

# **Music and streaming market study**

Statement of scope

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## Summary

1. The way music is listened to has changed markedly in recent years. The rise of the internet and the ease of file sharing saw, initially, an increase in music piracy and a decline in revenues for record labels, performing artists and songwriters. Since then, music streaming has transformed the music landscape, providing immediate access to millions of songs.
2. Before streaming, an artist would have recorded a song and it would have been distributed by a music label through a record shop where consumers could purchase physical copies. Now music can be listened to on an 'all-you-can-eat' basis through digital streaming services for a monthly fee, or no fee at all with advertisements. Music streaming services also provide features that enhance the consumer experience, such as playlists which help them find music they like.
3. These music streaming services have helped to restore growth in the sector and made it easier for new artists to share their music. Music streaming services have also had a significant impact on the ability to monetise back catalogues of music to the extent that the legacy rights of artists are now a sought-after commodity.
4. Whilst this radical shift in how music is accessed and listened to has had some clear benefits, some stakeholders have voiced concerns that competition may not be working as well as it could.
5. In particular, the DCMS Select Committee report on the 'Economics of music streaming' argued that the major music groups – Sony Music Group, Universal Music Group and Warner Music Group – 'dominate' the industry and have consolidated their market position by becoming the largest asset owners of recording and song rights. The report also pointed to commentary that the major music groups are experiencing historic levels of profitability. In contrast, it is argued that songwriters and performers receive only a small proportion of revenue.
6. Within music streaming services themselves, the Committee noted that there is a potential for some services which have a strong position in other markets, such as smartphones or voice assistants, to leverage that aspect of their business to gain a competitive advantage over other music streaming services that do not have such wider businesses. It is also argued that the contractual agreements between the major music groups and streaming services may impact innovation by streaming services and influence the music promoted to consumers.

7. To establish if the sector is operating in the interests of consumers, and whether competition is working well, the CMA's market study will examine how the music value chain operates, from the deals artists make with record labels through to the music streaming services offered to consumers.
8. The CMA intends to explore a range of factors including:
  - The nature of competition at different levels of the value chain, including the extent to which music companies and music streaming services may have market power;
  - The extent to which the publishing arms of recorded music companies strengthen any market power of such music companies;
  - Possible barriers to entry and expansion which may be faced by smaller and newer music companies and music streaming services, particularly those seeking to introduce disruptive business models or services;
  - The inter-relationships and agreements between music companies and music streaming services and whether they impact upon competition, innovation and consumer outcomes;
  - The range of music streaming business models, including ad-funded music streaming, premium subscriptions, and user-uploaded content platforms such as YouTube and how they compete with one another;
  - Whether any business practices adopted by music streaming services (for example how they collect and use consumer data) may harm consumers, especially as more adopt music streaming; and
  - How sector developments could change competitive dynamics.
9. As part of this assessment the CMA will explore how competition in one part of the value chain affects competition elsewhere.
10. If the CMA identifies any competition concerns or consumer issues during its study, it will consider whether further action needs to be taken.
11. The CMA will conduct its market study over the next year, gathering evidence from a wide range of stakeholders. It will provide an update within six months and a final report within twelve months which sets out its findings, any concerns it identifies and its proposed recommendations or remedies to those concerns. The CMA's final report must be published no later than 26 January 2023.

12. The CMA welcomes views from interested parties on this statement of scope by 17 February 2022.

## Introduction

13. This document sets out the purpose and scope of the CMA's market study into music and streaming. It provides an overview of the music streaming value chain and relevant work being undertaken elsewhere to address some of the issues in the sector. It outlines the proposed areas to be explored in the market study and the CMA's intended approach to evidence gathering. Finally, it invites submissions on the matters raised.
14. The CMA's mission is to make markets work well in the interests of consumers, businesses, and the economy. It achieves this by promoting and protecting consumer interests while ensuring that businesses are fair and competitive. As set out in its annual plan,<sup>1</sup> the CMA has a strategic goal to foster effective competition in digital markets, ensuring they operate in a way that promotes innovation and the consumer interest.
15. Market studies are one of a number of tools the CMA can use to examine possible competition or consumer protection issues and address them as appropriate.<sup>2</sup>
16. In a market study, the CMA may find that a market, or parts within it, can be given a clean bill of health or that some aspects of the market are not working well. If the latter, the CMA can look at different ways to address these issues. For example, the CMA can issue guidance to businesses, provide information or guidance to consumers, and/or make recommendations to Government or other regulatory authorities. Further action by the CMA could include opening an enforcement case if it identifies evidence that consumer or competition law has been breached and enforcement action is necessary, or a market investigation reference if it identifies problems that could most effectively be resolved through use of its order making powers.<sup>3</sup>

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<sup>1</sup> Further information on the CMA's key organisational objectives can be found in its Annual Plan for 2021 to 2022. CMA (2021), [Competition and Markets Authority Annual Plan 2021 to 2022](#).

<sup>2</sup> Further information on market studies can be found in the following guidance documents: [Market Studies Guidance on the OFT Approach \(OFT519\)](#) and [Market Studies and Market Investigations: Supplemental Guidance on the CMA's Approach \(CMA3\)](#).

<sup>3</sup> The CMA may also accept undertakings in lieu of a market investigation reference.

17. A market study formally begins with the publication of a Market Study Notice by the CMA.<sup>4,5</sup> The CMA must within 12 months of publication of a market study notice publish a market study report setting out its findings and the action (if any) it proposes to take.

## Context for the market study

18. The UK has a rich musical history and music remains an important aspect of UK cultural life. At the same time, the music industry is an important contributor to the economy, in 2020 contributing £3.1 billion to the UK economy and employing around 128,000 people through the music value chain. However, the sector, like many others, has been hard hit by COVID-19 with these figures down from £5.8 billion and 197,000 employed in 2019.<sup>6</sup>
19. Since around the turn of the century, a major shift has occurred in the way consumers access recorded music. Digital technologies enabled the creation of digital audio files and the growth of the internet facilitated the sharing of these files, with consumers able to purchase and download music via online services such as Apple's iTunes Store.
20. While the ease of online access proved popular, it also initially led to a proliferation of online piracy, in particular via peer-to-peer file sharing networks. This posed a threat to the recorded music industry. As shown in Figure 1, recorded music revenues fell (in nominal terms) from over £1.2 billion in 2001 to around £800 million in 2011, predominantly because of the substantial decline in the sale of physical albums and the almost entire decline of physical single sales.

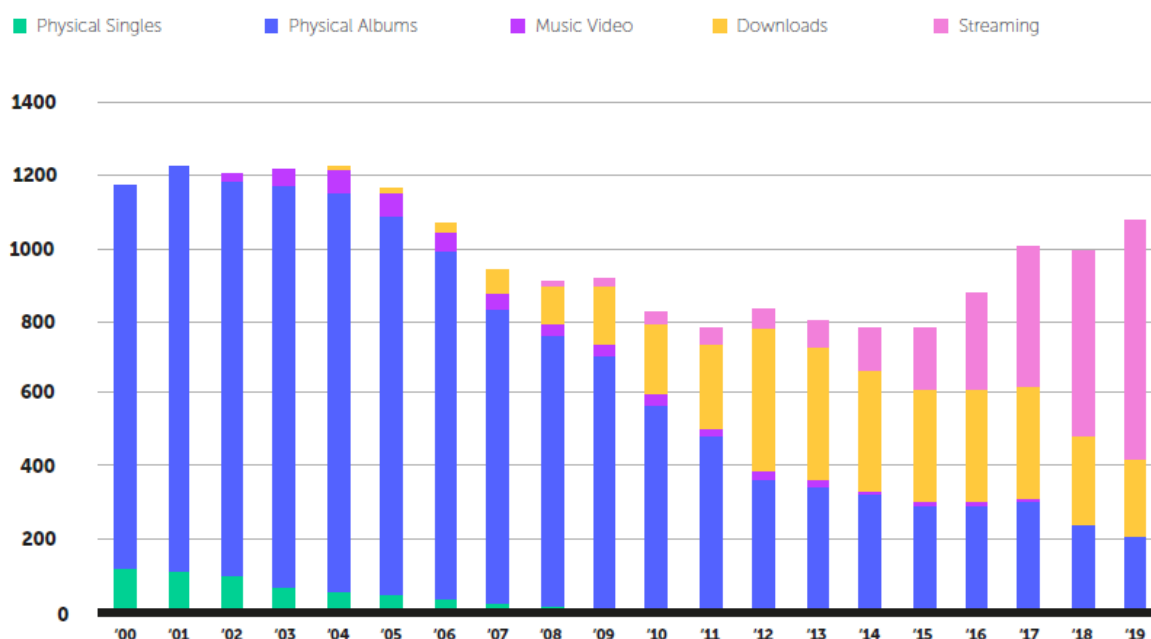
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<sup>4</sup> A Market Study Notice must be published where the CMA is proposing to carry out its functions under section 5 of the Enterprise Act 2002 (the Act) for the purposes of: considering the extent to which a matter in relation to the acquisition or supply of goods or services of one or more than one description in the UK has or may have effects adverse to the interests of consumers; and assessing the extent to which steps can and should be taken to remedy, mitigate or prevent any such adverse effects (section 130A of the Act).

<sup>5</sup> Under section 5 of the Act the CMA has the function of obtaining, compiling and keeping under review information about matters relating to the carrying out of its functions, with a view (among other things) to ensuring the CMA has sufficient information to take informed decisions and carry out its other functions effectively.

<sup>6</sup> UK Music (2021), *This is Music 2021*, p8.

