Written evidence submitted by BMG

Submission to the Digital, Culture, Media & Sport
Select Committee Enquiry into

THE ECONOMICS OF MUSIC STREAMING

About BMG

Founded in 2008, BMG is already the world's fourth largest music publisher and the first new global player in the recordings business in decades. Named in 2020 one of the world's *Most Innovative Companies* by Fast Company, BMG's pitch is unique – a relentless focus on fairness and transparency and service to its artist and songwriter clients. BMG's 19 offices across 12 core music markets now represent over 3m songs and recordings, and thousands of artists and songwriters attracted by its fresh approach which now includes production music, film and books as well as music publishing and recordings. BMG is owned by international media, services and education company Bertelsmann, whose other content businesses include the broadcaster RTL Group, the trade book publisher Penguin Random House and the magazine publisher Gruner + Jahr. With its multi-platform perspective, integrated technology platform and commitment to help artists maximize their income, BMG aims to be the best company in music to do business with.

About BMG UK

BMG UK, established in 2009, has a diverse roster of clients including:

- in music publishing, songwriters including Mick Jagger and Keith Richards, Roger Waters, Yusuf Islam (Cat Stevens) and Tears For Fears, through to Joan Armatrading, George Ezra, Lewis Capaldi, Camille Purcell and Mabel;
- in records, it represents artists ranging from Kylie Minogue (Number One this week with her latest album, *Disco*), KSI, Amy Macdonald, the DMAs, alt-J, Rejjie Snow, Jones and McFly as well as The Kinks, Black Sabbath, The Undertones, Supergrass, Slade and Shakin' Stevens.

It is the largest player in both recordings and music publishing outside the three "majors" and employs around 240 people at its Paddington, London, offices.

THE MUSIC INDUSTRY & TECHNOLOGY

Technologies, not music itself, drive growth in the recorded music industry. From the gramophone to the 45, the 33, the cassette, the CD, download and now streaming, overall market growth has always been driven by the rise of delivery technologies

Paradoxically music companies are instinctively suspicious of new technologies and have opposed virtually every new music technology from the player piano[1], to the LP to the CD and Download.

While the technologies used to distribute recorded music have changed dramatically over the decades, the business practices of record companies, in particular their contractual relationships with artists have barely changed at all

The default deal type, the royalty deal, dates back 100 years

We believe many of the complaints from artists and songwriters about remuneration in the streaming age are not a result of streaming itself, but are a result of the slow progress of the music industry in modernizing its processes, approaches and contractual terms

STREAMING

The advent of streaming has had an overwhelmingly positive impact on the music industry;

It emerged at a point when questions were being asked about whether the established music companies would even survive;

The technology to which they were committed – the compact disc – had declining public appeal at a time when technology had enabled industrial scale piracy on filesharing platforms;

The record industry's attempts to create its own digital music businesses – Pressplay and MusicNet – had proven to be failures[2];

The recorded music industry was ultimately forced into a period of consolidation which reduced the number of global "majors" from five to three – Universal Music, Sony Music and Warner Music;

Through its trade associations worldwide it began to sue members of the public for illegal filesharing in a desperate attempt to stem the tide of piracy;

Between its high point in 1999 and its low point in 2011 the worldwide recorded music market suffered a 40% collapse in retail revenues;

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[1] https://www.pbs.org/wgbh/pages/frontline/shows/music/inside/cron.html

[2] PressPlay and rival MusicNet were given the shared 9th place in PC World's 2006 list of the "25 Worst Tech Products of All Time", which stated that "the services' stunningly brain-dead features showed that the record companies still didn't get it".

It was left to streaming pioneer Spotify which launched in the first week of October 2008 – coincidentally the same week in BMG itself commenced operations - to come up with a solution.

THE OLD MUSIC BUSINESS AND CONTRACTUAL INEQUALITY

Technology in music is not neutral. It helps shape the businesses which use it. The physical record business with its requirement for capital intensive manufacturing and distribution gave power to those who controlled the infrastructure;

Without access to a major record deal, artists could effectively be excluded from the market;

Record companies became gatekeepers to success;

Artist contracts often reflected that imbalance in power and leverage, hence a 50 year history of complaints from artists about unfair contract terms.

