

# Written evidence submitted by Philippe Rixhon

## Economics of music streaming

### Submission to the parliamentary inquiry

#### Background

MPs examine what economic impact music streaming is having on artists, record labels and the sustainability of the wider music industry. **The DCMS Committee also considers whether the government should be taking action to protect the industry from piracy in the wake of steps taken by the EU on copyright and intellectual property rights**, and is seeking the perspectives of **industry experts**, artists and record labels as well as streaming platforms themselves.

The Committee invited written submissions to address the following questions:

- 1) What are the dominant business models of platforms that offer music streaming as a service?
- 2) Have new features associated with streaming platforms, such as algorithmic curation of music or company playlists, influenced consumer habits, tastes, etc?
- 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?
- 4) How can the Government protect the industry from knock-on effects, such as increased piracy of music?**
- 5) Does the UK need an equivalent of the Copyright Directive?**
- 6) Do alternative business models exist?
- 7) How can policy favour more equitable business models?**

This submission focuses on the questions 4), 5) and 7).

#### Author

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Philippe is working on the technical feasibility and implementation of copyright policies with the European Commission, Intellectual Property Office, and Open Music Initiative. He also worked with the Copyright Protection Centre of China and the European Parliament.

Philippe holds degrees in philosophy, engineering, management, and theatre directing, and is an honorary Doctor of Arts in recognition of outstanding contributions to performing arts creation, production, and technology.

**The author is an industry expert submitting evidence for himself. The views, thoughts, and opinions expressed in the submission belong solely to the author, and not necessarily to the author's employer, organisation, or other group or individual.**

#### Reason for submitting the evidence

With streaming currently accounting for more than half of the global music industry's revenue, the inquiry looks at the business models operated by platforms such as Spotify, Apple Music, Amazon Music and Google Play. Music streaming in the UK brings in more than £1 billion in revenue with 114 billion music streams in the last year, **however artists can be paid as little as 13% of the income generated.**

**The author suggests that taking only legislative actions will not solve issues around the poor remuneration of artists, but that these actions must be accompanied by the deployment of an effective and efficient data infrastructure conducive to the fair, appropriate, proportionate and transparent remuneration of all contributors to music works and related subject matters.**

## **The Copyright Conundrum**

### State of play

Content technologies, business models and copyright policies are evolving at different speeds.

The music industry operates on a complex, dynamic, fluid, transitional and liminal network of commercial and financial relationships.

The costs of digital reproduction and communication to the public are low while rights and royalty management remains complicated, imprecise, slow, and expensive.

### A difficult balance of rights

**The copyright conundrum is the difficult balance between –**

- Consumers' **access rights**
- Authors and artists' **moral and material rights** concerning attribution, work integrity and remuneration

- Intellectual **property rights**

Successive legislative actions have led from the **Copyright Act 1710**, an act of the Parliament passed in 1710 which was the first statute to provide for copyright regulated by the government and courts, rather than by private parties, to the current **Copyright, Designs and Patents Act 1988** incorporating changes as recent as 11 November 2018, among others the **Copyright and Related Rights Regulations 2003** transposing the European Information Society Directive (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) into United Kingdom law.

Article 27 of the **Universal Declaration of Human Rights** stipulates that –

- §1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- §2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

The Internet as we know it is a formidable instrument to give access to music, but not yet up to speed when it comes to synchronise authors' remuneration with access of content.

**The worldwide-accepted societal and legal framework is formulated but not realised in the digital era.**

The **European directive 2019/790/EU** of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market foresees a fair (Article 16), appropriate and proportionate (Article 18), as well as transparent (Article 19) remuneration of songwriters and performers. It also aims at protecting the rights of original works incorporated in user-generated content (Article 17).

**However, the European Union and its Member States are still lacking the necessary data standards, structures, architectures, and infrastructures to realise the potential of the newly adopted legislation.**

## **Latest developments**

### United Kingdom

"There is currently a strong sense of momentum and a growing consensus that a transparent and efficient data infrastructure is key to building a more sustainable music industry. Its importance is recognised in the UK government's creative industries sector deal, launched by the Secretary of State for Business and the Secretary of State for Culture. Considering the explosive increase of new music data, any delay in resolving this issue could further exacerbate the problem".

In 2018, the **Intellectual Property Office** issued **Music 2025: Ways Forward for Digital Music**, a long-term staged project looking to build an infrastructure to ensure the fair and speedy distribution of revenues generated by new digital music consumption platforms, with the ultimate ambition of enabling other digital content sectors to use this model.

