

# **BPI Submission to the CMA Music and Streaming Market Study Statement of Scope**

## **Introduction**

The BPI is the representative voice of UK record labels. Our work champions the UK's recorded music industry both at home and abroad. Our broad membership base consists of over 500 organisations, including hundreds of independent labels and the UK's three 'major' record companies.

The BPI provides training and insight for our membership, by gathering industry-wide data, providing events and supporting our members with networking opportunities. We also play a lead role in policy discussions concerning music and the wider creative industries, including the importance of Intellectual Property. We also lead work to tackle copyright infringement and music piracy.

The BPI works with labels and artists to promote British music overseas. We administer the Music Export Growth Scheme (MEGS), a partnership between industry and Government whose mission is to boost British music exports. We provide wider export support to our members including co-ordinating trade missions, organising export training and masterclasses, networking opportunities and global events.

Additionally, the BPI owns and organises the biggest showcase for British music, the annual [BRIT Awards with Mastercard](#), and the prestigious [Mercury Music Prize](#). It co-owns the *Official Charts* and runs [The BRIT Certified Awards](#) programme, which recognises artist achievement with the iconic Platinum, Gold and Silver Awards.

As a membership organization, representing hundreds of competing music companies, the BPI does not consider itself in a position to respond comprehensively to the questions raised by the CMA within the Statement of Scope. We are mindful of several areas within the scope of the CMA's market study which are directed at commercial issues (such as contractual relationships) in which the BPI has no role and where its members may not, in any event, have a unified view. In other respects, the BPI may have some general industry knowledge or awareness, but our members will have more direct, first-hand experience and are better placed to respond individually.

However, one of our roles is to gather data about the recorded music industry. This includes the annual statistical yearbooks that the BPI publishes, and with which the CMA is already familiar. The BPI also leads on policy work to grow the music industry - for example through support for exports, international trade agreements, platform responsibility and tackling piracy.

With these considerations in mind, this response provides a brief overview focused on those areas on which the BPI can appropriately comment. We stand ready to engage with the CMA further as the market study progresses, and where we might be able to add further data and industry-wide insight.

## **Section 1: General Questions**

### *Question 1*

As the CMA observes, the music industry has changed markedly in recent years, undergoing a radical transformation from a business dominated by physical sales to one with digital streaming as the predominant way in which consumers access music. We note the CMA's reference to BPI data showing this transition in UK trade revenues, which illustrates the impact of the emergence of the internet, the very severe impact of piracy (in particular peer to peer filesharing) on sales, and the return in recent years to growth, though the market continues to lag some way behind the historic

revenue highs seen in the early 2000s, accounting for inflation. As referenced by the CMA, BPI data shows that 83% of consumer consumption of music was via streaming in 2021, compared to just 3% in 2012.

### *Question 2*

The BPI is not in a position to comment in detail on the changing business costs of its members. However, in common with many other sectors experiencing digital transformation, we are aware of a number of digital costs that our members incur in the streaming environment, which include:

- A&R: funding new recordings and videos, including associated production, styling etc.
- Financial support to cover the cost of touring (which can be unprofitable for less well-established artists)
- Data analytics work to help artists to optimize their commercial success
- Promoting and marketing artists via a wide range of media outlets, online platforms and social media channels
- Artist services, such as website development and maintenance, managing online retail stores, and merchandise design, production and distribution
- Distributing digital and physical content globally, licensing content to multiple platforms and services
- Royalty collection and accounting services for global revenues
- Content protection activities, including measures to combat digital piracy
- Developing and advancing brand partnerships
- Digital licensing to secure new revenue streams, for example fitness opportunities such as Peloton

While the focus of the CMA's study is on music streaming, record labels continue also to support artists with physical sales of music, with 20% of trade income in the UK still derived from sales of CD and vinyl. For labels this entails meeting the costs of production and distribution of increasingly low margin physical music formats. In addition, artists will receive further income from other sources, such as live performance/touring, income from radio/TV broadcasting, public performance of their recordings, merchandise sales and brand partnerships. Although this is not within scope of the study, this is important context insofar as the CMA is considering artist income, given that streaming is only one element of artist earnings.