WHAT STREAMING DOES

Streaming removes the need for the record company's gatekeeper role;

Manufacturing and distribution are no longer barriers to market entry;

Artists have more options than ever before;

Record companies still have an important role as investor and marketing partner, but it is as service provider to artists rather than as dominant player in the music ecosystem;

Record company leverage is increasingly a thing of the past;

Artists have taken more power, either by renegotiation by superstar artists or at the point of signing for a new generation of streaming-savvy artists.

THE ELEPHANT IN THE ROOM

While the world is changing around it and record label power is dissipating, there is inertia in the system;

Processes, contracts, approaches to business designed for an analogue world strain to maintain their relevance in the age of streaming;

A revenue split which awards the recording four times as much money as the song underlying the recording looks anachronistic now record labels no longer have the costs which initially justified their greater share;

Artists who signed contracts in the 1960s find clauses, such as "packaging deductions" dreamt up for the vinyl age, being applied to a format which has no packaging.

#BROKENRECORD, #FIXSTREAMING AND COVID-19

Recent months have seen a growing clamour from artists and songwriters for more justice from the music business;

With the coronavirus pandemic leading to a shutdown of the live music business, artists and songwriters have been forced to look more closely at their earnings from recorded music;

They have not been impressed;

With hindsight it is clear that the dramatic growth of live music over the past two decades - to the extent that it became the largest single revenue stream for most artists - effectively sheltered the record industry from the scrutiny its business practices now face.

THE BMG VIEW

BMG had the benefit of starting afresh in 2008. With no history we were free to embrace the new realities of the streaming age;

We see a bright future for music and the music industry, but believe streaming entails a drastic reassessment of the role of music companies;

BMG views artists and songwriters as our clients. Our job is to be a service provider to them;

Viewing artists and songwriters as clients changes many of the historic assumptions of the music industry;

Since they are clients, it is not their job to keep BMG in business; it is BMG's job to add value to their businesses;

Since they are the principals, they should receive the lion's share of revenue, hence while traditional record companies pay royalties of 20% or less, our new recording deals credit recording artists with 70% of revenue or more;

We don't do this because we are do-gooders. We do it because we believe that's the logic of the streaming revolution and the modern way to do things.

FAIRNESS

It is a strange business in which "We don't rip off our clients" is an attractive sales pitch, but it is an indication of how far we believe the music industry lost its way that we identified it as an area of competitive advantage from the outset;

Key examples of BMG's concept of fairness:

- Our approach to record deals
  The traditional record deal comprises an advance which is recouped by a royalty on sales. The reality is that for most artists the advance is never recouped while the record company makes money long before recoupment. Such deals are notoriously intransparent. BMG has opted instead for a revenue share deal in which the artist is credited with 70% or more of revenues and is given complete transparency over how

the money is spent.

- Accelerated paythrough of royalties
  Historically music publishing companies in particular flattered their cash flow by hanging on to royalties as long as possible before paying songwriters. We have committed to pay out everything received within each accounting period;

- Abandonment of historic deductions.
  When streaming came along, in most cases existing record deal terms designed for the compact disc or vinyl LP were applied to the new revenue stream, including discounts on royalties for packaging costs, promotional copies and returns (from retailers). Because none of these are relevant in the digital age, BMG ceased applying such deductions in 2015.

- Controlled composition deduction
  A complicated legal mechanism for record sales in the US has allowed record labels to demand a discount of 25% off songwriting royalties when an artist signed to them is also a songwriter. In September 2020 BMG announced it would voluntarily cease applying such deductions in its contracts.

In all cases above, the industry practices outlined are quite legal. Music companies including BMG are entitled to apply them if they formed part of the original contact.

BMG, however, takes the view that in the context of today it is no longer desirable to prolong them.

We are therefore paying out more money, more quickly than we are contractually obliged to do.

We are clear we cannot make good all of the sins of the past, but we are committed to doing what we can to improve.

The future for music in the streaming age is bright. Industry revenues continue to climb.

We believe the key to artists and songwriters properly enjoying the benefits of this revolution is for the music industry itself to reform business practices established in the physical world.