**Figure 1: Recorded music revenues from UK sales, 2000-2019 (£m, nominal figures)**



Source: House of Commons Digital, Culture, Media and Sport Committee (2020), *Written evidence submitted by British Phonographic Industry (BPI)*, p9.

21. As the industry struggled, new services emerged which enabled large quantities of music to be readily and legitimately streamed online rather than purchased – with Spotify pioneering this model when it launched its UK service in 2008. These new models of accessing music are widely credited as a major contributor to the recovery of music revenues over the last decade, albeit in real terms still substantially lower than 2001.
22. Today, streaming is a key part of the music industry. According to the BPI, in 2021 around 83% of UK music consumption was through streaming<sup>7</sup> and in 2020 streaming income (at £736.5 million) made up about 66% of UK recorded music revenues.<sup>8</sup> The Entertainment Retailers’ Association (ERA) estimates that UK consumer spending on streaming in 2021 was £1.3 billion – more than three times the corresponding figure five years ago in 2016 (around £407 million) in nominal terms.<sup>9</sup> Alongside this, there has been a significant increase in the number of musicians bringing their music to market and in the volume of music available through music streaming services.<sup>10</sup>

<sup>7</sup> See [BPI website](#). Consumption data reflects volumes consumed in 2020 (via streaming and purchases) only.

<sup>8</sup> See [BPI website](#).

<sup>9</sup> See Music Week (2022), *ERA: Physical music sales grow for the first time in 20 years* and ERA (2021), *ERA 2021 Yearbook*.

<sup>10</sup> Intellectual Property Office (2021), *Music Creators Earnings in the Digital Era*, p31.



## *DCMS Committee inquiry*

23. Last year, the DCMS Committee published a report examining the economics of music streaming, which looked at the impact of music streaming on creators and music companies and examined the long-term sustainability of the music industry.<sup>11</sup>
24. The Committee concluded that the changes in the industry meant that ‘recorded music is now cheaper, more personalised and more readily available than ever before’,<sup>12</sup> but expressed concern about the extent to which creators (including songwriters and performing artists) were benefiting from the growth in accessing music via streaming services. It also highlighted the significant financial impact of COVID-19 in temporarily halting the live music industry. In its report it argued that the current pricing structure in the industry could mean that some of the music consumers love may not be produced in the future.<sup>13</sup> It expressed concerns that music creators were not getting a fair share of streaming revenues, as well as concerns about how copyright law is applied to music streaming.
25. To address the issues it identified, the DCMS Committee made a series of recommendations for both legislative reform and policy and regulatory intervention. These include recommendations relating to:
  - (a) creator remuneration and music rights – including the strengthening of creator rights (for example by introducing a right to equitable remuneration when music is consumed by digital means, a right for artists to recapture the rights to their works after a period of time and the right to contract adjustment if their works are successful beyond the remuneration they receive); improving contract transparency; tackling data issues, such as the provision of metadata identifying copyrights;<sup>14</sup> and greater support for the independent music sector; and
  - (b) music streaming services – such as research on the impact of streaming services’ algorithms on music consumption; ensuring transparency regarding payments or benefits in kind for playlisting; greater licensing obligations on user-generated content (UGC)-hosting services; future-proofing the public service broadcasting prominence

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<sup>11</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#).

<sup>12</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#), p3.

<sup>13</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#), p3.

<sup>14</sup> For further explanation of metadata and related issues, see for example Intellectual Property Office (2019), [Music 2025: the music data dilemma](#).

regime; and the clarification and enforcement of copyrights applying to livestreaming.

26. In its response to the DCMS Committee report,<sup>15</sup> the Government set out a range of actions it would be taking, involving the Intellectual Property Office (IPO) and the Centre for Data Ethics and Innovation (CDEI), to consider the Committee's recommendations and understand the issues better. These include the establishment of a Music Contact Group with senior representatives from across the industry, which the Government will engage on key issues including equitable remuneration and platform liability rules introduced by the EU; and the creation of technical industry working groups on data issues and contract transparency. Alongside this, the Government has committed to a supporting research programme, including on recommendation algorithms used by music streaming services.

#### *The CMA's decision to undertake a market study*

27. The DCMS Committee also raised concerns about the role of the three largest global music companies, also referred to as the 'majors' (Sony Music Group, Universal Music Group and Warner Music Group). These companies are active in both recorded music (the production of recorded music and the acquisition, distribution and monetisation of recording rights) and music publishing (the acquisition, monetisation and administration of rights in musical compositions (music and lyrics), or song rights).
28. The Committee recommended that the CMA undertake a market study into what the Committee called 'the economic impact of the majors' dominance',<sup>16</sup> which it proposed should include consideration of how the majors' position in both recorded music and publishing has influenced the relative value of recording and song rights; and whether current contractual agreements between the majors and streaming services have the potential to (or indeed have already) prevented experimentation and innovation by streaming services.
29. The CMA considered these recommendations and, in October 2021, announced its intention to carry out a market study.<sup>17</sup> This document sets out its approach and areas of particular focus for the market study. In considering this, the CMA has taken into account the other work being undertaken by the

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<sup>15</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report](#).

<sup>16</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#), p62.

<sup>17</sup> For further information see CMA (2021), [CMA plans probe into music streaming market](#), [Letter from Andrea Coscelli to Julia Lopez MP, Julian Knight MP and George Freeman MP on music streaming](#) (19 October 2021) and [Letter from Andrea Coscelli to Julia Lopez MP and George Freeman MP](#) (20 September 2021).

Government and other regulatory bodies, as well as other relevant work within the CMA.

30. The CMA also notes the DCMS Committee's recommendation for the CMA to consider exploring designating YouTube's streaming services as having 'Strategic Market Status' (SMS) under the proposed new pro-competition regime for digital markets. The Government consultation on the shape of this new regime closed in October.<sup>18</sup> Unless and until that new regime is in force, the CMA has no power to designate firms with SMS and this recommendation is therefore outside the scope of this market study.<sup>19</sup>
31. The CMA's market study will, however, include consideration of the role of user-uploaded content (UUC) services, such as YouTube within the sector. The DCMS Committee Report raised concerns that 'safe harbour' provisions that apply to UUC services may distort competition among music streaming services (due to a disparity in the dynamics of rights negotiations) and lead to a 'value gap' that reduces the revenues available to rightsholders. Paragraph 98 of this document sets out how the CMA intends to explore this issue.

## Overview of the music streaming value chain

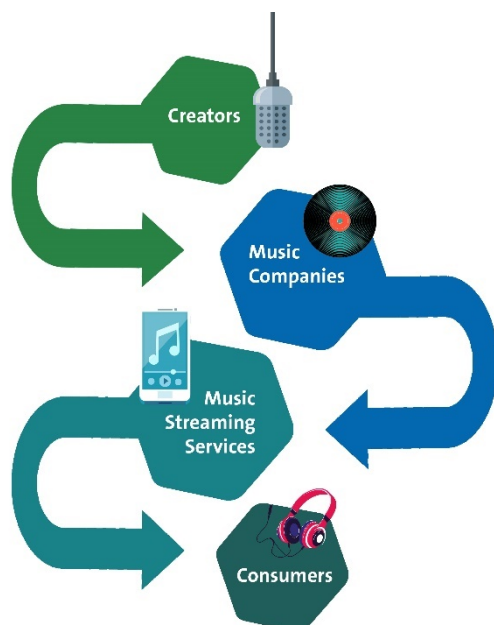
32. Music streaming services are now the predominant means of music consumption, supplanting traditional physical media such as CDs and vinyl. In between the creators making the music and the consumer listening to it via a streaming service, are various music companies that help creators to make and promote their music, distribute music to various retailers including streaming services, and/or administer the payments due to creators from streaming and other uses of their music.

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<sup>18</sup> Department for Business, Energy and Industrial Strategy and Department for Digital, Culture, Media and Sport (2021), [A new pro-competition regime for digital markets](#).

<sup>19</sup> See House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report](#), Appendix 2.

**Figure 2: The music streaming value chain**



Source: CMA

33. The following paragraphs discuss in more detail the different roles of music creators (with an overview of the copyrights that apply to creative content), music companies and streaming services within the music streaming value chain.

## Music creators

34. Music starts with its creators, including songwriters<sup>20</sup> and performing artists.<sup>21</sup> A written song (music and lyrics) comprises both a musical work and a literary work. Recorded music combines the song that is performed, and the recording of its performance. Hence any recording is subject to two sets of music rights which can be broadly categorised as:<sup>22</sup>
- (a) ‘song rights’ (comprising the separate copyrights in the music and the lyrics) or ‘publishing rights’; and

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<sup>20</sup> In this document, the term songwriters is used to refer to both composers and lyricists (as is common in the industry). However, composers and lyricists have distinct rights under copyright law. Song rights comprise the separate copyrights in the music and the lyrics, which appertain to the composer(s) and the lyricist(s) respectively.

<sup>21</sup> These include featured (lead) artists, as well as non-featured artists (such as backup singers and session musicians) who contribute to the performance. Performing artists are also referred to as ‘performers’.

<sup>22</sup> For a more extensive discussion of the copyright framework pertaining to music, refer to [Music Copyright Explained](#), a guide commissioned by the Intellectual Property Office and produced by CMU Insights. See also Intellectual Property Office (2021), [Music creators’ earnings in the digital era, Chapter 2](#).

(b) 'recording rights', which cover the copyright in the sound recording<sup>23</sup> and the 'performers' rights'.

