

Written evidence submitted by the Musicians' Union

MUSICIANS' UNION RESPONSE TO DCMS STREAMING INQUIRY

The MU represents over 32,000 professional musicians working across all sectors of the UK music industry. We are delighted to see the CMS Select Committee running this much needed inquiry, having highlighted the issues with the current streaming model in the oral evidence given to this committee by our General Secretary, Horace Trubridge, earlier this year as part of the COVID inquiry.

Key recommendations:

- Appropriate and proportionate remuneration for performers on streaming; we believe curated and algorithmic playlists on streaming platforms, as well as promoted (or pushed) tracks, are more comparable to radio than record sales and therefore should generate unwaivable royalties for performers to be paid via a collecting society such as PPL.
- Enshrine the broad principles of the European Copyright Directive in UK law, particularly Chapter 3 covering fair remuneration of creators and performers, transparency, contract adjustment and rights revocation. Introducing these principles into UK law would help improve treatment of creators and performers by the record industry in particular.
- Ensure that music publishers and record labels are held to the same standards of due diligence as collecting societies and that data standards are significantly improved upon; make sure royalties are paid out accurately.

Summary of music streaming economics:

At present streaming revenue is divided roughly as follows:

- 30% Streaming platform
- 55% Record label (which should pay a royalty to artists, however this may be as low as 10% and if the artist has not 'recouped', i.e. paid back their advance and recording costs to the label, then they won't receive any royalty at all)
- 15% Music publisher and songwriter (The songwriter will usually receive 80% and the publisher will retain 20%)

Inquiry questions:

- **What are the dominant business models of platforms that offer music streaming as a service?**
- Generally, as with Spotify, there is a free service which is funded by adverts or a Premium paid-for service which is a subscription model and is ad-free. The price of Spotify Premium has not increased in over a decade, which is highly unusual. Audio-visual streaming platforms such as Disney Plus, Amazon Prime and Netflix have successfully increased their pricing over this same period. Streaming platforms license music from rightsholders and in general these deals include non-disclosure clauses, which make it impossible for creators, performers and their representatives to find out

how much is paid overall in relation to the royalties they receive. Greater transparency is needed in order to assess the fairness of licensing systems and we hope this inquiry will shed some light on the economics of the music streaming business.

- YouTube generally doesn't identify as a music streaming platform but in reality it is used that way, particularly by young consumers. Edison Research and Triton Digital published their latest 'The Infinite Dial' report last year which showed that 50% of US respondents used YouTube for music or music videos, up from 46% a year ago. For 12-34 year-olds in the US, YouTube's music penetration rises to 70% of the demographic. The statistics in the UK are a bit more encouraging but still show that YouTube is a significant choice for music listening with children aged 8 to 15. A UK YouGov study this year showed that in this age range, those who normally listen to music on a laptop or computer, smartphone and/ or tablet, 56% used video platforms like Vimeo and YouTube and 59% used Spotify (respondents could select all platforms they had used). Source:<https://docs.cdn.yougov.com/s5aqcr5oaq/YouGov%20-%20Kids'%20music%20consumption.pdf>. YouTube does not pay appropriate licence fees for music and hides behind 'safe harbor' legislation, which absolves it of any responsibility for infringing or unlicensed use of music in user generated or uploaded content. This has led to the 'value gap'; a gap in the revenue which should flow through to rightsholders and in theory trickle down to music creators and performers. We say 'in theory' because, as we will elaborate on, there are various barriers to our members being appropriately paid and accounted to, by the major record labels in particular.
- **Have new features associated with streaming platforms, such as algorithmic curation of music or company playlists, influenced consumer habits, tastes, etc?**

Yes. Another YouGov survey of consumers, supported by the #BrokenRecord campaign, Musicians' Union and The Ivors Academy showed that listeners feel streamed playlists are very much like radio. The survey, which spoke to a nationally representative sample of over 2,000 British adults, showed that 60% of streaming consumers felt playlist streaming is more akin to radio than listening to a CD:

(<https://ivorsacademy.com/news/significant-public-for-streaming-reform-in-yougov-survey-for-the-brokenrecord-campaign/>).

Playlists are also often controlled by the major labels and tracks are 'pushed' to listeners, which has an impact on listening and therefore royalties. The Musicians' Union is concerned that over time listening will move from traditional radio to playlists on streaming platforms and this could have a detrimental impact on our members' livelihoods. Streaming increasingly mimics radio with curated playlists; a good example is "The GetUp" breakfast show: <https://newsroom.spotify.com/2020-10-22/say-hello-to-the-hosts-of-the-get-up-spotifys-new-daily-morning-show/>. However, unlike with radio, royalties from streaming are not guaranteed to artists and performers through collective rights management.

