

Written evidence submitted by the Creators' Rights Alliance

We must make music streaming fair to creators

The Creators' Rights Alliance (CRA) is a UK-based organisation that exists to promote, protect and further the interests of creators through advocacy and campaigning work. We speak on behalf of 17 member organisations and trade unions representing around 350,000 creators – from authors, artists and illustrators to translators, musicians and journalists – on public policy issues as diverse as fairer contract terms, working conditions, and copyright and intellectual property issues. A full list of our members can be found at the end of our submission.

We very much welcome the fact that the Select Committee has responded to calls from creators, in particular our musical member organisations, by launching this inquiry into Music Streaming.

Their submissions will provide detailed research which we do not propose to try to duplicate. Instead we will focus on the broader policy issues and possible solutions: while this inquiry looks at music streaming, we believe many, if not all, of the of the issues are relevant to other creators in the digital economy.

In particular, we draw the Committee's attention to the lack of transparency in licensing deals between large corporations and to historical contract terms that do not reflect the current technological and economic landscape. These issues must be addressed in order to ensure fair remuneration for those who create the very content upon which streaming platforms depend. As we will see, this involves addressing issues beyond simply the contracts between platforms and a rightsholder.

Music and musicians have often been forced to 'go first' in confronting problems in the online era; but we hope that the CRA can help the UK move ahead in finding ethical and economically rewarding solutions for all creators and the wider public.

What are the dominant business models of platforms that offer music streaming as a service?

The main model has been to offer 'free' (ad-funded) access and then encourage users to move to a subscription. This income is then put into a 'pot'; what remains after extracting 'platform share' is allocated in proportion to the total number of plays in a given accounting period. This creates a number of issues:

Consumers are increasingly aware that their subscription fees do not always reach the artists they have been listening to. If services are seen as unfair this has the potential to undermine the continuing trend of the public switching away from illicit music services.

This model also creates a situation which can be open to rogue elements gaming the system to the detriment of music creators and rightsholders: please see

<https://www.musicbusinessworldwide.com/great-big-spotify-scam-bulgarian-playlister-swindle-way-fortune-streaming-service/>

Streaming platforms have of course sought to clamp down on such 'fake plays', though the extent of the problem is not widely known. Some platforms are exploring a 'user-centric' approach which may address both issues – but it is not clear how willing some rightsholders with larger catalogues, who may be favoured by the current system, will be to go down this road.

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

A very large proportion of listening on music streaming services is through playlists, much like listening to a radio station, rather than through individual search and discovery. Major labels and publishers of course have much greater resources to 'push' promoted playlists and albums and, naturally, the more success they have the greater the likelihood that that music will be further 'pushed' to other users by the algorithms.

This clearly puts smaller companies, independent artists and less 'mainstream' genres at a disadvantage economically and creates concerns over a longer-term cultural 'silo' effect.

There is also a concern over creating an economic imperative to produce shorter-form music, with the predominance of the 'per play' royalty model that makes no reference to individual subscriber listening or the duration of a track. At least one Classical Music platform, Primephonic, has moved to a duration-based model..

What has been the economic impact and long-term implications of streaming on the music industry, including for artists, record labels, record shops, etc?

In the long term the economic impact of streaming will very much depend on policy decisions both by government and the industry. Music streaming has been a growth market, with large increases in paid-for subscriptions while use of illicit music sites is reportedly reducing.

That said, as we have outlined above, there are concerns about the manner in which royalties are allocated to musical works – both economically and in consumers' perceptions of fairness, which are essential to maintain a cultural shift away from piracy.

Moreover, beyond the method in which revenue is allocated to a 'track' there are the questions of how that revenue is allocated between writers and publishers on the one hand and, labels and performers on the other. The licensing agreements that have been reached are covered by Non-Disclosure Agreements and this lack of transparency makes it hard to say with certainty, but revenue does seem to be skewed towards the recording side (labels/performers) without record labels bearing the costs associated with physical formats.

Similarly, while some labels have moved to address historical contract terms that never anticipated streaming and unrecouped balances (where sales of a record have yet to offset the original costs of recording and production), it is the case that many signed artists will be on royalty terms that are supposed to reflect the costs of a physical format release and thus reduce the artists' share of gross income. In other cases, it can even be open to question whether a recording contract allowed for digital distribution in the first place.

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?

Yes, we believe the UK does need an equivalent of the Copyright Directive particularly in regard to those aspects that follow the principles of the 'Fair Terms' campaign: <https://www.societyofauthors.org/Where-We-Stand/C-R-E-A-T-O-R-Campaign-for-Fair-Contracts>

It is apparent from music streaming that creators do need the ability to address terms in historical contracts that do not reflect new and unforeseen economic and technological changes. Guarantees around transparency are also essential in order for creators to be able to enter into informed negotiations with those who wish to exploit their work. CRA members have already done work on how some of this legislation might look in a UK context and would be very happy to discuss this further.

It is also important that due attention is given to provisions for those platforms such as YouTube which allow for user upload. A large amount of music is still available to listen to on this and similar platforms without the rightsholders' permission. Too much of the onus is still on them to report these uses, while the platforms themselves derive advertising revenue from the 'viewers' rather than creators giving rise to what is known as the 'value gap'. The Copyright Directive contained measures designed to address issues such as the 'safe harbour' legislation that allows these platforms to avoid taking the level of responsibility on their sites that we believe they should.

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

As we have referred to above, a 'user-centric' model of royalty distribution for subscription would seem to be more equitable, given a review of the balance of royalties between master and publishing rights. We would hope the Select Committee's inquiry will help encourage greater engagement from other elements of the music industry in engaging with these issues.

We also believe that, in keeping with our points about the Copyright Directive, consideration needs to be given to the rights regime around streaming. The manner in which many people consume music on streaming services is far more akin to listening to the radio – which does yield equitable remuneration – yet with streaming featured performers often receive far less and non-featured musicians nothing at all.

Appendix: Current Creators' Rights Alliance Membership (Full & Associate) in Alphabetical order:

1. Association of Artists' Agents
2. Association of British Science Writers
3. Association of Illustrators
4. Association of Photographers
5. Authors' Licensing and Collecting Society
6. British Association of Picture Libraries and Agencies
7. Chartered Institute of Journalists
8. Design and Artists Copyright Society
9. Directors UK
10. Equity
11. Incorporated Society of Musicians
12. Ivors Academy of Music
13. Musicians' Union
14. National Union of Journalists
15. Society of Artists' Agents
16. Society of Authors
17. Writers' Guild of Great Britain