35. Under UK copyright law (the Copyright, Design and Patents Act 1988 or CDPA), the copyrights in the song and the recording<sup>24</sup> are automatically vested in the songwriter(s)<sup>25</sup> and producer(s) respectively. A producer, in this specific context, is defined as 'the person by whom the arrangements necessary for the making of the sound recording [...] are undertaken'.<sup>26</sup> As such, the copyright to a sound recording may be owned by a music company that organises the recording on behalf of the performers it represents. Alternatively, the performer(s) may organise the production themselves and own the copyright to the recording.
36. Alongside the copyrights in the song and recording, performers are automatically granted a separate category of rights known as 'performers' rights' that give the performer a number of moral and economic rights in the recording.
37. The CDPA sets out a number of 'acts restricted by copyright' which apply when music is used.<sup>27</sup>

(a) For example, under the CDPA, the use of music by a music streaming service engages the 'making available' right. This gives the rights-holder the exclusive right to decide how their work is made available 'to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them' and covers music streaming services.<sup>28</sup> This is a subset of a more general right to communicate the work to the public by electronic transmission (eg via radio broadcasting).

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<sup>23</sup> A sound recording is also called a 'master'. Hence, recording rights may also be termed 'master rights'.

<sup>24</sup> For musical works (ie publishing), the copyright runs from date of the creation of the work until 70 years after the date when the last remaining author of the work dies. For sound recordings, the copyright lasts for 50 years after the work was created, or if the work is released within this time, the copyright lasts for 70 years after the work was released.

<sup>25</sup> See footnote 20.

<sup>26</sup> See CDPA 1988: s. 9(2)(aa).

<sup>27</sup> See CDPA 1988: s.16. These cover rights to: copy the work; issue copies of the work to the public; rent or lend the work to the public; perform, show or play the work in public; communicate the work to the public; and make an adaptation of the work.

<sup>28</sup> The making available right is set out in the World Intellectual Property Organisation (WIPO) Copyright Treaty 1996 and the WIPO Performances and Phonograms Treaty 1996, and was implemented in the UK by way of the CDPA, which (as amended in 2003) also implemented the Copyright Directive 2001/29/EC (Information Society Directive). The UK is also a signatory to other international agreements relating to copyright, most notably the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the Berne Convention for the Protection of Literary and Artistic Works. While not adopted in the UK, the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market (Digital Copyright Directive) contains provisions potentially relevant to a number of the concerns outlined in the DCMS Committee Report (such as platform liability) and is therefore also relevant in the context of international copyright developments.

- (b) Streaming may also engage the right to copy a work, including by storing the work in any medium by electronic means (the ‘mechanical’, or ‘reproduction right’).
- (c) Different uses of music – such as physical sales, radio broadcasting, public performance (when music is played in public places such as restaurants, night clubs and theatres) and ‘sync’ (when music is used in film and TV) – engage different rights.
38. Under the CDPA, some of these rights are exclusive (ie the rights-holder must consent before the work can be used in a particular way) while others are subject to compulsory provisions (meaning that the rights-holder is compelled to grant access to their work, usually in return for a fee).
39. One of the central objectives of the copyright system is to incentivise and reward creativity. Music rights enable creators to control how their works are used and to benefit financially from that use. Creators make money from exploiting their rights, often via music companies with whom they negotiate rights deals to take their current and/or future music to market. Creators’ copyrights in the song and/or recording, as well as any performers’ rights, can (to the extent they are exclusive) be assigned (transferred) or licensed to music companies in exchange for services and/or financial compensation.<sup>29</sup> Creators may also sell their rights in back catalogues (past recordings) of music.<sup>30</sup> This is an area where investor interest has grown considerably of late, both from music companies and investment funds such as Hipgnosis.<sup>31</sup> Such rights, in the round, contribute to a creator’s overall earnings power, alongside related brand rights which, in today’s digitally connected world, can facilitate significant online as well as offline marketing, merchandising and sponsorship revenue streams.
40. Collective management organisations (CMOs) such as PRS for Music<sup>32</sup> and PPL in the UK,<sup>33</sup> assist music creators and music companies in the licensing

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<sup>29</sup> Intellectual Property Office (2021), [Music creators’ earnings in the digital era](#), section 2.4.

<sup>30</sup> Catalogue music (ie music that is more than 12 months old) represents the majority of music streamed, and its proportion of streams is increasing. IPO research found that new music now accounts for less than one half of the streams achieved by catalogue music. Intellectual Property Office (2021), [Music creators’ earnings in the digital era](#).

<sup>31</sup> Hipgnosis Songs Fund is a British music intellectual property investment and song management company offering investors a pure-play exposure to songs and associated musical intellectual property rights. See the [Hipgnosis website](#).

<sup>32</sup> PRS for Music Limited (PRS for Music) collects publishing royalties on behalf of its 140,000 members whenever their music is performed, played in public broadcast, streamed or used in media. PRS for Music consists of two collection societies: the Performing Right Society (PRS) and the Mechanical-Copyright Protection Society (MCPS). See the [PRS for Music website](#).

<sup>33</sup> Phonographic Performance Limited (PPL) is the UK’s music licensing company for over 120,000 performers and recording rightsholders. PPL licenses recorded music when it is played in public or broadcast on the radio or TV in the UK and then distributes the fees to the performers and recording rightsholders it represents. See the [PPL website](#).

of rights and the administration, collection and distribution of royalties. CMOs are subject to certain obligations under the Collective Management of Copyright (EU Directive) Regulations 2016 (as amended following the UK's exit from the EU). In the UK, these obligations are monitored by the IPO.

## Music companies

41. Music companies help creators bring music to the market. They carry out two main types of activities:
- (a) Recorded music: these companies distribute music to music streaming services and other commercial users on a wholesale basis (ie monetising the recorded music rights for such uses). They also provide services to support that distribution, for example by signing and promoting artists. When music is distributed under a particular brand, the brand (or the company that owns that brand) is referred to as a 'label'.
  - (b) Music publishing: these companies monetise and administer song rights, including when a song is used in a recording or other media such as film or TV, or published in written form. They also provide financial and other support to songwriters to enable the above.
42. UK Music estimated that, in 2019:<sup>34</sup>
- (a) The recorded music sector contributed £613 million to the economy (an increase of 9% from 2018), with exports at £518 million (an increase of 8% from 2018).
  - (b) The music publishing sector contributed £524 million to the economy (an increase of 14% from 2018), with exports at £712 million (an increase of 15% from 2018).
43. The majors – Universal, Sony and Warner – are by far the largest music companies globally. They are large conglomerates that engage in a wide range of activities worldwide. On the music side, this includes both recorded music and music publishing.<sup>35</sup>

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<sup>34</sup> UK Music (2020), *Music by Numbers*, p16 and 19.

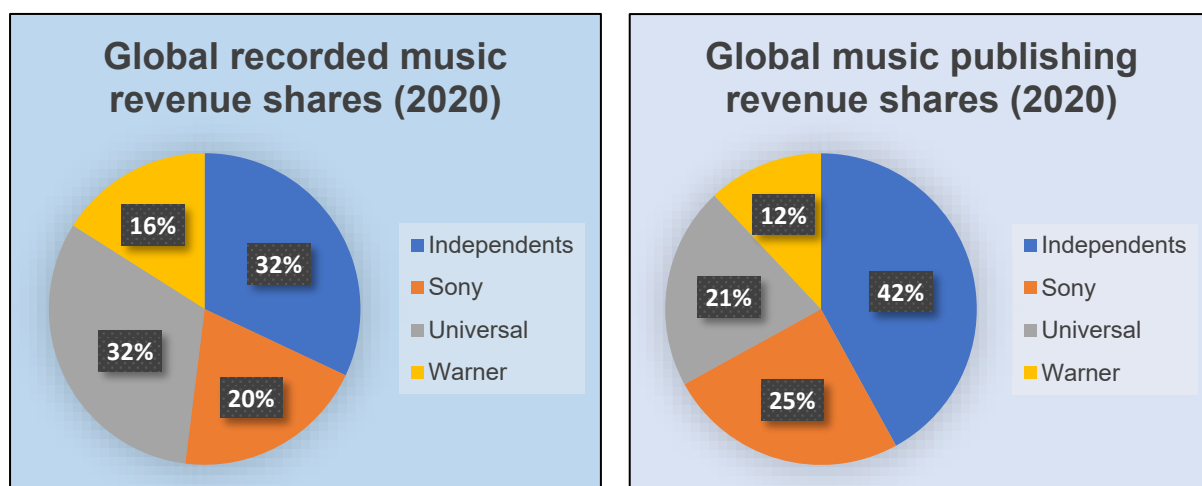
<sup>35</sup> The majors also hold (or have held) some equity interests in streaming platforms. For example, Spotify shares worth a combined 18% equity stake in 2008 were offered and taken up by the then-four major music groups (Sony, Universal, Warner and EMI) and Merlin, the collective digital rights and licensing agency for independent record labels, as part of an initial investment into the then startup business. Merlin and Warner have since divested their shares, but Sony retains a reduced investment and Universal has not to date made any disposals. Further, Warner owns a small share in Deezer. House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming*, paragraphs 107-108.