Radio listening in the UK is in slight decline as evidenced by RAJAR: https://www.rajar.co.uk/docs/news/RAJAR_DataRelease_InfographicQ12020.pdf. PPL royalties from radio and other broadcasting plus public performance help to sustain the incomes and careers of session (non-featured) musicians who currently receive no streaming royalties whatsoever. We would like to see a portion of streaming revenue passed on to a collective management organisation such as PPL to distribute to labels, featured artists and session musicians by the same ratios as for PPL's radio licensing

revenue. The ratios are: 50% to the label and 50% to performers (divided 65% to the featured artist and 35% to the non-featured). Incidentally, the percentage of PPL revenue that comes from broadcast licensing (such as radio) is in a steady decline of 3% annually (2017: 37%, 2018: 34%, 2019: 31%) and this is also of concern.

Streaming royalties paid via PPL would be of benefit both to non-featured (or session) musicians and also featured artists who are under exclusive contracts with labels and remain unrecouped. Record labels treat any money they spend on an artist, which includes any advance paid to them as well as all costs of manufacture, distribution and marketing of their music, as recoupable and therefore it is essentially a debt the artist must repay before they receive any royalties. Many artists (particularly those who signed record contracts in a pre-digital era) remain unrecouped for decades and never start receiving royalties. Unlike in a profit share arrangement, the artist is fully responsible for repaying all costs rather than sharing the costs and any resultant profits with the label. We believe this is unfair and that unrecouped balances should be wiped after a reasonable period, for example 15 years.

We are also concerned about the significant influence of the major labels and publishers over streaming playlists and algorithms. This is a barrier to independent artists and smaller labels accessing the marketplace and generating revenue from their music. Spotify have very recently launched a new feature for artists which allows them to boost the visibility on algorithmic playlists by accepting a lower royalty rate: <https://newsroom.spotify.com/2020-11-02/amplifying-artist-input-in-your-personalized-recommendations/>. They have offered this on the basis that labels and publishers already do similar deals. These sorts of practices will clearly have an impact on access to the marketplace and on the income of creators and performers. Major labels and publishers have far greater ability to negotiate or pay for tracks to be promoted by algorithms.

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

Streaming is a phenomenal success and labels are reporting record profits from it. The IFPI's Global Music Report 2019 showed that the recorded music market grew by 9.7% worldwide in 2018, the fourth consecutive year of growth. Streaming revenue grew by 34% and accounted for almost half (47%) of global revenue, driven by a 32.9% increase in paid subscription streaming. There were 255 million users of paid streaming services at the end of 2018 accounting for 37% of total recorded music revenue. Growth in streaming more than offset a 10.1% decline in physical revenue and a 21.2% decline in download revenue. However, this growth is not reflected in musicians' earnings. The average musician earns around £20k from music and during the Covid-19 crisis, during which the live sector has effectively shut its doors, tens of thousands have suffered financial hardship.

A survey of members of the Musicians' Union and The Ivors Academy on streaming income in November 2020 (with 320 respondents) returned the following results:

- More than 80% of respondents had earned less than £200 from streaming in 2019.

- 63% of respondents had earned less than £50 from streaming in 2019.
- 82% of respondents had earned less than £50 from their most streamed track in 2019.
- Over 90% of respondents said less than 5% of their earnings came from streaming.

Traditionally, the back end of royalties from PPL sustain session musicians and artists but these do not currently apply to streaming revenue and therefore this represents a 'value gap' of a different kind in the view of the MU. The #BrokenRecord YouGov survey showed that 81% of consumers support the idea of session (or backing) musicians receiving streaming royalties. There is also a move to achieve this across Europe, with the implementation of the Copyright Directive in EU member states, and the recent C8 Associates survey showed that performers would want streaming royalties paid through a CMO (such as PPL in the UK) rather than direct from a record label. The survey results (here <https://www.payperformers.eu/performer-survey-results>) showed that 90% of all performers indicate that the streaming market has given them no meaningful return in income.

Streaming offers music lovers the opportunity to access an enormous catalogue of music either for free (supported by advertising) or at a relatively low monthly subscription fee. While Netflix, Amazon and Disney Plus have successfully increased the pricing of their audio-visual streaming services, music streaming has remained at the same price point for a decade. There is certainly an argument that music streaming platforms should increase their pricing and that this increase in revenue should be passed on directly to performers via a CMO.

There is growing evidence that licensed streaming platforms are leading people away from illegal sites and helping to reduce music piracy, which is of course good news. A YouGov poll conducted in 2018 showed that 10% of those surveyed downloaded music illegally compared to 18% five years before and that 63% of those who had stopped using illegal download sites were now using streaming services. This reduction in piracy will primarily benefit the record labels unless fair remuneration for creators and performers is achieved.

