

Written evidence submitted by the Incorporated Society of Musicians

DCMS Committee Call for evidence Economics of music streaming

This is a submission produced by Incorporated Society of Musicians (ISM) responding to the DCMS Committee call for evidence: Economics of music streaming This submission responds directly to the questions in the terms of reference and a summary can be found on pp.1-2.

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1. Introduction

About the ISM

The ISM is the UK’s oldest professional representative body for musicians, set up in 1882 to promote the art of music and to protect the interests of all those working in the music sector. The ISM’s membership comprises over 10,500 members working in every part of the profession. We support our members with legal services and advice, insurances, professional development and guidance in their work as a musician.

Summary

The ISM welcomes this inquiry as an opportunity to articulate some of the inherent systematic failures in the streaming model, which for most musicians does not generate a sufficient income stream to support their livelihoods. Despite streaming platforms experiencing significant growth, many musicians – whether performer, composer or songwriter - are not sharing in the increased value that streaming has brought to the industry.

The reasons for this are multifarious, complex and are not all down to the business practices of the digital service providers (DSPs). However, DSPs need to be part of the

solution and to engage with the industry in a more meaningful way to address the inadequacies musicians face.

Coronavirus has exacerbated these longstanding issues as the decimation of live performance has brought into sharp focus the disproportionate weighting that income from live performance plays within the portfolio of a musician's earnings.

Recent ISM research (2019) shows that 55% of all members working in the music industry earn less than £20,000 per annum and 79% of musicians earn less than £30,000. It is imperative therefore that the economic model for streaming supports these musicians, not just the global superstars.

All creators must be paid fairly for their work. Without songwriters, composers, recording artists, session musicians and music producers, there is no recorded music industry. As noted above, there are a number of areas that require reform in order to achieve a more equitable position for musicians.

Below is a summary of the salient issues:

- A significant power imbalance exists between the major industry stakeholders and the very people who create the music. This can no longer continue and must be reformed. This is compounded by the contractual relationship between DSPs being with the rightsholder, usually the label, publisher or collective management organisation. Streaming platforms have no direct link with the musicians therefore, thereby creating a disincentive for any change to the status quo.
- There is a lack of transparency around deal terms as a result of DSPs using Non-Disclosure Agreements to suppress confidential commercial information. This is having a significant detrimental impact as it makes it impossible for musicians to know if they have been paid correctly for their work.
- Accurate data is needed from all parties to ensure that songwriters, composers and recording artists are earning every penny they are owed. DSP's, rightsholders and collection societies must work together to address this issue.
- Equally, allowing musicians greater insight into the data that surrounds how fans engage with their music would ultimately facilitate greater industry growth.
- The balance between the level of royalties received by recording artists compared to songwriter/composer needs to be redressed. Whilst we strive for parity, it should not be at the expense of reducing royalties for recording artists; DSPs need to allocate a greater portion of their revenue to royalties so that all those involved in the creation of the music can share in its success.
- Recording artists and session musicians should be able to earn performance royalties from the streaming of their recorded performances, as songwriters and composers are permitted the same right in respect of their performance rights.
- Recording artists, songwriters and composers are further penalised if they are operating under historic legacy contracts which do not specify royalty rates for digital income.
- At present the length of a piece of a track has no bearing on the royalty received, thus unfairly penalising those that are involved in the creation of works that are longer than a typical three-minute song.

- There is insufficient correlation between the subscription fee paid by the consumer and the royalties reaching those involved in creating the music the consumer has been listening to.
- We would be concerned if DSPs look to become rightsholders as this would have serious consequences, both intentional and unintentional, for the industry.
- There are many playlists on major DSPs controlled by a third-party which raises questions on the legalities and ethics of this form of 'digital payola'.
- Finally, we believe that the UK music industry would benefit from elements of the EU copyright directive which address some of the fundamental issues such as safe harbour and the value gap.

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

At present, the current business model for most major streaming platforms (including Spotify) is to pay a revenue share to rightsholders generated from subscription fees of premium customers, topped up with revenue from advertising from non-subscription paying (freemium) consumers.

The number of streams and level of income from subscriptions and advertising fluctuates month by month, making it difficult, if not impossible, for those involved in the writing, recording and producing of music to determine what the value of a stream is in any given month. The knock-on effect of this is that musicians cannot audit their royalty statements for accuracy and it is impossible to make accurate financial projections on the return on investment those involved in the creation of music can expect to see from the creative process.

The licensing structure enables some industry stakeholders (generally the major record labels and major publishers) to negotiate directly with DSPs. Whilst the terms of these deals remain confidential it is believed that preferential streaming rates were secured over smaller stakeholders and independent artists due to their overwhelming market share. Equity stakes were also commonplace in the early days to allow DSPs to secure access to the rights they needed to launch and grow their services without the need for a cash outlay. This further clouds the ability of musicians to understand the relationship between rightsholders and DSPs.

By operating a revenue share model, as noted above, there is little correlation between the subscription fee a consumer pays and the royalty received by the musicians they have been listening to, which undermines consumers' confidence in their ability to support the musicians they listen to.