- (a) Universal Music Group (which includes Universal Music Publishing Group, Universal’s music publishing arm) is represented in the UK by Universal Music Operations Ltd and Virgin Records Ltd. Universal’s labels include Island, Polydor, Decca, Virgin, EMI and Capitol.
- (b) Sony Music Group is present in the UK as Sony Music Entertainment UK Ltd (recorded music) which operates labels including RCA, Columbia and Epic; and Sony/ATV Music Publishing (UK) Ltd (music publishing).
- (c) Warner Music Group is present in the UK as Warner Music UK Ltd and Parlophone Records Ltd (recorded music) with labels including Parlophone, Chrysalis and Ensign; and Warner Chappell Music Ltd (music publishing).<sup>36</sup>

44. The DCMS Committee report noted the majors’ strong position in the market and an increase in their profitability over the past six years.<sup>37</sup> Figure 3 shows estimates of the majors’ global revenue shares in 2020.<sup>38</sup> In the UK, the ERA estimated that the major labels accounted for 76% of total streams (by volume) in 2020.<sup>39</sup>

**Figure 3: The majors’ global recorded music and music publishing revenue shares (2020)**



Source: CMA, based on data from House of Commons Digital, Culture, Media and Sport Committee (2020), *Written evidence submitted by the Ivors Academy of Music Creators, EMS0197*, p30.

45. A brief overview of each area follows.

<sup>36</sup> IBISWorld (2021), *Sound Recording & Music Publishing in the UK*.

<sup>37</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming*, paragraph 110.

<sup>38</sup> House of Commons Digital, Culture, Media and Sport Committee (2020), *Written evidence submitted by the Ivors Academy of Music Creators, EMS0197*, p30.

<sup>39</sup> ERA (2021), *ERA 2021 Yearbook*, p69.



## **Recorded music<sup>40</sup>**

46. Recorded music companies support artists in creating recorded music and distribute this music to streaming services. These companies have traditionally comprised the majors and other labels (referred to as 'independent' labels), who have played a critical role in investing in and/or providing supporting services to enable artists to bring their music to market.
47. Traditionally, the majors have focused on the supply of full-scale artist and repertoire ('A&R') services via their main labels. These services, which include promotion, marketing, creative development, radio campaigns and tour support, are intended to support and enhance the distribution of an artist's recorded music. A large number of smaller independent record labels (for example, Beggars Group, BMG Rights Management (BMG) and Domino Recording Company) compete with the majors to sign artists and music rights. Many independent record labels rely on third party suppliers (including the majors) for distribution.
48. Under traditional A&R deals, artists agree to create sound recordings for a record label for a set number of albums over a long period of time. The record label typically owns the copyright to the recorded music, retains the majority of revenues generated through distribution, and is responsible for most of the costs (including A&R costs) associated with distribution. The artist is compensated through an agreed share of the revenues. This has traditionally been structured as a capital advance, followed by royalty payments after the advance and/or a subset of costs have been paid back or 'recouped' from the artist's earnings over time.
49. However, digitisation has opened new horizons for artists. The lower cost of distribution and improvements in affordable production technology have enabled some artists to independently produce their own music and get it to market. Social media and digital marketing models have made it possible for them to promote themselves and build an audience directly.
50. New types of music companies have sprung up to support this rapidly expanding segment of independent artists – for example, focusing on artist and label (A&L) services which are typically a scaled down version of A&R services provided to either artists or labels, and/or mass market digital

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<sup>40</sup> This section draws on the CMA's publications to date in its ongoing investigation into a merger in the music sector, namely the Sony/AWAL merger, which has been referred to an in-depth Phase 2 investigation. CMA (2021), [Completed acquisition by Sony Music Entertainment of all of the issued shares of the entities comprising the AWAL and the Kobalt Neighbouring Rights businesses from Kobalt Music Group Limited: Decision on relevant merger situation and substantial lessening of competition](#), and CMA (2021), [Completed acquisition by Sony Music Entertainment of all of the issued shares of the entities comprising the AWAL and the Kobalt Neighbouring Rights businesses from Kobalt Music Group Limited: Issues Statement](#).

distribution with limited supporting services (such as DIY platforms that allow artists to directly upload their music for distribution to streaming services). These more targeted services typically also offer different pricing models and contract durations and, unlike traditional A&R services, may not include music production or any transfer or licensing of music rights (meaning that the artist would retain these rights). Under an A&L deal the provider typically takes on lower risk and receives a smaller portion of earnings than would a traditional A&R provider. This means that the artist will typically retain a higher portion of earnings from distribution under an A&L deal.

(a) A&L service providers include Believe/Tunecore, Fuga and PIAS. The majors have also established their own A&L divisions. For Sony, these are the Orchard and (subject to regulatory assessment)<sup>41</sup> AWAL; for Universal, Virgin Music Label and Artist Services (Virgin) and Ingrooves; and for Warner, ADA.

(b) Digital distributors include CDBaby, Distrokid, Ditto and TuneCore.

### **Music publishing**

51. Music publishing involves the promotion, licensing and administration of song rights, and the provision of services to songwriters in support of the above. Publishers earn revenue from developing, protecting, and valuing the rights to pieces of music, and licensing these rights for use in retail or other media. This will include royalty payments from music streaming, which may be collected directly by the publisher or via CMOs.
52. Many music companies have both publishing and recording operations. Typically, any service that wishes to use recorded music (such as a streaming service) will need to license the song and recording rights separately.
53. The majors are the largest publishers in the UK. They operate alongside a large number of other music publishers, for example BMG, Beggars Music, Kobalt Music Group and Sentric Music.

### **Music streaming services**

54. A music streaming service is, for the purposes of this market study, defined as a service that allows consumers to legally stream recorded music on-demand. This encompasses services that:

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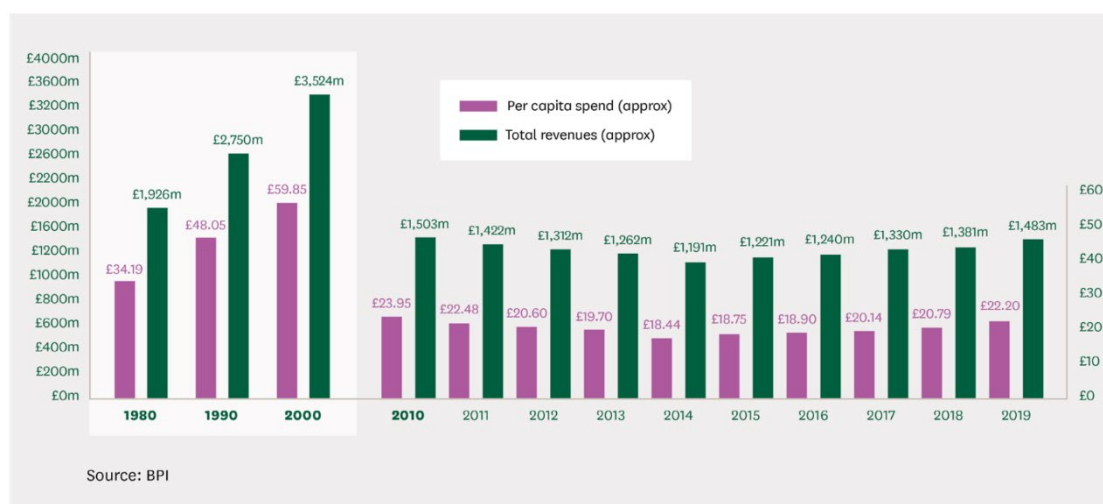
<sup>41</sup> The completed acquisition of AWAL by Sony is currently subject to investigation by the CMA. See [Sony Music Entertainment / AWAL and Kobalt Neighbouring Rights businesses merger inquiry](#).

- (a) supply commercially acquired content (referred to here as ‘commercial content music streaming services’).
    - i. These may either be free to use (via ad-funded, or ‘freemium’ subscriptions) or require a paid subscription. Some offer both freemium and paid-for (‘premium’) options.
  - (b) offer a platform for users to upload content (‘user-uploaded content (UUC) services’). Music content uploaded by users may be of a wholly original nature. However, it may also be a copy of (or include) commercial music.
    - i. UUC services are typically free to use (ad-funded).
- 55. Music streaming services offer consumers easy access to online music and have radically changed the way many people obtain and listen to music. With streaming:
  - (a) Music is no longer acquired by consumers via an ownership model (ie where a product is owned in perpetuity, whether in physical form or as a digital download) but is accessed on demand.
  - (b) Consumers can listen to a vast range of music on an unlimited ‘all-you-can-eat’ basis.
  - (c) Consumers can access music through a wider range of devices, in particular internet-connected mobile devices such as smartphones and voice assisted smart speakers.
- 56. With this shift, consumers are (after adjusting for inflation) paying significantly less in aggregate to access recorded music compared to the era of physical music sales (Figure 4). The average per-capita spend has dropped to around £20 per year on recorded music since 2010, compared to £60 per year on average in 2000.<sup>42</sup>

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<sup>42</sup> Inflation adjusted approximate figures in constant 2020 prices.

**Figure 4: UK per capita recorded music spend and total revenues (in 2020 prices)**



Source: House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#), p24.

57. The following sections provide an overview of the main music streaming services in the UK – both commercial content and UUC services – and some of the ongoing developments in the sector.

### **Commercial content music streaming services**

#### *Service providers*

58. In the UK, the main providers of commercial content music streaming services are Spotify and the major tech firms Amazon, Apple and Google (via Google’s subscription service YouTube Music). These services provide music in both audio and video form, but their focus tends to be on audio content.
59. Other smaller services include Deezer, Tidal, Napster, Sonstream and SoundCloud via its subscription service SoundCloud Go. The BBC has also recently introduced its own audio streaming and download service (‘BBC Sounds’) which includes live radio, on-demand music, speech content and podcasts, and is funded out of the BBC licence fee.
60. To access these services, consumers typically sign up to a service plan which may be free (in practice, ad-funded, or ‘freemium’)<sup>43</sup> or subscription-based, offering ‘premium’ benefits such as ad-free listening and/or a wider range of features in exchange for a fee.

