Supplementary written evidence from Sony Music

Members Questions:

1. Q. **Please explain precisely why streaming should be classified as 'making available'.**

   A. In the streaming world you can access any song on that service at the time and place of your choosing and you can skip, pause or cancel any stream you receive. Accordingly, streaming clearly falls within the legal definition of the making available right. Broadcasts do not afford any interactivity to the end user because the user cannot influence the transmission of the music which can be listened to at a given time; he or she can only choose to turn off the station if the piece broadcast is not to his or her liking.

   B. If streaming was treated as broadcast and artists received direct a material share of the fees payable, the balance payable to the label would not be sufficient to maintain investment in new signing, A&R and marketing and so would materially reduce the opportunity to mitigate its risk on the majority of signings which do not succeed and in respect of which we are unable to break even.

   C. Furthermore, if streaming was treated as a broadcast and equitable remuneration applied, then this would be administered by collective licensing (e.g. PPL). Because of the restrictions placed upon collective licensing - making it significantly harder for them to "walk away" from a negotiation, and deferral to the copyright tribunal if there is a dispute, it is generally accepted that the rates that would be payable under a collective licensing regime would be significantly less than those that would be negotiated by the labels direct, where we can choose to license or not license our catalogue, or specific recordings, if necessary. Accordingly, whilst the artist may receive a bigger share under that regime, it would be a bigger share of a much smaller pie – which would also further reduce the label's ability to invest in new artists. By way of example, in the UK broadcasters pay approximately 4 % of their revenue to PPL for distribution to rights holders and performers, whereas with direct licensing DSPs pay approximately 55% of their revenue to recorded music holders.

2. Q. **How many streams would you estimate that an artist would have to achieve in order to earn £1 in net profit, assuming royalty rates of 20%, 25% and 30% (given that these were the figures cited in oral evidence as the typical lower, median and upper rates)? How much revenue would these streams equate to, and how much would be earned by the label?**

   A. Using a full rate subscription service such as Spotify Premium in the UK as an example, where the average rate per stream we receive is approximately £0.005, the number of streams required for the artist to earn £1 in royalties at the differing royalty rates is as follows:

Artist Royalty	Streams to earn £1 royalty	Total Revenue	Artist Share	Contribution to label costs
20%	1,000	£5.00	£1.00	£4.00
25%	800	£4.00	£1.00	£3.00
30%	669	£3.35	£1.00	£2.35

We thought it would be helpful to mention, for additional context, that the value of streams also varies significantly by country because of significantly different consumer prices and by the nature of the streaming service. Subscription services are at the high end of value and ad-funded, free-to-user services at the low end of the range. Typically, the value of a stream is higher in the UK than in many territories, as per the example below.

For comparison, using the 25% royalty rate in the above example, the comparable results for a UK ad-funded service such as YouTube would be approximately:

Artist Royalty	Streams to earn £1 royalty	Total Revenue	Artist Share	Contribution to label costs
25%	5,479	£4.00	£1.00	£3.00

The equivalent results for a Chinese service such as QQ would be approximately:

Artist Royalty	Streams to earn £1 royalty	Total Revenue	Artist Share	Contribution to label costs
25%	13,333	£4.00	£1.00	£3.00

To give even more context, it should be noted that in the streaming world material success is measured in hundreds of millions or billions of streams, not millions of sales as in the physical world. By way of example, to achieve a Gold Record for a CD required 100,000 sales, which now equates to 100 million paid for/premium streams or 600m ad-funded streams

B. From the context of the meeting and your use of the words "net profit" we thought this question might be a follow-up to Mr Kevin Brennan's oral question where he gave examples of an advance of £300,000, costs of £250,000 and asked how many streams were required for the artist to "make £1 profit".

We hoped it would be helpful for you to have more context on this in case there are some fundamental misconceptions over this area.

1 In Mr Brennan's example it is important to note that the artist effectively makes £300,000 profit at the start of this deal when he or she receives the personal advance. Advances may be "recoupable" i.e. future royalties are only paid once their value exceeds the amount of the advance and recoupable costs, but advances are never returnable or repayable, other than in very exceptional cases.

2 In Mr Brennan's example he said that the illustrative deal included £250,000 of recording costs so it should be noted that the record company has committed and risked £550,000 in this example without the certainty of recovering much of that if for whatever reason the public do not like the record. Importantly the label will also invest in significant marketing activity during the development phase and to launch the record, which is non-recoupable or deductible from the artist under a royalty deal. To develop and launch a new or developing UK artist we routinely invest £300,000 in marketing, which is at the label's risk.

3 The website that Mr Brennan referred to during his question and which uses an average rate of 0.005p per stream for the artist is not an unreasonable illustration of streaming rates given the range of streaming rates we have referred to above.

