rights and song rights. Second, while live music is of course an important source of income (at least until the COVID-19 pandemic), recordings are extremely important in building reputations that generate booking and promotion for live shows. Third, recordings are widely used in films, TV and so on, generating further income from 'sync' rights.

2.3 A new system of recorded music production and consumption has emerged over the last decade. Central to this new system is the interdependence of two major groups: the rights-holders (the record companies and music publishers) and the music streaming services (MSS).

2.4 Whereas the late 20th century system was centred on sales in shops of physical artefacts such as CDs, more than 56 per cent of global recorded music revenue and over 71 per cent of UK recorded music revenue now comes from streaming. Retailers have closed in large numbers, and in effect MSS have replaced their role as key access points to music.

2.5 The communication media (especially radio, television, film and games) remain important means by which consumers access music and musicians, but music streaming services are also taking some of the audiences for radio.

2.6 The new system offers remarkable choice and convenience for consumers. However, the MSS offer essentially the same (vast) catalogues as each other, and their products are mainly differentiated on the basis of their interfaces, playlists, and recommendation and discovery functions.

2.7 Although no existing studies provide firm evidence for or against this claim, it seems that the system centred on streaming almost certainly allows more musicians to earn money from recorded music than ever before – though many of them will earn very small amounts. This increase in the number of musicians gaining recorded music earnings is partly a result of the proliferation of digital distributors and 'label services' that now provide a variety of means by which musicians can circulate and market their music beyond those currently provided by record companies. Some offer the means to upload music to all MSS and to monitor data and earnings. Others firms offer marketing services as well or instead.

2.8 Musicians can also make use of crowdfunding platforms that did not previously exist – though it needs to be recognised that these require considerable labour on the part of musicians and artist managers.

3 Controversies and misunderstandings

3.1 As noted in 1.1, there has been considerable public controversy about payments to musicians. My analysis of contributions to public debate about the new system outlined in 2.3 to 2.8 above suggests there is considerable confusion about how the system works.

3.2 It is not always well understood, for example, that MSS do not pay musicians directly, but rather they pay 'rights owners', mainly the record companies and music 'publishers' (i.e. owners of song rights), who then distribute royalties out of their income, on the basis of rates determined by contract.

3.3 Another important misunderstanding is that many reports and social media comments refer to ‘per-stream rates’ supposedly paid by MSS to musicians.³ There is no such thing as ‘per-stream rates’. MSS do not determine a per-stream rate, which they then pay to rights holders. The per-stream rate is an analytical construct, calculated in retrospect, rather than an actual practice.

3.4 The actual practice of payment is that rights-holders are paid according to the proportion of all streams within a period achieved by the tracks to which they have rights. This is known as the ‘pro-rata’ system. So if track X achieves one ten-thousandth of all Spotify’s September streams, Spotify will pay, after deducting its cut and tax, one ten-thousandth of its payments pot to the owners of the rights for that track. In effect, this is divided between the owners of the recording, and the owners of the underlying song/composition.

3.5 Moreover, the false idea of a ‘per-stream rate’ is *misleading*. It is quite possible for (retrospectively calculated) per-stream rates to decrease if people stream more. But overall musician income might well rise if people stream more (because more users = more subscriptions and maybe advertising revenue). What matters is total income not this retrospective rate.

3.6 The ‘penny fractions’ quoted in pieces that purport to cover streaming payments look vanishingly small compared with the income a musician would generate from a CD. However, such comparisons are not valid. The comparison would be more valid if it were with CD ‘plays’, i.e. all the times that a purchased CD was played (which is probably unknowable) or with a broadcast royalty divided by the number of listeners.

4 The key factors determining current musician earnings

4.1 I propose that, rather than the false notion of ‘per-stream rates’, the three most important factors determining musician income from streaming are as follows.

4.2 The first is **total streaming pay-outs by MSS to rights-holders**, which are in turn determined by a) numbers of subscriptions; b) the cost of subscriptions (currently the standard is £9.99); c) revenue from advertising; d) the cut taken by the MSS – which in turn is determined by the licensing deals negotiated with rights holders e) the sales tax that needs to be paid.

4.3 The second key factor determining musician earnings from music streaming, under the ‘pro-rata’ system just outlined in section 3.4, is **the proportion of total streams achieved by recordings and songs for which musicians are entitled to receive royalties** from rights owners (in some cases, musicians may own their own rights). Proportion of total use is what matters not number of streams. This generates further misunderstanding, because it is common to hear complaints from musicians that in spite of achieving millions of streams, little payment has been received. Millions always sounds like a lot, but the current ‘pro-rata’ system rewards proportion not numbers of streams.

³ E.g. the claim reported in Jack Schofield, ‘Which is the best streaming service for supporting artists?’ *The Guardian*, 31 October 2019, citing the *Digital Music News* website, that Spotify pays ‘\$0.00437 per stream’ and Apple Music pays ‘\$0.00735’.

4.4 The third key factor is **musicians' contracts with rights-holders**, and especially a) royalty rates; b) advances that might be paid to musicians; c) costs that are recoupable by the record company out of future royalties. Such contracts are completely separate from the operations of the MSS, and yet are crucial to the earnings that musicians might receive. Royalty rates in recording contracts are generally accepted as usually being in the range of 15-20 per cent; rates in publishing contracts (i.e. song rights) are usually 50 per cent, though payments from MSS to owners of song rights (usually publishers) are lower than to owners of recording rights (usually record companies).⁴

5 The key questions to be addressed in assessing whether the current system is fair for musicians

5.1 On the basis of the above, I would therefore suggest that the four most important questions regarding musicians' earnings from streaming are as follows (5.2 to 5.5).