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<sup>43</sup> Other than BBC Sounds which is, as noted in paragraph 59, funded by a licence fee.

- (a) Spotify (founded in 2006) offers a range of streaming plans, both freemium and paid.
  - (b) Amazon (since 2014) has offered a selection of music ('Amazon Music Prime') as part of its Amazon Prime subscription offering. It also offers a separate paid-for subscription service (Amazon Music Unlimited, launched in 2016) with a wider range of music, alongside an ad-funded freemium service (Amazon Music, launched in 2019).
  - (c) Apple Music is available to Apple users on a subscription-only basis. Apple Music was introduced in 2015, and followed on from Apple's launch of its iTunes store in the UK in 2003, which focused initially on downloads and since 2020 is being phased out.
  - (d) Google's YouTube Music service is available both on a freemium and paid basis. (Following the introduction of YouTube Music in 2015, an earlier Google offering, Google Play Music, was withdrawn in 2020).
61. Subscription fees are typically a flat monthly fee for unlimited listening and hence revenues per customer do not vary with usage (though exceptions exist, for example Sonstream).<sup>44</sup> Prices will depend on the number of people covered by the subscription plan, or the features included. The large majority of music streaming revenues are derived through paid subscriptions.<sup>45</sup> The DCMS Committee report indicated that the pricing of entry-level premium plans has remained relatively stable (typically £9.99 per month for an 'individual' adult plan) for a number of years.<sup>46</sup>
62. Features that can distinguish different music streaming services and/or the plans they offer include:
- (a) The range of music (or other content) available to access.

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<sup>44</sup> For example, Sonstream uses a pay-per-stream model, but with payments capped past a certain level of repeat streaming. House of Commons Digital, Culture, Media and Sport Committee (2021), [Written evidence submitted by Sonstream Ltd, EMS0154](#).

<sup>45</sup> BPI data for 2020 (BPI (2021), [UK recorded music revenues grew 3.8% in 2020](#)) showed that of streaming income of £736.5 million, £650.3 million was subscriptions to streaming services (such as Spotify, Apple, Amazon and Deezer) – up 14.7% on the previous year, compared to ad-funded streaming income of £42.4 million (an increase of 17.5%) and income from video streaming platforms, notably YouTube, of £43.8 million (an increase of 24.4%). Spotify also gave evidence to the DCMS committee that subscriptions are 90% of its revenues despite being less than 50% of accounts. House of Commons Digital, Culture, Media and Sport Committee (2021), [Oral evidence: Economics of music streaming, HC 868](#), Q634. ERA data for 2020 (ERA (2021), [ERA 2021 Yearbook](#), p68) shows that by volume, audio streams are significantly skewed towards premium accounts (86%), whereas almost all video streams (98%) were ad-funded. Of total volumes (both audio and video), 78% were on premium accounts.

<sup>46</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#), p86. However, the report also noted some recent changes in pricing, for example with Spotify increasing the price of some of its premium plans.

(b) The ability to play music when offline (ie not connected to the internet) or the availability of on-demand playback.

(c) Audio quality (eg high definition or lossless listening).

(d) Playlists (collections of music that users can access on-demand), which can assist with content navigation and music discovery.<sup>47</sup>

63. In the UK, Spotify appears to be the most popular commercial content streaming service, with an ERA tracker survey showing that 75.8% of music streamers had used Spotify in 2020, followed by Amazon Music (30.5%).<sup>48</sup> As regards paid-for services, IPA Touchpoints research cited by Ofcom indicates that 43% of adults now subscribe to paid-for music streaming services; and among those paying for a subscription, 57% had subscribed to Spotify and 32% to Amazon Music.<sup>49</sup>

### *Content acquisition*

64. In order to feature a recording, a music streaming service supplying commercial content to consumers (such as Apple, Amazon, Spotify or YouTube via its YouTube Music subscriptions) must negotiate agreements with all the rightsholders in that recording.

65. These rightsholders are typically the music companies (such as music labels and publishers) which own or have acquired control of the rights of the artist(s) and songwriter(s), and/or license such rights on behalf of the rightsholders as part of a distribution agreement.

66. Rights may be held by different companies in different countries and, where multiple songwriters are credited for a song, each may be represented by a different publisher.

67. Contracts with numerous rightsholders may therefore be required to license a particular song for streaming. For recording rights, each major contracts directly with each streaming service, covering the portfolio of songs it owns or distributes the rights for, on a commercial basis. Smaller music companies can participate in a collective licensing agreement negotiated by Merlin, a member-led organisation,<sup>50</sup> or can seek distribution via the majors as an alternative to negotiating bilateral agreements with each of the streaming

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<sup>47</sup> Playlists can be algorithmically generated ('algorithmic playlists'), curated by the platform or third party ('editorial playlists'), or curated by a user.

<sup>48</sup> ERA (2021), *ERA 2021 Yearbook*, p64.

<sup>49</sup> Touchpoints data; Ofcom (2021), *Statement: Market position of BBC Sounds*, paragraph 3.9.

<sup>50</sup> Merlin is an organisation which negotiates with streaming services on behalf of a collective of independent labels, charging a small administration fee (see the [Merlin website](#)).

services. Similarly, self-releasing artists may work with distributors who will enter into licences with streaming services on their behalf. For publishing rights, CMOs may also be involved in licensing on behalf of publishing companies<sup>51</sup> and/or other rightsholders.

68. The revenues earned from streaming are divided between the streaming platforms and rightsholders (which as explained above may be music companies) on the basis of the licensing contracts between them. The share received by each rightsholder is typically allocated on a pro-rata basis: that is, it depends on the number of times the music they license is played. Where the rightsholder is a music company, that company may then divide the money it receives with the creators of that music, based on its individual agreements with those creators in respect of the copyrights relevant to streaming. CMOs are also involved in the administration of payments and take a commission fee for their assistance.
69. Further complicating the above, some music companies also hold equity stakes in some streaming services. In particular, the majors and Merlin invested in Spotify's early development and Universal and Sony still retain direct shareholdings in Spotify (albeit for Sony, reduced from original levels) today.<sup>52</sup>

### ***User-uploaded content (UUC) streaming services***

#### *Service providers*

70. UUC services offer consumers another, freely accessible, means of music streaming which is enabled by an ad-funded model. While UUC includes a wide variety of content, the DCMS Committee Report indicated that music forms a significant component of such content.
71. In the UK, YouTube is a major UUC service, and is popular among those who use free streaming services (UUC or otherwise) to listen to music (in 2021, 69% of such users had used YouTube).<sup>53</sup> Other UUC services with a music focus include TikTok and SoundCloud. Providers of UUC services may also offer commercial content music streaming alongside their UUC offering, as is

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<sup>51</sup> Or as part of a joint venture with such companies.

<sup>52</sup> See footnote 35. Further, Sony and Warner both hold equity in Tencent Media Entertainment, which operates a number of streaming services in China; Tencent Media Entertainment's majority owner (Tencent Holdings) holds equity in both Warner and Universal; and Spotify and Tencent Music Entertainment (another subsidiary of Tencent Holdings) have cross-shareholdings. House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming*, paragraph 108.

<sup>53</sup> Mintel (2021), *Music and other Audio – CDs, streaming, downloads & podcasts – UK – 2021*.

the case for YouTube (via its paid-for YouTube Music service) and SoundCloud (via its paid-for SoundCloud Go service).

72. UUC services differ from commercial content music streaming services in terms of how they source their music content. Any user can upload content to a UUC service. This may include official content uploaded by labels for promotional purposes. However, much of the content is uploaded by consumers and such content may either be wholly original, or may include commercial content – either with or without permission (see below for more detail of the application of copyrights to UUC services and their interactions with rightsholders). Content on UUC services also tends to be more video-focused, and typically cannot be streamed in the background (the service’s app or webpage must be open) or offline.

### *Content acquisition*

73. As described in paragraph 72, UUC services make available content uploaded by its users. These services seek to operate under so-called ‘safe harbour’ provisions in law that limit their liability for illegal content uploaded by its users.<sup>54</sup> As such, UUC services generally can and do carry unlicensed music content – either temporarily, until they become aware of such content and take corrective action, or where such unlicensed content is not identified and remains on the service. Corrective action may comprise either the removal (‘taking down’) or licensing of the relevant content.
74. Such provisions may place UUC services at an advantage over their non-UUC counterparts for the use of the same music, and thereby impact the remuneration received by rightsholders, as UUC services:

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<sup>54</sup> ‘Safe harbour’ is a legal construct derived from Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Article 14 exempts online service providers from liability for illegal content uploaded by its users (the so-called ‘hosting defence’), so long as the provider:

- (a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; and
- (b) upon obtaining such knowledge or awareness (for example via notification or their own detection systems), acts expeditiously to remove or disable access to the information.

European caselaw is clear that the exemption from liability only applies where the activity of the provider is of a mere technical, automatic and passive nature which means the provider has neither knowledge of, or control over the illegal content. See for example Judgment of 12 Jul 2011, C-324/09 (*L’Oréal*), and Judgment of 23 March 2010 Google France and Google, C-236/08 to C-238/08).

Further, the hosting defence will not be available where a service provider knows or ought to know, in a general sense, that users of its platform are making protected content available to the public illegally via its platform, and refrains from putting in place the appropriate technological measures that can be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform. See joined cases C-682/18 and C-683/18, *Frank Peterson and Elsevier Inc. v. Google LLC and Others* (22 June 2021).