The report was sponsored by the two key UK music collection societies, PRS for Music and PPL. **PRS for Music** and their European partners are developing **Cube**, a new copyright platform to harness cloud computing and machine learning technologies to deliver a highly automated copyright system increasing the speed and accuracy of the consolidation of multi-territorial copyright data. The system will *open the box* on how data is processed according to common data authority rules and will seamlessly integrate rightsholders into the resolution of data conflicts. **PPL** is deploying **RDx**, a music data exchange service from the International Federation of the Phonographic Industry (IFPI) and Worldwide Independent Network (WIN). It enables record companies and collective management organisations (CMOs) to submit and access authoritative recording data via a single point. This will help to improve the timeliness, accuracy, and efficiency of CMO revenue distributions to rightsholders worldwide.

**Cube and RDx are necessary initiatives. They address more the demands of professional artists affiliated with CMOs than the needs of independent music makers or prosumers – users generating original content. They are more correcting issues than preventing them. They are not sufficient to solve the issues raised by this parliamentary inquiry.**

#### United States of America

On 11 October 2018, the United States signed into law the Orrin G. Hatch–Bob Goodlatte **Music Modernization Act** (MMA). The bill H. R. 4706 of the 115<sup>th</sup> Congress is United States legislation aiming at modernising copyright-related issues for music and audio recordings due to new forms of technology such as digital streaming.

The legislation sets up a **non-profit governing agency** that creates a database related to the owners of the mechanical license of musical works - the copyright that covers the composition and lyrics of a song; the actual performance and recording of the song is typically held under a different license. This **musical works database** will be completed with help of the major music publishers. The new agency establishes **blanket royalty rates** that are used to pay the composers and songwriters when used by streaming services using this database, eliminating the difficulty previously faced by streaming services to properly identify the mechanical license holder. These royalties will be paid to the non-profit agency as a compulsory license, not requiring the mechanical license holder's permission; the agency will then be responsible for distributing the royalties. Streaming services will still be able to negotiate other royalty rates directly with the mechanical license owner if they so choose. The new legislation assures that songwriters are paid a portion of mechanical license royalties for either physical or digital reproduction of a song with their lyrics, at a rate set by contract. It revamps the rate court process when disagreements over royalty rates arise.

**The US legislation establishes a kind of public private partnership whereby the Library of Congress stipulates what must be done, the music industry organises and operates the data infrastructure, and the Library of Congress dispatches auditors to assess the effectiveness of the system. It does not yet sufficiently cover the needs of independent artists or prosumers.**

European Union

After the ratification of the new directive on Copyright, the **Council of the European Union** issued on 20 December 2019 a stocktaking document on **Developing the Copyright Infrastructure**. It foresees to realise the digital potential of all creative sectors through effective metadata, improved licensing efficiency and automated revenue distribution. The document outlines an approach relying on interoperable identifiers of works and rightsholders, attribution of authorship, standardised Rights Management Information, and data exchange standards.

In December 2019, the **European Commission** announced the upcoming European blockchain Pre-Commercial Procurement for the third development step of the **European Blockchain Services Infrastructure**. The first step already covered use cases that are relevant for the music industry: notarisation, certification, self-sovereign identity, and trusted data exchange. The third step addresses among others the tracking of digital records and the rights associated to them.

On 19 February 2020, the **European Commission** published a **European Strategy for Data** envisioning **Common European Data Spaces** in strategic sectors and domains of public interest. These sectors or domains are those where the use of data will have systemic impact on the entire ecosystem, but also on citizens. This should lead to the availability of large pools of data combined with the technical infrastructures necessary to use and exchange the data, as well as appropriate governance mechanisms. While not having a one-size-fits-all approach, common governance concepts and models could be replicated in different sectors. The frameworks will – where appropriate – be complemented by sectoral legislation for data access and use, and mechanisms for ensuring interoperability.