4 In order to see the full context, we have included a table with this letter (Appendix A) where you will see that whilst it might take 458 million streams to allow the artist to recoup the personal advance and recording costs and receive an additional £1 of royalties, on the same basis the record company has to sell 244 million streams simply to avoid losing money on the deal. For the record company to make a profit of £300,000 – the same amount as the artist's personal advance – it takes 378m streams, lower than the 458m required for the artist to recoup, but the record company has incurred 100% of the upfront financial risk, so if the project fails the record company loses £550,000 whereas the artist

always receives the £300,000. In addition the artist will also be earning from other sources e.g. live, merchandising, publishing and sponsorship.

3. Q. **Please provide a breakdown of types of costs and relative proportions that comprise A&R spend. Within your answer, please provide information on what proportion of this cost is spent on royalties, advances, production costs and ancillary costs (such as A&R staff costs) each year.**

   *A. Redacted

4. Q. **Across your repertoire, what production costs have been negotiated as recoupable by you against an artists' portion of revenue in both advance and royalty deals or profit share deals?**

   *A. [Redacted]

5. Q. **What proportion of your current annual income is comprised of recoupments?**

   *A. [Redacted]

6. Q. **Given that advances are recouped from royalties, do you deduct these totals from your A&R costs each year? If not, how much of your yearly income is comprised of recoupments against historic advances?**

   A. We do not deduct the amount of recoupment from our A&R budget spend in any year as we budget to spend what we consider to be the necessary amount to cover the artist activities likely to arise in the year. Our actual spend will be based on that budget adjusted to reflect actual artist activities and opportunities arising during the year.

   Recoupment – which will relate to a huge range of historic releases, is recorded on a separate line reducing our operating costs. While they do, of course, benefit our overall profitability and therefore our ability to invest in new artists, they do not directly alter our investment plans in any individual year.

   B. For the second question, recoupment is not included in our income but credited back to our operating costs. In order, however, to provide you with context we have shown the amount of recoupment as a percentage of our Income in the last 5 years in response to question 5.

7. Q. **What proportion of your current repertoire has been upstreamed from other labels, brands, distributors, etc, and what proportion of this are from brands, subsidiaries, distributors, etc that your company or your parent companies own?**

   A. The majority of our repertoire is the direct signing of an artist, although approximately 20% of those artists may have previously had deals with independents, distributors or self-released. Less than 20% of our repertoire signed in any one year is licensed in or acquired from a third party distributor or label. We cannot recall more than one or two artists ever being up-streamed from a distributor owned by us over the last 10 years.

8. Q. **How many artists in your repertoire have reobtained or recaptured their rights in the US (either by exercising their rights under the relevant Copyright Act or have otherwise negotiated to do so by any available means)? Can you contrast these figures to the number of artists in your repertoire who have reobtained or recaptured their rights in the UK?**

   A. We are not aware of any UK artist who has re-obtained copyright in their master recordings by virtue of US copyright law. We can only think of 2 or 3 artists who due to their success have renegotiated their contracts with us in the UK and obtained a reversion of rights after 15-20 years as part of that renegotiation. To give this matter context reversion of copyright in the US is not automatic and the recordings in question have to qualify. Accordingly, the majority of recordings are owned by the record labels for longer than 35 years.

9. Q. **Do all your deals with artists cover 'life of copyright' or are some time-limited? If the latter, what proportion (of the rights you currently own) are time limited, and what is the typical length of time negotiated?**

   *A. [Redacted].

10. Q. **Evidence from PPL argued that the Momentum Fund "is actually funded by the performer side". How much is contributed to the Momentum Fund by record labels from your side (i.e. not the performers' side) of unallocated funds?**

    A. The Momentum Fund is funded by more than just performers and includes contributions from songwriters and publishers. Donations to such funds on behalf of performers is necessarily made through PPL as it is the only way many tens of thousands of performers can group together to make one donation. We did not donate to the Momentum Fund as we have our own initiatives. We contributed some £500,000, in 2020 alone, to the following funds: Help Musicians, Music Venues Trust, Stagehand, Nordoff Robbins (music therapy), Mind, Young Minds, Trussell Trust and – via our UK Social Justice Fund – to a number of further charities including the Young Urban Arts Foundation, Key4Life, the 3T Course for black women in the live music industry, and Milk & HoneyBees. As a member of the BPI (British Phonographic Industry) we also make annual contributions to the BRIT Trust and the BRIT School and we fund the anti-piracy unit of the BPI (which performers no longer contribute to).