- (a) can negotiate with rightsholders *after* (rather than before) the music is used;
- (b) can opt to take down specific instances of music as an alternative to paying for its use; and
- (c) do not bear the costs of any unidentified music rights being used.

### ***Music streaming as part of a wider service***

75. Providers of music streaming services may offer music streaming as part of a wider suite of services available to consumers. For example:

- (a) Apple and Google both provide a range of mobile devices such as smartphones and tablets and accompanying software, including operating systems, browsers and browser engines, app stores and apps offering specific functionalities (including their own music streaming apps). Google also provides the market-leading search engine Google Search alongside online advertising technologies.
- (b) Amazon offers numerous products and services (including video streaming, audio and e-books and gaming) alongside its Amazon marketplace for third party sellers, with many of these services combined to some extent (alongside music streaming) in an 'Amazon Prime' bundle for customers paying a subscription. Similarly, Apple offers TV, gaming, storage, news and fitness services that can be bundled alongside music streaming in an 'Apple One' plan.
- (c) Amazon, Apple and Google also offer 'voice assistant' functionality ie voice activation of devices: Alexa (Amazon), Siri (Apple) and Google Assistant. These can activate mobile devices as well as smart speakers, which connect wirelessly to a wider ecosystem. Smart speakers include the Amazon Echo, Apple HomePod and Google Nest, alongside other third-party speakers that can also feature connectivity to one or more of the main voice assistants above.

76. These wider offerings are potentially relevant to competition in streaming, for example as streaming often occurs via mobile devices, in particular smartphones (used by around half of consumers to stream music);<sup>55</sup> but

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<sup>55</sup> Research by Mintel indicated that in August 2021, 56% of consumers had streamed music on a smartphone in the past 3 months. Mintel (2021), *Music and other Audio – CDs, streaming, downloads & podcasts – UK – 2021*, p15. ERA research estimated that in 2020, 49% of consumers used a smartphone to listen to music (ERA (2021), *ERA 2021 Yearbook*, p64).

increasingly also via smart speakers, which around half of UK households now own.<sup>56</sup>

77. Music streaming services are also expanding beyond recorded music audio. For example, as noted above Amazon's Prime subscription and Apple's One subscription bundle a range of content, including music; Spotify has started offering podcasts (both video and audio) and 'music plus talk' features (such as its Daily Drive, or within podcasts created via its Anchor service); and in response to the pandemic, the streaming of live music events is also on the rise, for example on Tidal as well as UUC platforms such as YouTube and TikTok.

## Objectives of the market study

78. The overall objective of this market study is to further the CMA's understanding of the markets in scope and to assess whether these markets are working well and in the interests of consumers. If the CMA finds problems, actions to tackle these can range from issuing guidance or recommendations, through to enforcement action or a market investigation reference as set out in paragraph 16.
79. As set out in paragraph 26, there is a wide range of other public policy work being undertaken by the Government in these markets. The CMA will be working alongside Government to take its findings into account as its programme of research progresses, in a joined-up way that seeks to avoid unnecessary duplication. In this regard the CMA notes in particular DCMS' intention to report back initially in spring 2022 with a further review in autumn 2022, at each point considering whether to take forward legislation in any areas; and other forthcoming research that may assist to inform the CMA's understanding of the operation and regulation of the market.<sup>57</sup>
80. Similarly, the CMA's market study will be cognisant of other relevant CMA work in this area. This includes its Phase 2 merger investigation into the acquisition by Sony of AWAL,<sup>58</sup> the emerging findings from its [mobile](#)

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<sup>56</sup> Ofcom (2021), [Media Nations: UK 2021](#), p95 to 96. This research also found that among those UK adults using smart speakers in 2021, two-thirds had used them to listen to music.

<sup>57</sup> Including for example: the forthcoming publication of the IPO's IP Crime and Infringement Reduction Strategy, as well as the results of research assessing the use of Artificial Intelligence to combat IP infringement; and the Digital Radio and Audio review, due in autumn 2022, which is looking at the impact of connected audio platforms on UK radio and audio production, including the issue of prominence of UK radio and audio services on connected smart speaker devices.

<sup>58</sup> The CMA is investigating the completed acquisition by Sony Music Entertainment of the AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited. AWAL provides a range of services to artists and labels. See [Sony Music Entertainment / AWAL and Kobalt Neighbouring Rights businesses merger inquiry](#).

ecosystems market study,<sup>59</sup> <sup>60</sup> its investigation into Apple's AppStore,<sup>61</sup> its upcoming publications on online choice architecture,<sup>62</sup> and its ongoing support to the Government in establishing a new pro-competition regulatory regime for digital markets.<sup>63</sup>

81. While the market study focuses on the interests of consumers, the CMA recognises that these interests are intertwined with the interests of music creators. Music is of intrinsic cultural and personal importance, and a vibrant and competitive market can support a diverse and dynamic supply of music catering for consumers' many and varied tastes. In assessing the impact on consumer interests, the CMA will therefore also seek to understand – at an aggregate level – how competition in the market serves music creators and how this may affect consumers.

## Scope of the market study

82. We are proposing that this study will cover the supply of music to consumers and the supply of services connected with the supply of music to consumers (the 'music streaming value chain'). This encompasses all steps in, and all the music-related goods, services and licensing provided as part of, the chain of supply from the creators of music through to the consumer, in particular via music streaming services. For example, it includes arrangements concerning the acquisition and licensing of music rights and/or the distribution of digital music, and arrangements between music creators, music companies (including music labels and music publishers), and other intermediaries (including CMOs).<sup>64</sup>

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<sup>59</sup> See the CMA's ongoing [mobile ecosystems market study](#). This examines the ability of Apple and Google (for example, via their provision of hardware and software such as browsers and apps) to control the key 'gateways' through which users can access content and services on mobile devices with internet connectivity, such as smartphones and tablets. Concerns being examined include the extent to which Apple and Google can use their positions as owners of the main app stores to exploit consumers and app developers (for example the impact of Apple and Google mandating that many app developers using their app stores only use their in-app payment systems when selling digital content); or to favour their own services over competing ones. Such potential concerns are relevant to streaming services, as streaming often occurs via apps on smartphones or other mobile devices.

<sup>60</sup> This was preceded by the CMA's [online platforms and digital advertising market study](#), which found that competition is not working well in these markets, and recommended that the Government passes legislation to establish a new pro-competition regulatory regime.

<sup>61</sup> The CMA is investigating Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers' access to Apple's App Store. See [CMA investigation into Apple AppStore](#).

<sup>62</sup> The CMA's Behavioural Hub and Data and Technology Insight team are building an evidence base on Online Choice Architecture (OCA) issues and considering further work in this area, which could include publishing some research and guidance pieces on OCA, providing advice to government and a communications campaign in 2022 – see p27 to 28 of the [CMA Annual Plan 2022/23 Consultation](#).

<sup>63</sup> CMA (2019), [The CMA's Digital Markets Strategy: June 2019](#) and Department for Digital, Culture, Media & Sport and Department for Business, Energy & Industrial Strategy (2021), [A new pro-competition regime for digital markets](#).

<sup>64</sup> See the [CMA Notice for this market study](#).

83. The CMA's market study will distinguish between two key levels of the music streaming value chain:
- (a) The products and services offered by music companies upstream including in recorded music and music publishing; and
  - (b) The downstream provision of music streaming services.
84. The proposed scope of this market study has been defined in a way that allows the CMA to fully understand the industry and assess a range of possible issues that could arise. As the overall objective of a market study is to understand whether markets are working well and in the interests of consumers (see paragraph 78 above), the CMA proposes to focus more on concerns where competition or consumer issues are a key element (see paragraphs 105 to 107 below for wider issues we do not intend to focus on).
85. Given that the emergence and growth of music streaming has been a key development in the music industry, the CMA proposes to focus its market study on the music streaming value chain. Both recorded music and music publishing<sup>65</sup> are important in music streaming as music streaming services need licence agreements that cover both recording and song rights.<sup>66</sup> Of the possible concerns that the CMA is aware of,<sup>67</sup> most of those with a key competition or consumer element link back to possible issues in recorded music. The CMA therefore intends to have a particular focus on the recorded music element of the music streaming value chain. This would include examining the links between recorded music and music publishers, and the impact of these links on competition.<sup>68</sup>
86. With a focus on recorded music, the CMA intends to assess whether competition at the key levels in the music streaming value chain is working well and delivering good outcomes overall for consumers and music creators. The CMA's proposed approach to this assessment involves two parts:
- (a) Understanding how the industry works, which would involve a systematic analysis of how the music streaming value chain is operating, how the supply of music has changed since the introduction of music streaming, and ongoing sector developments; and

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<sup>65</sup> See paragraphs 46 to 50 for recorded music and 51 to 53 for music publishing.

<sup>66</sup> See paragraphs 34(a) and 34(b).

<sup>67</sup> In particular, those set out in House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#).

<sup>68</sup> See paragraphs 87(b) and 94.

- (b) Assessing whether there are any specific competition and/or consumer concerns.