- **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 would like to see the principles of the European Copyright Directive enshrined in primary legislation in the UK. We believe that the wording of the European Directive could actually be improved upon so it is more effective and practical to apply. The broad principles of the Directive which we would want to see addressed in UK law are as follows:

1. Transparency obligations for record labels, music publishers, streaming platforms and other licensing entities so that creators can effectively make use of their right to audit music companies they are signed to or who administer royalties to them. At present, it is very costly for artists to audit labels and it is ineffective because they are not able to gain access to details of licensing deals with platforms because of non-disclosure agreements.

2. Appropriate and proportionate remuneration for creators and performers from streaming. For example, the song currently receives around 15% of streaming revenue (divided between songwriter and publisher) whereas the recording receives around 55%. Session musicians currently receive no streaming royalties. If UK law enshrined the principle of appropriate and proportionate remuneration, or an unwaivable equitable remuneration on streaming this would provide a new and guaranteed income stream for all performers.
3. Contract readjustment: if the remuneration originally agreed under a license or transfer of rights turns out to be disproportionately low compared to revenues generated then creators and artists should be entitled to improved contract terms. Again, if this principle were enshrined in law then it would facilitate renegotiation and adjustment of contracts to ensure appropriate and proportionate royalty rates for artists. There are examples of music businesses improving their practices and adjusting existing contract terms but this is far from widespread. BMG, for example, recently eliminated controlled composition contracts from its US record deals: <https://www.musicbusinessworldwide.com/bmg-exterminates-poisonous-controlled-composition-clauses-from-its-us-record-contracts/>.
4. Rights revocation: music creators ought to be able to revoke a license, i.e. sign their works with a different music company, if after a reasonable timeframe the music company tasked contractually with exploiting their work is not succeeding.
5. Liability of online platforms: ensuring that platforms including those that host user generated content will (barring exceptions such as parody) be liable for hosting unauthorised content, unless they have:
 - obtained a license
 - not displayed any copyrighted content which has been registered with the platform by rightsholders
 - Acted expeditiously to take down any copyrighted content on receipt of valid notice from the rightsholder
 - Made best efforts to prevent the reupload of taken-down content.

We would also like to see unrecouped balances for artists who signed contracts in a pre-digital era (heritage artists) wiped clean after a reasonable period of time (we would suggest 15 years). Martin Mills of Beggars Banquet agrees with this principle: <https://www.musicbusinessworldwide.com/martin-mills-majors-must-pay-artists-fairly-if-were-to-beat-youtube/>). Record labels should also be obliged to account and pay royalties to all heritage artists and held to the same standards of due diligence in finding those to pay as CMOs are (under the CRM directive: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0026&from=EN>)

We would also like to see significant efforts from labels in particular to improve performer data on tracks so that royalty payments are paid out more accurately. CMOs and rightsholders can only be truly accurate and effective in distributing payments if their data is good quality. For example, record labels do not always provide PPL with the list of non-featured performers on a track when they register it. This leads to musicians not being paid. The IPO backed research project Music 2025 highlighted the music industry's data problem but many in the industry failed to take the recommendations

forward. Renewed efforts are crucial. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/809492/Music-2025.pdf. Minimum data standards are required as is the facilitation of meaningful industry dialogue on this issue.

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

There are potentially fairer models, such as user-centric royalty distribution, which could be explored within the industry but do not require Government policy to be achieved. However, a recommendation for user centric royalty distribution to be explored by platforms would be useful to see in the Select Committee's report. Some streaming platforms are already looking at user-centric as a fairer model such as Deezer (who have thus far had attempts blocked by the major record labels we understand). User-centric means that one user's £10 per month subscription payment would be paid out on the tracks they themselves listened to that month. At present, all streams are effectively pooled and all revenue is paid out according to the total number of streams per track. This means 90% of a user's payment could go to tracks they did not listen to. It also could favour major labels and their artists over independent labels and artists with a niche but dedicated following. We believe this is a model that should be examined more closely by platforms with a view to make the economics of streaming fairer for artists and consumers.

Where Government policy could assist is in setting a framework for fairer treatment of creators and performers by enshrining and improving on some of the key elements of the European Copyright Directive (as we have set out above).

