

Written evidence submitted by the Music Publishers Association

DCMS Select Committee; Economics of Music Streaming Inquiry 2020

MPA comments – 16 November 2020

The Music Publishers Association (MPA) Membership organisation represents over 200 UK music publishing companies, ranging from iconic Independents to the global Major Publishers. The MPA Group also includes the MCPS mechanical rights organisation (representing over 22 thousand direct composer and songwriter members) and PMLL, providing licensed sheet music of original compositions to schools and choirs.

We will structure our comments in response to this inquiry in two parts, before providing our answers to particular questions posed by the inquiry (Annex p3).

Revenues to the Music Publishing Industry

- (1) Digital services receive money from the use of music either from advertising/sponsorship or from subscription. Consumers generally get a more limited service from advertising-funded digital services than from a subscription-based digital service for which they pay a monthly fee. In the United Kingdom, the cost of an individual subscription to a streaming service is typically £10 per month. This amount has remained unnaturally static for more than a decade. Digital services negotiate terms with music publishers and other licensors of musical works (and associated literary works) on an arm's length basis.

Government could support the music publishing industry by ensuring a level playing field for legitimate digital services by:

- Providing the legal and practical means for rightsholders to protect their rights against illegal and unlicensed digital services which do not license or pay for the music on which they build their services and revenues. Unlicensed services undermine the value of music and create market distortions which prejudice services that operate legally and secure licences.
- Addressing the prevalence of illegal and unlicensed services and illegitimate content available online which undermines the legitimate market for both licensed services and rightsholders alike.

The music publishing industry is in need of effective and cost-efficient means to enforce its rights and preserve the value of copyright against the market impact of illegal digital services.

- **One of the most important tools at the disposal of the music industry are website blocking orders which have been successfully obtained from UK courts for the last 10 years. The required procedure is established; however, obtaining such website blocking orders is still an expensive undertaking. We urge government to consider introducing simple, quick and cost effective**

solutions to address the current cost structure associated with such website blocking orders.

- **Once a takedown notice has been issued for infringing content within a service, it is extremely difficult for rightholders to establish that the notice has been actioned and to ensure that the infringing content does not re-appear on the service in future. We urge the government to support a framework of ‘stay down’ in response to takedown notices issued by rightholders.**
- **Furthermore, swift and cost-efficient procedures to terminate the activities of illegal streaming and stream-ripping services and unlicensed music applications are urgently needed. The online harms initiative presents an opportunity to establish such procedures in law.**
- **We would urge Government to investigate the approach adopted by the large technology companies to piracy and in particular to review the way in which popular App stores continue to offer a large number of Apps which offer unlicensed music services that are in many respects as fully-featured as licensed services. The fact that these applications are offered within App stores operated by reputable global companies imbues these unlicensed apps with a veneer of legitimacy that no doubt confuses consumers into believing that the relevant applications must be fully licensed and legitimate.**

Additionally, fully-licensed digital services compete with online platforms offering “user-uploaded content” who often pay less to rightholders, claiming that they are not liable for the music uploaded by their users and thus do not require a (full) licence. The recent European Union Directive on Copyright in the Digital Single Market 790/2019 acknowledges that online platforms actively make available copyright protected material to the public, which has also been established under UK case law for over 10 years.

The UK’s copyright regime, and in particular recent case law, has set a relatively high standard of protection and a common sense recognition that digital services that offer copyright content to consumers are undertaking a communication to the public of copyright-protected works. We ask Government to support these precedents and to strengthen them by establishing the concept of a Duty of Care for platforms and online services. Such a Duty of Care should require that platforms and services accept responsibility for the services they offer and act in a manner that ensures that the legitimate interests of rightholders are protected and that unlicensed activity does not proliferate unchecked.

Distribution of Monies Collected

- (2) Digital services pay for many different rights that are embodied in content they supply from sound recordings, audio visual material, podcasts and the “publishing” right (being the rights in musical works and associated literary works).

The fees and/or royalties attributable to the publishing right flow from the digital services to the relevant collective management organisations or the relevant publishers from whom the services have licensed the relevant rights. These revenues are then accounted for to the relevant songwriters pursuant to their contractual arrangements with their collection society and/or publisher as applicable.

- **In our view government involvement in freely-negotiated contractual arrangements between songwriters/composers and music publishers is not**

required and would not benefit any of the contracting parties. The music publishing sector includes a very diverse range of contractual arrangements that are offered in a highly competitive environment. In addition, legal decisions taken by the UK courts over the past 50 years have established protections that ensure that publishing contracts cannot be enforceable in circumstances where they are unreasonable – for example if they operate in a manner that results in an unreasonable restraint of trade.

ANNEX

QUESTIONS

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

Music streaming services operate various playlisting models in addition to controlling the editorial features of their services (including recommendations and the decisions about which releases have more prominence on the various pages that users navigate as they browse the available choices of music) and in this way they can very effectively control the visibility of music and influence its popularity with users. There is clearly a risk that services are already or may in the future seek to use their ability to either promote or downgrade the prominence of individual recordings or musical works based not on users' tastes but rather based on the benefits derived by the services from doing so.

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

The business models that exist in the market today are not static and are in a state of constant evolution. Regulatory intervention in these models is neither desirable nor necessary. The models typically used for determining the allocation of value to individual uses of copyright works that are currently in place are accepted by a wide range of services and rightsholders globally because they can be operated in a manner that is scalable, transparent and efficient and are considered to be no less equitable than other solutions. They are implemented through agreements that are entered into by services and rightsholders that are based in a wide range of jurisdictions and those agreements are subject to a wide variety of national laws and jurisdictions. A UK regulatory intervention would not only ossify business models and thereby prevent the market from evolving but would also create huge potential disruption and complexity for services and rightsholders alike.