The BPI collects industry-wide data on investment in A&R (the primary direct investment by labels in creative content), which shows that as the sector has returned to growth industry investment has been growing faster than industry revenues. In the five-year period (2016-2020 inclusive), an average of 21% of gross UK label income (across BPI members surveyed) was invested in A&R, even taking into account the impact of Covid; in the prior five years (2011-2015) 19% of revenue was invested in A&R.

BPI also leads work on behalf of the industry as a whole to reduce the impact of piracy and the illegal distribution of recorded music, taking action on behalf of labels and their artists in the following ways:

- Content protection: Monitoring and working to remove illegal content online (for example by issuing takedown notices to search engines to remove links to infringing websites and illegal copies of music and liaising with the Policy Intellectual Property Crime Unit (PIPCU)

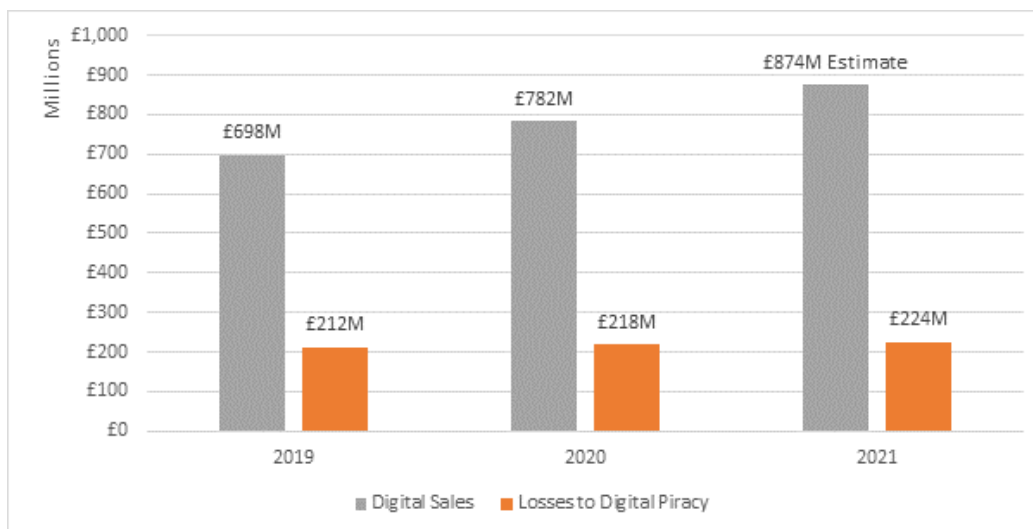
- Litigation: includes civil law by bringing direct civil action against illegal websites and litigation to block access to illegal sites hosted overseas; using criminal law to bring private criminal prosecutions and assisting the UK authorities to bring prosecutions against individuals and organised crime groups
- Education: working with the Government and Motion Pictures Association (as Creative Content UK (CCUK)) to run the consumer education campaign *Get It Right from a Genuine Site*.
- Industry co-ordination: the BPI has led efforts to develop voluntary commitments from industry – bringing together platforms and rightsholders – to tackle online infringement.

Piracy is estimated to cost the industry lost revenues of more than £200m a year (see Fig 1 below). To give some sense of scale, by the end of 2021, the BPI’s content protection team had issued over 1 billion search engine delisting notices in total since 2012 and issued more than 562 million notices to Google alone to remove illegal search results.<sup>1</sup> In 2021, there were over 1 billion UK visits to all types of infringing sites, of which over 450 million were stream ripping sites.<sup>2</sup>

As well as the value of lost revenue, tackling piracy costs the industry a considerable sum in operational costs, such as the costs of monitoring and reporting and bringing legal action where necessary. While we do not have detailed industry wide data on all these costs, the BPI itself spends in the region of £1.5m a year alone in addition to the significant sums spent by its member companies, which run into millions of pounds a year.