## How the industry works

87. As part of its analysis on how the industry works, the CMA proposes to consider:

- (a) **Business models:** This involves assessing how music companies and music streaming services generate revenues and how the revenues generated compare to the costs and risks involved. As part of this, the CMA is interested in understanding what services and activities these firms undertake in acquiring, developing, marketing, distributing and supplying music that is made available on music streaming services. The CMA also intends to explore the terms under which services are offered, specifically the different deal structures music companies offer to music creators (see paragraphs 46 to 50 above) and the different music streaming service plans offered to consumers (see paragraph 54).
- (b) **Market structure:** The CMA is interested in understanding the structure of the music streaming value chain. As part of this, the CMA intends to examine the extent to which corporate groups are active in different parts of the value chain, the extent to which their activities are integrated (eg how integrated a music company's recorded music and publishing arms are), and the ownership structure of firms including any equity stakes firms have in each other. The CMA plans to analyse the degree of concentration and differentiation at each level in the value chain, and to also examine the supply arrangements between firms including the revenue flows between them ('flow-of-funds' analysis);
- (c) **Consumer and music creator behaviour:** The CMA intends to examine how consumers choose and use music streaming services. Similarly, the CMA intends to examine how music creators choose and use services offered by music companies. The CMA plans to explore how this shapes the business models and practices adopted by music companies and music streaming services; and
- (d) **Nature of competition:** The CMA intends to examine how music companies compete, and how music streaming services compete. This would involve identifying the main parameters of competition.

88. The CMA plans to explore how each of the areas above have changed with the emergence of music streaming, and to anticipate any further changes from ongoing sector developments. This would include understanding how digitisation and streaming have affected business models, and any resulting changes in the cost structure of the industry, changes in consumer preferences over how they listen to music and the range of content they pay for, and whether any of these changes have knock-on effects on the nature of competition. The CMA also plans to consider to what extent industry costs increase as music streaming revenues increase, for example as a result of music companies being incentivised to spend more on marketing and promoting the artists they have signed as a result of the greater revenues available.

### **Assessment of possible competition and consumer concerns**

89. The part of the CMA's assessment focused on assessing specific competition and consumer issues involves building on the understanding the CMA develops of how the industry works to assess how effective competition is, the extent of market power, and any business practices or other factors that may limit competition and/or harm consumers. The CMA explains below how it proposes to undertake such an assessment and the types of issues it intends to explore in relation to:
- Competition between music companies;
  - Competition between music streaming services; and
  - Competition issues that may arise from agreements and inter-relationships between music companies and music streaming services.
90. The CMA also sets out the types of consumer and other harms it intends to assess, and areas it does not intend to focus on.

#### ***Competition between music companies***

91. The CMA intends to assess the strength of competition between music companies by considering the ways in which they compete, and by examining the competitive constraints they are subject to. This assessment will help the CMA understand the extent of any market power of the majors or other music companies.
92. The CMA is interested in understanding the bargaining power of music companies with respect to two sides of their business:

- (a) Music companies' bargaining power with music creators when offering music creators services to develop and bring their music to market; and
  - (b) Music companies' bargaining power with music streaming services.
93. First, the CMA intends to assess competition between recorded music companies, and the extent of any market power that some may have, given its focus on recorded music (see paragraph 85). On the music creator side, this would involve assessing the strength of competition both within and between the different types of services recorded music companies offer (for example A&R and A&L services). On the music streaming side, the CMA plans to draw on the understanding it develops of how recorded music companies compete to assess the extent to which recorded music companies compete with each other as part of their negotiations to supply music streaming services.
94. Second, the CMA plans to examine the extent to which the publishing arms of recorded music companies strengthen any market power of such music companies, both in relation to their bargaining position with music creators and in relation to their bargaining position with music streaming services.
95. Third, the CMA intends to assess whether there are any particular business practices or other factors that limit competition between music companies on either the music creator side or the music streaming side. The types of issue the CMA proposes to explore include:
- (a) Whether there are any barriers to music creators switching and/or taking advantage of new type of deals or services to bring their music to market;
  - (b) The extent of any economies of scale and reinforcing 'network effects' whereby the more artists a recorded music company has signed, the stronger its position is in signing even more artists and promoting them on music streaming services;
  - (c) The role of the back catalogue, the acquisition of the rights of top music creators' music (existing and future), and how any such acquisitions could impact competition between music companies;
  - (d) The extent to which music streaming services need to offer all or most music content and the impact this has on competition between music companies; and
  - (e) Barriers to entry and expansion in the services offered by recorded music companies, including any that are linked to economies of scale and network effects (point (b) above) or due to agreements between

certain music companies and music streaming services (see separate section below).

### ***Competition between music streaming services***

96. The CMA intends to assess the strength of competition in music streaming services by building on the understanding it develops of how they compete and examining the competitive constraints they are subject to. In doing so, the CMA would seek to establish the extent of any market power certain music streaming services may hold. Of particular interest to the CMA is whether competition in music streaming services is as effective as it could be at achieving good outcomes for consumers.
97. The CMA's assessment of the strength of competition in the supply of music streaming services could explore the incentives to offer different service plans such as ad-funded and premium services to attract a range of consumers, and to convert consumers from ad-funded to premium options. As part of this, the CMA is interested to understand what are the drivers of and constraints on the prices, terms, features and content of these different options.
98. The types of competition and consumer issues the CMA proposes to explore in relation to music streaming services include:
  - (a) Barriers to switching and issues around how consumers interact with music streaming services such as the extent to which they opt for default music streaming options on smartphones, smart speakers or other devices;
  - (b) The extent of any economies of scale and reinforcing 'network effects' whereby music streaming services with a larger customer base are in a stronger position to attract even more customers;
  - (c) The impact of UUC music streaming services, and the safe-harbour copyright protections they benefit from (see paragraphs 70 to 74) on competition in music streaming services, including whether such services enhance competition or have distortionary effects on competition that harm consumers;
  - (d) What drives innovation in music streaming and what, if anything, may impede innovation including the effects of UUC services and agreements between music companies and music streaming services on innovation (see next section);
  - (e) Any vertical issues that may arise from vertical integration between some music streaming services and other related products and



services such as smart speakers, for example whether default options on smart speakers (point (a) above) weaken competition; and

- (f) Barriers to entry and expansion in music streaming services, including any that are linked to economies of scale and network effects (point (b) above) or any linked to default options on devices on which consumers use music streaming services (point (a) above).

### ***Agreements and inter-relationships between music companies and music streaming services***

99. The CMA is interested in understanding the relationships between the music streaming services and the music companies involved in licensing and distributing music. Concerns have been raised over the agreements involved (see paragraph 28), and the CMA intends to assess whether these relationships and agreements could raise any competition issues.
100. As part of the CMA's review of the agreements between music companies and music streaming services, the types of competition issues the CMA proposes assessing include:
  - (a) how these agreements have developed, the relative bargaining power of music companies and music streaming services in negotiating these agreements; and any impact such agreements may have on competition between music companies in supplying music to music streaming services;
  - (b) Any impact the agreements have on competition between music companies in relation to the services they provide music creators, for example whether the agreements could make it more difficult for smaller recorded music companies to promote artists and expand to compete more strongly with larger recorded music companies; and
  - (c) Any impact the agreements have on competition and innovation in music streaming services.
101. The CMA's assessment of the relationship between music companies and music streaming services could also examine whether there are softer forms of control or influence (beyond the contractual agreements between them) that could limit competition in the ways noted above. The potential types of influence the CMA is interested to understand further range from the financial stakes these companies have in each other to the role of music streaming playlists on competition between music companies.

### ***Possible consumer and other harms***

102. The CMA intends to assess possible harms to both consumers and to music creators as part of its work, with the interests of consumers being intertwined with those of music creators (as set out at paragraph 81 above).
103. The shift to music streaming is recognised by many as a positive development for consumers. Listening to recorded music is now cheaper, can be more personalised, and more readily available than ever before.<sup>69</sup> Nevertheless, consumer harm may still arise if competition issues are holding back future improvements and innovation, or if there are broader consumer issues that may be leading to worse outcomes for consumers. Such consumer issues may include, for example, transparency around business practices such as how playlists are compiled and music recommendations made to consumers; and the collection and use of consumer data.
104. Music creators could also be harmed by lack of competition to sign artists and offer them distribution services. Such harm could be reflected in the share of revenues that music creators take overall. Music creators could also be harmed if the way in which music is curated on streaming services (for example on playlists and recommendations) is distorting the choice of music played by consumers.

### **Areas where the CMA does not intend to focus**

105. The CMA's study focuses on music streaming, which is only one part of a wider music ecosystem that includes aspects such as the physical distribution of music, radio broadcasts and concerts, and is subject to copyright legislation and enforcement. These broader areas are the focus of DCMS, the IPO, Ofcom and others (see paragraphs 25 and 26 above). Within the CMA's market study, the CMA therefore proposes to limit its consideration of such broader areas to the extent that they have an impact on the issues set out above in paragraphs 82 to 104. For example, the CMA intends to consider the extent to which other types of music consumption are a competitive constraint on music streaming services. Further, while the development and monitoring of copyright law is a policy matter for DCMS and the IPO, such copyrights are fundamental to how the sector operates and the CMA therefore intends to consider what role, if any, this framework has in any competition issues we find.

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<sup>69</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming](#), p3.