11. Q. **In evidence, alternate forms of DSP business model were alluded to but not mentioned explicitly. Can you clarify whether your companies support user centric payment systems, and if not, what alternative payment systems were being alluded to?**

    A. We are not aware of any DSPs that deploy the user centric model for royalty reporting, although we believe Deezer is willing to trial such a measure. We are agnostic as to whether a user centric model is employed as it is not meant to change the pool of money available to the labels/artists. We feel that whether a user centric model is used is ultimately a matter for the DSPs (who will have to invest significant sums in changing royalty reporting systems) and the artist community (as some artists will win from a changing model and some will lose). However, due to the practical implications of such change for various stakeholders, we think it would require thorough and concerted impact assessments in order to establish an industry-wide support. It is extremely important to understand that a shift in reporting methodology will not increase the amount of money artists are paid in the aggregate. It will just shift money from some artists to other artists. Artists who lose in this scenario are not likely to see this as a more equitable way of dividing payments and thus we believe it is extremely important that the entire artist community weigh in on this shift before it is considered.

12. Q. **If Deezer or Soundcloud introduced user-centric payments, would you withdraw your licences from the services?**

    A. Please see A.11 and with respect, we would submit that your framing of this question does not reflect the way the market or our contractual agreements work. A DSP cannot unilaterally change their methodology of accounting to Sony Music and we assume that is the same with other recorded music companies.

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Integrating a completely different reporting regime with respect to just a handful of DSP partners would introduce significant and unnecessary additional cost and complexity to the music streaming ecosystem and lead to confusion in usage and royalty information provided to artists. We believe it is incumbent upon these services to provide a compelling justification to change the existing reporting methodology when they know some artists and genres will suffer as a result. In particular, we would ask on what basis they have determined which artists and genres deserve to be paid more and which should be paid less, and shouldn't those shifts be transparently provided to all rights-holders?

13. Q. **What would you say to those who are concerned that the various shareholding arrangements between Spotify, your companies and your parent companies might lead to anti-competitive influences, such as when it comes to licensing, playlisting, etc?**

A. Our shareholding in Spotify is nominal (it is less than 3%) and we have absolutely no control over the business organisation and/or running of Spotify and do not have a place on its Board. The quality and the popularity of our catalogue, the hard work of our artists and teams, and our continuous investment in creative and business capabilities help us in our often long and difficult negotiations with services like Spotify, where we are focused on obtaining maximum value for the use of our recordings, while at the same time building sustainable models to secure a healthy long-term business. We believe that succeeding on both these fronts is critical for us to remain competitive and attract talent. Finally, it is worth noting that the investments we made in Spotify have also yielded significant dividends for our artists and distributed independent labels – we have to date shared more than $250m from the proceeds of our sale of Spotify shares directly with artists and distributed labels, disregarding whether their accounts may be recouped or un-recouped. We have equity in other DSPs as well and will share proceeds from equity holdings we have obtained in relation to licensing activities in a similar manner to Spotify if we ever have a positive cash event.

APPENDIX A.

Aritst Royalty Deal - P&L				Label - Breakeven pre overhead	Label - Breakeven	Label - 10% Margin	Label - £300k	Artist Recoups		
Streams - millions	**10**	**50**	**100**	**170**	**244**	**314**	**378**	**458**	**1,000**	**1,500**
Gross Revenue - £ '000s	50	250	500	850	1,222	1,571	1,889	2,292	5,000	7,500
Artist Royalty - 24%	12	60	120	204	293	377	453	550	1,200	1,800
Advance	300	300	300	300	300	300	300	300	300	300
Recording Costs	250	250	250	250	250	250	250	250	250	250
Recoupment	- 12	- 60	- 120	- 204	- 293	- 377	- 453	- 550	- 550	- 550
Net Talent	538	490	430	346	257	173	97	-	-	-
Marketing - non recoupable	300	300	300	300	367	471	567	688	1,500	2,250
30% / £300k min.	600%	120%	60%	35%	30%	30%	30%	30%	30%	30%
Label - pre-overhead	- 800	- 600	- 350	-	306	550	772	1,054	2,300	3,450
Label - Overhead (25%)	13	63	125	213	306	393	472	573	1,250	1,875
Label Profit	**- 813**	**- 663**	**- 475**	**- 213**	**-**	**157**	**300**	**481**	**1,050**	**1,575**
						10%	16%			
Artist Advance	300	300	300	300	300	300	300	300	300	300
Artist Royalty Paid	-	-	-	-	-	-	-	0	650	1,250
Artist Total	**300**	**300**	**300**	**300**	**300**	**300**	**300**	**300**	**950**	**1,550**

Streams - millions	10	50	100	170	244	314	378	458	1,000	1,500
Artist - £'000s	300	300	300	300	300	300	300	300	950	1,550
Label - £'000s	- 813	- 663	- 475	- 213	-	157	300	481	1,050	1,575