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

Playlists are becoming increasingly dominant as younger audiences move away from traditional radio. The curatorial role of a DJ (particularly important in the context of the BBC and its remit as a public service broadcaster to foster and encourage the discovery of new music) is becoming obsolete as algorithms and paid for promotion determine which tracks are highlighted to the consumer. This has a potentially damaging impact on

consumers as it disadvantages smaller or independent artists who cannot afford to pay to have their tracks promoted on playlists. Therefore the way that consumers discover music is fundamentally changing and becoming less organic. It also raises questions about whether such algorithmic functions help consumers connect with artists outside of the DSP.

There have been concerns amongst musicians for some time surrounding whether or not DSPs may seek to become rightsholders themselves as they realise the power of owning catalogue. Should this happen, there is a very real risk that DSPs could prioritise their own catalogues, thereby distorting the system further. For example, if a consumer asks a voice activated control system such as Amazon's Alexa to 'play some chill-out music' the DSP would naturally ensure the music heard favoured their own catalogue. Not only would this restrict choice of the consumer but would also benefit DSPs as the royalty received would off-set the licence fee paid, thereby ultimately taking money out of the industry.

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

By and large, the growth in legitimate streaming services has led to a reduction in piracy, which is a welcome development. However, as many services are free to access, the unintended consequence is that consumers place even less monetary value on music than previously, a situation that is perpetuated by the subscription fee not going directly to support the artists being listened to.

In addition, there are inequalities for recording artists, songwriters and composers at every stage in the chain: musicians contracts with labels and publishers, the deals reached by labels, publishers and collection societies with DSPs and the different weighting DSPs place on master and publishing rights.

For the purposes of this inquiry, we will focus on the disparity between royalties allocated to master rights in comparison with publishing rights. DSPs give significantly more revenue to secure master rights, however without underlying music work, there would be no recording. We believe therefore that composers and songwriters should be better compensated for the use of their work by DSPs and that the gap between the value attributed to publishing rights as opposed to master rights should be closed.

For the avoidance of doubt, we are not advocating for royalties for master rights to be reduced to redress this imbalance. Rather, we believe that DSPs should be increasing the revenue allocated to royalties in order to achieve parity for publishing rights with master rights.

The digital age has brought with it the ability to provide data to rightsholders on the usage of their music by DSPs. This is a welcome development however it is imperative that DSPs work collaboratively with the industry and are held accountable to ensure that data is processed accurately and in a timely fashion. Until the flow of data between DSPs and rightsholders (whether directly or via collection societies) is improved, there will be unattributable income that will not reach musicians. As a 'follow the money' approach is

adopted, emerging artists and niche genres will be most affected by this method, to the detriment of the industry as a whole.

The ISM is concerned by a recent development from Spotify to offer rightsholders the 'opportunity' to accept lower royalty rates in exchange for promotion. As no up-front cost is required, it may seem like an attractive offer however it raises concerns as to whether;

a) the artists and their managers whose recordings are involved in this process will be informed that this is taking place and be given an opportunity to opt in (which is likely to leave them contractually unrecouped – ie. in debt to their label - for longer), and b) whether truly transparent accounting statements will be provided to allow artists who engage with reduced streaming rates to clearly understand whether agreeing to reduce their streaming rates has in any way paid off/should be considered again as an economic decision. Greater transparency for musicians and artists must again be provided on this development.

5. 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?

It is the ISM's opinion that post-Brexit, there are elements of the EU Copyright Directive that if not transposed into UK law would have a detrimental effect on the UK music industry. In particular we support the work led by PRS for Music in addressing concerns around DSP's reliance on safe harbour and the 'value gap' such services have created. This is particularly important in the context of user generated content platforms such as YouTube.

As a board member of the Creators Rights Alliance (CRA), we also fully support the aspects of the Directive that support fair terms for creators and refer you to the CRA submission for further details on this point.

As referenced in the summary, of particular concern is the number of historic contracts still in circulation that are silent on the treatment of digital income. Without the ability to renegotiate contracts, musicians are being disadvantaged by not being able to take full advantage of a growth area of the industry, compounding the inequality between musicians and DSPs /industry stakeholders.

We encourage government to continue working with industry on education initiatives to broaden understanding of the importance of intellectual property. This is particularly important given copyright education is not covered by statutory music curriculums in the UK. Pupils will only be exposed to these issues if they opt to take the relevant modules as part of the BTEC Music Technology Level 3 course or the Diploma in Music Business at SCQF level 6/7. Greater consumer understanding of copyright is paramount to deterring usage of unlicensed services.

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

As noted earlier in our response, there are many points of failure for musicians in the digital eco-system, many of which are inextricably linked. To achieve a fair system, there

has to be a user-centric approach which puts the recording artists (both featured and non-featured artists), composers and songwriters first. Without them, we have no industry and the starting point has to involve establishing a fairer, less exploitative system for creators.

Musicians are increasingly opting to retain their copyright and enter into licensing deals with labels and publishers instead of assigning their copyright and we hope that this model continues to take hold.

Furthermore, it is also important that recording artists and session musicians are able to earn performance royalties from the streaming of their recorded music. The fact that they can't is a significant gap in the UK's copyright framework. The ISM believes that parity across performance royalties must be introduced and the relevant changes made to ensure Phonographic Performance Limited (PPL) are able to collect performance royalties for featured performers (credited lead recording artists), non-featured performers (typically sessions musicians who generally never see royalties from music streaming) and rightsholders in the near future.