THE ARITHMETIC OF FAIRNESS

In the course of this enquiry, the committee can expect to witness much fingerpointing at the digital services.

They are certainly not perfect:

- Their attempts to overturn a court-mandated increase in songwriter royalties in the US is an outrage to many songwriters;
- The slow progress made towards adopting user-centric licensing is disappointing;
- What appears to be an attempt to reduce music's royalty pot by increasing the amount of podcast content is concerning to many;
- And the recent announcement by Spotify that artists may have to trade lower revenues for access to certain playlists potentially sets a dangerous precedent.

There is much work to be done by the streaming services and the music industry working together to drive the value of the streaming market for musicmakers and music fans alike.

But in the current discussion about the remuneration of artists and songwriters, the music industry could make substantial progress itself simply by addressing some of its own outdated assumptions and deal models.

A rule of thumb is that streaming services pay around two-thirds of their revenues to the music industry for the music rights they license;

The problem for artists is that while the recording attracts the largest share (around 80%) of the music rights pot, a traditional record deal may offer them 20% or less of that share, and 20% of 80% of 66% is 10.5%;

The problem for songwriters is that while they typically have much higher royalties, around 75%, that percentage is applied to the smaller share (around 20%) of the music rights pot, and 75% of 20% of 66% is 10%;

The only realistic way for artists to increase their income from streaming is for them to receive a higher share of the revenue generated by their recordings.

The only realistic way for songwriters to increase their income from streaming is for them to receive a greater share of the total pot of money paid by streaming services for the music they use.

Both proposals are likely to encounter significant push-back from the traditional music industry. This is understandable since achieving them would entail wholesale changes to working practices, improvements in efficiency and a more robust approach to overhead.

None of this is comfortable, but we believe it is necessary.

Having benefitted from a dramatic windfall increase in revenues almost entirely attributable to the investment of third parties – ie streaming services – we believe that it is right and appropriate that the music industry should share some of that windfall with the artists and songwriters who create the music.

BMG
16 December 2020

Appendix – Questions posed by the DCMC Select Committee Enquiry into the Economics of Music Streaming

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

  This is best answered by the services themselves.

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

  Self-evidently this is the case – Otherwise we and our competitors would not spend so much time and effort seeking placement on playlists.
  We have no in-principle objection to such playlists, but we recognise there is a

tension between services's commercial imperative to maintain confidentiality over the workings of such algorithms and the need for transparency to maintain a free market.
Spotify's [November 2 announcement] that it is to offer labels paid-for personalised recommendations which influence algorithmic playlists has been widely criticised by artists as a form of digital age "payola". While it is too early to say whether such language is justified, any mechanism which is seen to rig the market in favour of the biggest and best-funded players will inevitably raise concerns about market manipulation.

- What has been the economic impact and long-term implications of streaming on the music industry, including for artists, record labels, record shops, etc?
  As outlined in our submission above, we believe the economic impact and long-term implications of streaming for the music industry as a whole have been overwhelmingly positive. We believe however that the music industry itself still has some way to go to reform its analogue-era practices to be fit for purpose in the digital age.

- 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?
  While piracy has reduced significantly since its high point a decade or so ago, it remains an ever-present threat. We welcome any assistance the Government can give in this on-going battle, including tackling illegal, unlicensed services, removing barriers to website blocking orders and ensuring the takedown and staydown of unlicensed content.

- Do alternative business models exist? How can policy favour more equitable business models?
  We are undoubtedly still in the early days of the streaming revolution. Additive business models such as virtual gifting and artist-specific "tip jars" will increasingly emerge.
  The most significant enhancement to the existing streaming model we believe should be investigated is so-called user-centric licensing.
  At its heart is that each subscriber's month payment would be divided solely among the artists to whom the subscriber listened to, rather than as now all streams and payments being aggregated into larger pots.
  We acknowledge that the impact overall on artists incomes may not be significant, but we believe its greatest value would be in strengthening the bond between artist and fan, increasing the transparency of the streaming ecosystem and, above all, satisfying a desire among musicians for fairness. Too often the status quo gives the impression it was designed for the convenience of industry players, rather than with a view to the perceptions of artists and fans.