106. As described in paragraph 104, the CMA intends to assess revenue outcomes for creators at a high level and in this way the CMA anticipates its work can assist to inform the wider debate on music creators' earnings. However, the CMA proposes to focus its contribution on how this breakdown is affected by competition. The CMA does not plan to focus on other factors that may affect overall revenue outcomes (such as piracy issues within copyright), or social issues including how appropriate such allocations may be, in particular in respect of the relative contributions of different creators or in furtherance of cultural aims. These are important matters of wider policy that the CMA considers the Government and the IPO are best placed to examine via their ongoing programme of research. For example, as part of this work the Government will assess different remuneration models, such as equitable remuneration and the artist growth model;<sup>70</sup> and the IPO has recently published research on creators' earnings in the digital era.<sup>71</sup>
107. Where appropriate, the CMA's market study may also draw on other work undertaken by the CMA, rather than seeking to cover similar issues to the same level of detail.<sup>72</sup> In particular, the issues examined in the CMA's ongoing Mobile Ecosystems Market Study (as regards the potential influence of Apple and Google as owners of the main app stores on mobile devices and also the providers of competing apps) may be relevant,<sup>73</sup> since much streaming activity occurs via apps. The ongoing investigation of Sony's acquisition of AWAL is also expected to provide insight into specific aspects of the music market which may be able to inform the CMA's market study.<sup>74</sup>

## Consultation questions and next steps

108. The CMA welcomes comments on any of the issues raised in this Statement of Scope and the accompanying Market Study Notice<sup>75</sup> from consumers, businesses and other interested parties. The CMA particularly welcomes responses, supported with evidence where available, to the following key questions, focusing on both the sector in the UK generally and the two main areas of the value chain it is focusing on (set out in paragraph 83).

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<sup>70</sup> House of Commons Digital, Culture, Media and Sport Committee (2021), [Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report](#), p3 to 4.

<sup>71</sup> Intellectual Property Office (2021), [Music creators' earnings in the digital era](#).

<sup>72</sup> See paragraph 80.

<sup>73</sup> See the CMA's ongoing [mobile ecosystems market study](#) for further details; also paragraph 80 and footnote 59 of this report.

<sup>74</sup> See [Sony Music Entertainment / AWAL and Kobalt Neighbouring Rights businesses merger inquiry](#).

<sup>75</sup> Including on whether the CMA should make a market investigation reference under section 131 of the Act.

## Box 1: Key questions

### General questions

1. What have been the main changes in the music industry as part of the shift to music streaming, including any changes to:
    - a. business models;
    - b. the cost structure of the industry (eg costs of music companies, costs recouped from music creators; and costs of music streaming services);
    - c. risks that music companies and music streaming services take on; and
    - d. the way firms compete at different levels in the music streaming value chain?
  2. To what extent do costs change, if at all, as music streaming revenues grow, and if so, what drives any changes in costs (eg see paragraph 88), for:
    - a. Music companies; and
    - b. Music streaming services?
  3. Are there any key technological or other changes anticipated in the music industry, particularly anything that could impact competition in the future, either between music companies or between music streaming services?
  4. Are there areas within the stated scope of the market study that the CMA should particularly focus on, or any important areas it has missed?
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### Competition between music companies

5. How do recorded music companies compete with each other in:
  - a. the supply of services to music creators to develop and bring their music to market; and
  - b. the supply of music to music streaming services?
6. How well is competition working at present between recorded music companies?
7. How, if at all, is competition between recorded music companies likely to change in the future?
8. To what extent can music creators seek better terms for the services they are offered by recorded music companies?
  - a. What are the key drivers of a music creator's choice of recorded music company? What role do music managers play in this?
  - b. What are the key factors determining the bargaining power of music creators in negotiations with recorded music companies?
  - c. Does the strength of competition between recorded music companies vary for different types of music creator, for example music creators at different stages of their career – and if so, how and why?

9. To what extent can music streaming services seek better terms from recorded music companies?
    - a. What are the key factors determining the bargaining power of music streaming services in negotiations with recorded music companies?
    - b. What impact, if any, do recorded music companies' links with music publishers have on these negotiations?
  10. What scope is there for smaller recorded music companies (including DIY platforms) or music streaming services to compete with the major music groups?
  11. What barriers, if any, are there to:
    - a. entry and/or expansion in services offered by recorded music companies; and
    - b. innovation in relation to these services?
  12. What, if any, issues are there that limit competition between music companies, either in the supply of services to music creators or in the supply of music to music streaming services (see paragraph 95 and 100 above for examples of the types of possible issues the CMA intends to explore)?
  13. How can competition between music companies be strengthened in the supply of services to music creators and/or in the supply of music to music streaming services?
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### **Competition in music streaming services**

14. How do music streaming services compete with each other for consumers?
15. How well is competition in the supply of music streaming services working at present?
16. How, if at all, is competition in the supply of music streaming services likely to change in the future?
17. How do consumers make decisions about which music streaming services to use? What barriers are there, if any, to consumers switching between services?
18. How do consumers use music streaming services and to what extent is their usage influenced by playlists or recommendations?
19. What barriers, if any, are there to:
  - a. entry and/or expansion in music streaming services; and
  - b. innovation in music streaming services?
20. What, if any, competition or consumer issues are there in the supply of music streaming (see paragraphs 98, 100(c) and 103 above for examples of the types of possible issues the CMA intends to explore)?
21. How can competition in music streaming services be strengthened?
22. How can better outcomes for consumers be achieved in music streaming?

## **Agreements and inter-relationships between music companies and music streaming services**

23. What impact, if any, do equity cross holdings and agreements between music companies and music streaming services have on:
- competition between music companies; and
  - competition and innovation in music streaming services?
24. What impact, if any, is there on competition in the music streaming value chain from any softer forms of influence or control that music companies and music streaming services may have over each other (for example related to back catalogue rights or playlists/recommendations)?

109. In addition to considering responses to this document, the CMA intends to gather evidence through a range of methods to inform its review, including: information requests to key parties; analysing existing datasets and research; reviewing contracts; and meetings with key interested parties. The CMA will also consider ways to better understand consumer views on the market eg via engagement with consumer representative bodies or whether to undertake its own consumer research.
110. As the study progresses, the CMA may choose to use other means of seeking additional information. Information and updates about this study will be added to the case page on a regular basis.

### ***Responding to this statement of scope and market study notice***

111. Please email or post written submissions on the market study by **17 February 2022** to:

- **Email:** [musicstreaming@cma.gov.uk](mailto:musicstreaming@cma.gov.uk)
- **Post:** Music and streaming market study  
Competition and Markets Authority  
The Cabot  
25 Cabot Square  
London  
E14 4QZ

112. The CMA intends to publish responses to this Statement of Scope, therefore:
- Please supply a brief summary of the interests or organisations you represent, where appropriate.
  - Please consider whether you are providing any material that you consider to be confidential, and explain why this is the case. The factors that the CMA must have regard to in these circumstances are set out in Annex A. Please provide both a confidential and non-confidential version of your response.
113. If you are an individual (ie you are not representing a business), please indicate whether you wish your response to be attributed to you by name or published anonymously.
114. An explanation of how the CMA will use information provided to us can be found in the Annex. The Annex sets out how the CMA may use information provided to it during the course of this market study, including where it may need to refer to information in order to pursue enforcement action against a business in this sector.

## **Annex A – use of information provided to the CMA**

1. This annex sets out how the CMA may use information provided to it during the course of this market study.

### ***Why is the CMA asking for information?***

2. The information you provide will help the CMA to understand the markets concerning ‘the supply of music to consumers and the supply of services connected with the supply of music to consumers’, and identify any competition and consumer issues.

### ***What will the CMA do with the information I provide?***

3. Your information will inform the CMA’s final market study report, and any interim updates. The CMA may publish information you provide and identify you as the contributor of it in those reports, or alongside them on our website. The final market study report will set out the CMA’s findings and any proposed remedies to any existing or potential issues it finds.
4. The CMA may disclose any information provided by you for the purposes set out in sections 7, 170 and 241 to 243 of the Enterprise Act 2002, where it considers such disclosure to be appropriate. In particular, the CMA may choose to put information provided by you to third parties, such as other Government departments and other parties providing information to the CMA, for the purpose of facilitating any further related work.
5. The CMA may share your information within the CMA to facilitate the performance of its functions. The CMA may use information you provide to take enforcement action, including against businesses operating in the markets within the scope of this study, using its competition or consumer powers. The CMA may also share your information with another enforcement authority or with another regulator for them to consider whether any action is necessary.
6. Unless an exemption applies, the CMA may disclose the fact that you have provided information to it, and the information you have provided, in accordance with its obligations under the Freedom of Information Act 2000.

### ***Will the CMA take steps to protect my information?***

7. The CMA may only publish or share information in specific circumstances set out in legislation (principally Part 9 of the Enterprise Act 2002). In particular, prior to publication or any such disclosure, it must have regard to (among other considerations) the need for excluding, so far as is practicable:



- (a) any information relating to the private affairs of an individual which might significantly harm the individual's interests; or
- (b) any commercial information which, if published or shared, it thinks might significantly harm the legitimate business interests of the undertaking to which it relates.

8. The CMA will redact, summarise or aggregate information in published reports where this is appropriate to ensure transparency whilst protecting legitimate consumer or business interests.

***How will the CMA handle any personal data I provide?***

9. Any personal data you provide to us will be handled in accordance with the CMA's obligations under the UK General Data Protection Regulation and the Data Protection Act 2018. The CMA's [personal information charter](#) sets out the standards you can expect from it when it collects, uses or shares personal data and provides details of your rights in relation to that personal data and how to contact it.

***What should I do if you have concerns about how the CMA will use any information I provide?***

10. You should make clear to the CMA any information that you consider to be confidential when you provide it to the CMA and set out why you consider it to be confidential.
11. If the CMA wants to include any sensitive commercial or personal information in a document that will be published it will, save in exceptional circumstances, contact you prior to publication to give you an opportunity to tell it about any concerns you may have regarding that publication.

***Where can I find further information?***

12. Further details of the CMA's approach can be found in [Transparency and Disclosure: Statement of the CMA's Policy and Approach \(CMA6\)](#).