**Connecting the Directive on Copyright with the Copyright Infrastructure, the European Blockchain Services Infrastructure and Common European Data Spaces appears to be an idea worth investigating to shift the focus from the correction of issues to their prevention and enable, among others, the fair, appropriate, proportionate and transparent remuneration of music makers.**

## **A way forward**

Recently, a seminar conducted by **Ulster University**, the author of Music 2025, stated clearly why music creators' earnings matter –

- 1) Music makes a significant contribution to the UK economy and to the perception of the UK globally
- 2) UK music contributes £5.2 billion to the UK economy

3) UK is the world's second biggest market

This parliamentary inquiry is the opportunity to gather evidence and thoughts about a way forward, to launch a national programme to solve the issue for the benefit of UK artists, consumers and music industry, and to position the UK as the world leader in this field.

Indeed, answering questions –

- 1) What are the dominant business models of platforms that offer music streaming as a service?
- 2) Have new features associated with streaming platforms, such as algorithmic curation of music or company playlists, influenced consumer habits, tastes, etc?

will summarise the **state of play**.

Answering the questions –

- 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?
- 6) Do alternative business models exist?

will define the **business case**, the potential impact of eventually combined legislative and infrastructure actions.

And answering the questions –

- 4) How can the Government protect the industry from knock-on effects, such as increased piracy of music?
- 5) Does the UK need an equivalent of the Copyright Directive?
- 7) How can policy favour more equitable business models?

will outline a **way forward**.

**Submissions from the music industry are shedding light on the questions 1) and 2), and submissions from economists are addressing the questions 3) and 6).**

## **A regulatory-compliant rights framework**

Answering the questions 4), 5) and 7) should consider three basic scenarios to combine legislative and infrastructure actions –

- **Baseline**, i.e. nothing is done for the data infrastructure; this scenario serves as a benchmark against which further scenarios and options can be compared; it represents the current situation with no significant changes
- **Laissez-faire**, i.e. partial proprietary systems emerge slowly; it is a non-intervention option when industry players, primarily online platforms, and management organisations push proprietary systems on the data infrastructure – albeit slowly
- **Breakthrough**, i.e. an open, public, auditable data infrastructure is designed, built, and operated; this scenario would be a solution where governmental intervention would support the emergence of a data infrastructure for the efficient registration, management and use of Rights Management Information.

After having described the three scenarios and several options of laissez-faire and breakthrough – defining as many solutions as there are options – I recommend that the DCMS Committee considers their reliance on –

- **Open standards** to ensure transparency, interoperability, and normalisation
- **Inclusive architecture** to cater for rightsholders, incumbent and new intermediaries
- **Proven techniques** to address specific issues and integrate the solution

Combining legislative and infrastructure actions will mean –

- **Aligning** the circumstances of the music industry, UK copyright policies, and state-of-the-art technologies
- **Achieving** an optimal generation, distribution, and protection of Rights Management Information, making optimal use of state-of-the-art and emerging technologies
- **Ensuring** backwards compatibility for fast mass adoption – by affiliated artists, independent music makers, and prosumers – and **future-proofing** the solution by monitoring trends and anticipating industry, policy, and technical developments
- **Considering** desirability and acceptability besides the mere technical feasibility (i.e. the strict interoperability at technical, data and governance levels)
- **Balancing** the loads of data and functionality of the infrastructure with governance layers enabling new business models and facilitating regulatory compliance
- **Combining** legislative and technical instruments to alleviate if not prevent the effects of piracy
- **Listening** to stakeholders, **avoiding** the “design by committee” hurdle, and **triggering** the development of effective and efficient systems, hence **enticing** rapid industry adoption
- **Leveraging** best of breed UK developments and lessons learned from relevant US and European initiatives for speed to market

The data infrastructure could combine –

- **a public private partnership** designing, developing, and deploying a distributed trusted register of Rights Management Information, whereby the regulator would specify the rights attribution and attestation mechanisms and audit their performance, while asking the industry to build and operate the system
- **a multitude of not-for-profit or commercial, sectorial or generic, national or international competing systems** to declare rights into the trusted register
- **numerous competing systems** to license and distribute music assets, monitor and meter their usage, and pay royalties

**The combination of legislative and infrastructure actions would alleviate the identified problems while focusing on the measures to be taken by the music industry and the regulator.**

**The actions would comply with other relevant legislations pertaining for example to individual privacy, business confidentiality, and assessed identity.**

**Starting from the music industry, the actions should consider the other sectors of the creative industries. Starting from the UK ecosystem, the actions should be open to the world.**

**The DCMS Committee has the opportunity to trigger a combined body of legislative and infrastructure actions that will not only solve the problem at hand but also provide the UK with a formidable instrument to promote UK music and foster the world trade of digital cultural assets.**