5.2 Are music consumers paying enough for music streaming?

£9.99 is the standard subscription rate for many MSS, and this has not changed in over a decade. Does 9.99 accurately reflect the value consumers might attribute to access to vast musical resources? Could this be a notable case of how digitalised services (e.g. Uber) often provide considerable convenience and choice for consumers, but are associated with problematic working conditions? It seems that MSS are nervous about raising the rate, in case consumers move their subscriptions to a different MSS. As MSS have broadly similar repertoire, at least in terms of the most streamed music, this may indeed be a danger.

5.3 Are musicians' contracts with rights-holders fair?

It seems obvious that a general increase in royalty rates could considerably benefit musicians, as long as the increases were not sufficient to challenge the business sustainability of rights holders. As noted above, recording royalty rates have already improved since the 20th century, but many musicians and their representative organisations believe that record companies no longer have to pay for the manufacture and distribution of physical goods, and so royalties should be further increased.

Rights owners defend current royalty rates by referring the high levels of risk involved in signing artists and investing in their career development, and it is certainly true that the music industries remain a high-risk sector, because of the difficulties in predicting which performers will appeal enough to succeed. Most acts and recordings fail to cover the costs of record companies. Nevertheless, one big hit track or star can cancel out many failures. This system tends to the larger companies that can spread their risk across a repertoire and spread the costs of maintaining various staff across various acts, creating longstanding conditions of oligopoly.

As noted above in section 2, the system centred on streaming provides new means for musicians to achieve success, including an increasing ability for musicians to avoid contracts with record companies and 'traditional' music publishing companies (i.e. song

⁴ There are also complexities regarding fees for collection societies. The definitive guide to music rights and payments to rights-holders and musicians is Chris Cooke, 2020, *Dissecting the Digital Dollar*, 3rd edition, London: Music Managers Forum.

rights owners), by choosing deals from the greater variety of possibilities now offered by the new digital distributors and label services.

5.4 How much variability is there in the earnings of musicians from recorded music across the whole range of musicians?

Most crucially, this concerns the extent to which the most successful musicians (and rights-holders) dominate earnings. The music industries are often considered to be examples of 'superstar economics' and the 'winner take all' nature of cultural markets.⁵ A rare piece of research on the topic estimated that 1 per cent of musicians earn 77 per cent of income.⁶ The key issue is what a 'middle tier' or a 'middle class' of musicians earn, below the superstar level, but above the level of amateurs and semi-professionals. Many of these musicians are from marginalised communities, and many are people of colour. Allowing this tier to flourish may well benefit musical production and consumption, encouraging greater diversity of content and worker.

There is currently considerable debate about the 'user-centric' system of payments, whereby money is distributed to rights-holders on the basis of share of each individual user's streams (rather than share of total streams as in the pro-rata system). Some studies suggest that this might ensure higher payments for 'lower-tier' musicians and other benefits.⁷

It may be that other shifts in MSS practices can have a significant effect on inequality of revenue. Computer scientists working for MSS have written of trade-offs between 'user satisfaction' and 'supplier fairness' (essentially spreading streams and therefore rights payments more evenly).⁸ There are signs that Spotify may have made moves in this direction, perhaps in response to the expressions of public concern noted above. This possibility is indicated by press reports that the proportion of total streams achieved by the half a million most streamed tracks on Spotify in the USA in 2018 was considerably less than the proportion achieved by the half a million most streamed tracks in 2017, i.e. the top 1 per cent or so of tracks (rather than musicians) had become less dominant.⁹ It seems likely that this redistribution was achieved as a deliberate shift on the part of Spotify, a shift towards 'supplier fairness', involving adjustments to recommendation algorithms. Policy makers might consider whether and how such adjustments could be encouraged.

⁵ Sherwin Rosen, 1981, 'The economics of superstars', *American Economic Review*, 71,5; Robert Frank, 2016, *Success and Luck: Good Fortune and the Myth of Meritocracy*, Princeton: Princeton UP.

⁶ Mark Mulligan (2014), *The Death of the Long Tail: The Superstar Music Economy*. London: MIDIA Research.

⁷ For a meta-study, see Rasmus Rex Pederson, no date, *A Meta-Study of User-Centric Distribution for Music Streaming*, Roskilde University, <https://www.koda.dk/media/224782/meta-study-of-user-centric-distribution-model-for-music-streaming.pdf>.

⁸ Rishabh Mehrotra et al., 2018, 'Counterfactual evaluation of the trade-off between relevance, fairness and satisfaction in recommendation systems', *27th ACM international conference on information and knowledge management*, Torino, 22–26 October, pp. 2243–2251.

⁹ Tim Ingham, 2019, 'Daniel Ek wasn't lying: streaming is becoming less dominated by mega-hits', *Music Business International*, 8 January.

5.5 How many musicians can make a sustainable living out of music now and how does this compare with earlier periods?

This is a key question, whether implicit or explicit, in recent debates and controversies. Definitive answers are difficult to achieve, because the historical data is incomplete and/or difficult to obtain. While collection societies (e.g. PRS for Music) and the licensing hub ICE have data on publishing income, it is difficult to obtain data concerning payments by MSS to rights-holders for recordings. It is also very difficult to obtain reliable data on how much musicians earn from supplementary income such as live music and music teaching.