We believe that paying streaming royalties to featured artists on a sales basis, the current standard practice, makes no sense and is unfair to the artists because it is no longer necessary for a record company to pay to manufacture, store and distribute physical product. In the pre-digital era, artists understood that these costs went some way to justifying the low royalty rate. There are none of these costs associated with streaming. The contract readjustment principle in the Copyright Directive could assist with this issue. The enormous catalogue of music that the streaming services offer the consumer includes a large proportion of recordings that were made in a pre-digital era. These recordings are being streamed and the rights owners are receiving money for these streams but in many cases they are not paying this money out to the original artists due to a number of reasons including unrecouped balances but also because the recordings may have changed hands many times and there is no longer any record of the artists' names and addresses. Record companies should have a duty to locate and pay these heritage artists. Legislation should ensure that those who buy catalogue and make money from it, inherit the duty to pay creators their royalties. And, again, we would point to the Music 2025 research and improving data in the music industry as a crucial part of the solution.

We believe that as well as the royalty received from the record company, which is almost always very low or non-existent; there should be an additional payment akin to the money the performer receives when their recording is played on the radio. These

payments should be collected and distributed via collective rights management, e.g. PPL. The non-featured / session musicians on the recording should be included in this, as they are for broadcast, as at present they receive no income from streaming apart from their (usually low) upfront session fee. The reason artists rarely receive a royalty is often because they haven't recouped the advance from the record company even though the record company, in many cases, has made substantial profits from the exploitation of the artists recordings. Furthermore, most musicians earn a very low royalty on streaming due to their contract with their record label; we would like to see deals revisited and the percentage paid on streaming to increase across the board to at least 30% (the best deals offer 50% but these tend to be for new artists or those with significant bargaining power). If streaming was dealt with as radio is, musicians would receive a guaranteed income stream from it. Without changes to the rights management regime and/or adjustment to existing contracts, the majority of performers will never earn more than a pittance from streaming.

Streaming services are, essentially, a sophisticated version of radio. Consumers using Spotify to download a track do not feel they are purchasing the music they listen to in the way they do when using iTunes. The most popular services on Spotify are the curated playlists where the listener chooses, for example, 'modern country' or 'heavy metal' and a selection of music is then streamed to their device. The listener only knows the type or style of music (not the specific tracks) he or she will be listening to. The experience is no different to listening to a specialist internet radio station inasmuch as you aren't 'pulling' the tracks, rather, they are being 'pushed' at you. One way to secure a guaranteed income stream via a CMO for performers would be to recognise that the activities of streaming platforms include a substantial element of Communication to the Public and are not purely Making Available. On this basis, we would argue that musicians should receive Equitable Remuneration through a collecting society such as PPL, as they do when their performances are played on the radio or in commercial premises.

Alternatively, the Government could assign an unwaivable Equitable Remuneration to Making Available as well as to Communication to the Public.

Finally, as is happening in Spain and will soon be introduced in other European countries as a result of the Copyright Directive, the Government could ensure that appropriate and proportionate remuneration is paid to performers via a CMO from the streaming platform's share. This could be paid for with a small price increase, say £1 per month on the cost of a music streaming subscription.

Any of these mechanisms could be put in place by the Government in order to improve streaming economics for performers at no cost to the UK economy. In fact, any of these measures would show a significant return and benefit the UK economy. At present, a significant share of streaming revenue is paid to US-owned major labels by streaming companies and not paid out.

We have a representative on the Steering Board for the IPO-backed Creators' Earnings Research Project and hope this will shed some light on the economics of streaming in due course. In the interests of the Research Group getting a genuine picture of how streaming works for all stakeholders, it is crucial that platforms, labels and others who hold meaningful data are encouraged to share it with the project.

We have also attached a supplementary paper, prepared by the Musicians' Union's music industry contract advisers, detailing the issues with aggregator contracts. An aggregator is a digital content distributor. Aggregators register recordings with the streaming services, on behalf of artists, and collect any resulting royalty income. The streaming services won't deal with individual artists, so an aggregator is always required, unless the artist is signed to a label. An aggregator usually charges the artist an upfront fee and/or a percentage of royalty income from the streaming of their music.

Finally, we have attached the results of a survey of Musicians' Union and The Ivors Academy members in November 2020 looking at streaming income for creators and performers in music.

Conclusion:

Covid-19 has hit songwriters, featured artists, session musicians and composers hard. Gigs and commissions have been cancelled, festivals and performances postponed, and recording studios have had their capacity significantly reduced. This crisis has brought into sharp relief the fact that creators and performers are sustained primarily by income generated by the live side of the music business and that streaming royalties are woefully insufficient. MU members have reported over £21m of lost income since the Covid-19 lockdown came into force. It would take an estimated 62 million Spotify streams to break even on a £25,000 loss, which was the anticipated loss by Ivors Academy members at the outbreak of Covid-19 over a period of 6 months. This figure is unattainable for most music creators. There has never been a more urgent time to fix streaming so that it becomes a real source of income for musicians and composers.