Figure 1

## Digital Sales vs Losses to Digital Piracy



Source: BPI Trade Income Survey (digital sales only), BPI Loss Estimation (digital piracy only). We calculate losses based on the number of estimated downloads across all pirate sites and a 100 to 1 conversion rate from streaming to download.

<sup>1</sup> [https://transparencyreport.google.com/copyright/reporters/1847?hl=en\\_GB](https://transparencyreport.google.com/copyright/reporters/1847?hl=en_GB)

<sup>2</sup> Site types: Stream Rippers, MP3 Aggregators, Linking Sites (e.g., Mp3 Aggrs linking to Cyberlockers), Cyberlockers, Torrent Sites, Single-Site Proxy Aggregators (e.g., pirate bay proxy lists), Multi-Site Proxy Aggregators (e.g., <https://unblockit.cam/>)

### *Question 3*

As one of the sectors impacted earliest and most extensively by digital technologies, music continues to be at the forefront of technical innovation and adaptation. In our role, we provide training and insights into business and tech trends to our membership, as well as input into tech-related policy discussions. We foresee numerous and potentially profound technological changes that may affect the future of music. This includes (non-exhaustively):

- the impact of Artificial Intelligence on the marketing and creation of music;
- the potential for recorded and live music in the metaverse;
- the role of the blockchain in the distribution of music and royalty accounting;
- the potential to realise value from issuing non fungible tokens (NFTs);
- a broadening in the range of tech platforms that use music in different ways, including the integration of music into fitness, health, gaming and other applications.

While these technologies may provide new opportunities for the music industry, some may pose a challenge by potentially reducing royalty flows to music rightsholders and artists. We touch on in this more in response to Section 4 below.

### *Question 4*

It is important that the CMA considers the whole music streaming landscape within the study, and we therefore welcome the inclusion of streaming services within its scope.

One of the facets of the music streaming market is the potential ability for UK artists to reach a wider audience than ever before. This means that export revenues from around the world can contribute to the success of new releases.

This heightens the need to focus on how the UK can compete globally more effectively as an exporter of music. The UK continues to excel in music internationally – being the third largest music market<sup>3</sup> and the second biggest exporter of recorded music. While export revenues continue to grow in absolute terms (reaching more than £0.5 billion for the first time in 2020), the UK's share of the global market has been gradually declining, standing at 10% in 2020, compared to 17% in 2015. This is largely as a combined result of fast acceleration of streaming take-up in large, developing markets, and the popularity of domestic music in each national market, such as K- and J- Pop in Asia, Latin American music and domestic rap.

In this context, it is therefore important that the UK market is considered in light of wider global trends. Any policy or regulatory considerations must not make the UK less competitive or a less attractive place for music companies to do business, which could lead to lower levels of investment and further reductions in exports, with consequent impacts on the market and on consumers.

We therefore suggest that the CMA's Scope of Study explicitly takes into account not only the UK streaming market but its contribution to the UK's global success in music.

## **Section 2: Competition between music companies**

We limit our comments in this section to BPI data which shows that independent labels have seen their share of the recorded music market grow in recent years. Our 2021 yearbook showed that UK independent labels' share of music consumption (across streaming and physical), as measured by Album Equivalent Sales (AES), rose for a third successive year in 2020 to reach 26%. This was the

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<sup>3</sup> [https://www.ifpi.org/wp-content/uploads/2020/03/GMR2021\\_STATE\\_OF\\_THE\\_INDUSTRY.pdf](https://www.ifpi.org/wp-content/uploads/2020/03/GMR2021_STATE_OF_THE_INDUSTRY.pdf)

third consecutive year of share growth of the independent sector,<sup>4</sup> with an approximately 1% share increase across each of the last three years.

We also question the framing of question 9 in terms of music streaming services ‘seeking better terms from recorded music companies’ and note that there is no equivalent question here or in later sections on the streaming services to pose this question the other way round. We would suggest it might be appropriate to also consider this question in reverse – i.e., the extent to which music companies are able to secure better terms from streaming services.

### **Section 3: Competition in music streaming services**

As the CMA describes, consumers have access to a wide range of streaming services to choose between, ranging from premium subscription services to ‘free’ ad-funded user upload services (UUC). Unlike with other creative sectors (which also feature a mix of free to consume and pay/subscription services) the content on the majority of the main services is similar; that is, there is little exclusivity and content differentiation. From a consumer perspective, this therefore means that competition between services revolves around user experience and price.

Here, we observe that there is a significant difference in the typical value derived from user-upload services and subscription services, and as well as the consumer perspective, there are variable impacts on artist and creator earnings from different platform models. As noted in our yearbooks, premium streaming represents just under 90% of streaming revenues (of a total £736.5m in 2020).<sup>5</sup>

UUC (user-uploaded content) ad-funded services account for a significant share of music listening and provide an alternative to paying for a subscription, but they pay only a fraction of the royalties generated by premium services. In 2020 user upload video featuring recorded music content had 30 billion streams in the UK, yet generated only approximately £14m in trade revenue for UK labels. By contrast, just 1.6 billion subscription video streams on YouTube generated more total revenue for labels than all UUC video in 2020 (£17.3m).

In large part, this results from the fact that, because UUC platforms can claim the benefit of the so-called ‘DMCA copyright safe harbour’ for user-uploaded content, it is impossible to negotiate better licensing terms.

This so-called ‘value gap’ between subscription and user upload services shows that each stream is worth considerably less on user upload services – with a typical UUC stream generating around 10 times less than a premium subscription stream on Spotify, with the UUC stream worth approximately a 20th of a penny, compared with about half a penny in premium subscription revenues into the industry.<sup>6</sup> The free availability of UUC content distorts the value that can be derived from recorded music licensed under exclusive rights.

### **Section 4: Agreements and inter-relationships between music companies and music streaming services**

BPI members have raised a number of concerns about the presence and presentation of some music content on streaming services, and how in their respective ways these can distort how value flows to rightsholders and artists.

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<sup>4</sup> <https://www.bpi.co.uk/news-analysis/fans-flocking-to-uk-independent-labels-music-across-streaming-and-physical-formats/>

<sup>5</sup> BPI Yearbook 2021 p15

<sup>6</sup> <https://committees.parliament.uk/oralevidence/1689/pdf/>; Q421

### *Stream manipulation*

Stream manipulation involves the artificial creation of plays of music tracks where those plays do not represent genuine listening. Manipulation can occur via human or non-human means and may be undertaken in respect of individual or groups of recordings in order to artificially improve chart positioning, increase market share, increase royalty payments, or for other dishonest purposes. It can include, by way of example, plays generated using automated processes such as ‘bots’ or ‘click farms’ or plays resulting from ‘pay for play’ arrangements.

These practices have multiple potential negative impacts on the music sector and on consumers. In effect, the manipulated streams simulate genuine consumer demand – generating additional royalty income for some at the expense of other rightsholders and artists. As such, it can cause economic harm to artists, rightsholders and streaming service providers, by providing them with potentially misleading, artificial data. For artists, misleading data can also mean they are competing with artificially inflated stream counts. Furthermore, it can harm consumers’ impressions and understanding of the popularity of particular recordings and undermine trust and enjoyment of music streaming.

### *‘Fake Artists’*

Fake artist streaming occurs where services include ‘production’ music on their platforms, for which they have bought out the rights, and which may then be presented to consumers within streaming services under the name of a ‘fake artist’. This is deceptive to the consumer and is particularly problematic where the service includes these tracks in its own curated playlists. Plays from these playlists ‘count’ towards a share of listening but do not require any royalty pay-outs by the platform, thus distorting the value that flows from streaming services to labels and ‘real’ artists.<sup>7</sup> Such ‘fake artists’ may receive royalties running into the thousands of pounds.<sup>8</sup> The further development of Artificial Intelligence and its potential to generate tracks without any human involvement could exacerbate this issue.

**17 February 2022**

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<sup>7</sup> <https://www.musicbusinessworldwide.com/why-spotifys-fake-artists-problem-is-an-epidemic-literally/>

<sup>8</sup> <https://pitchfork.com/features/article/how-artist-imposters-and-fake-songs-sneak-onto-streaming-services/>