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## The Re-Intermediation of the Music Industries Value Chain: Market definition, gatekeepers and the control of data

Response by CREATE ([www.create.ac.uk](http://www.create.ac.uk)) to Competition and Markets Authority: Music and streaming market study Statement of Scope\*

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### **CREATE**

*CREATE is the UK Copyright and Creative Economy Centre, based at the University of Glasgow. In 2012 CREATE was established as an RCUK Centre jointly by the Arts and Humanities Research Council (AHRC), Engineering and Physical Sciences Research Council (EPSRC) and the Economic and Social Research Council (ESRC). From 2018-2023, CREATE is leading work on Intellectual Property, Business Models, Access to Finance and Content Regulation as part of the AHRC Creative Industries Policy & Evidence Centre (PEC). From 2020-2023, CREATE also leads the creative industries stream of a major EU H2020 research consortium: reCreating Europe – Copyright law, cultural diversity and the Digital Single Market.*

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## Summary

The submission responds to the following questions posed in the Statement of Scope:

- 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?
- 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?
- 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?

This response draws on empirical research from legal and sociocultural perspectives examining Intellectual Property issues and artist labour markets in the streaming era, along with research in the field of Competition Law in the context of multisided platforms.

This submission identifies three key areas CMA should afford particular attention in the market study:

- (1) the definition of ‘music streaming market’, in particular understanding audio in a wider context, and where music streaming is a complementary but secondary component of business models;
- (2) the relationships between self-release creators/micro-producers and music streaming services, in particular the role of new and old ‘unavoidable’ gatekeeping intermediaries, such as artist and label (A&L) services and collective management organisations (CMOs);
- (3) the control, interoperability and portability of data, in particular content identifiers, content metadata (such as ownership) and data associated with the digital identity of artists (such as their followers and other information about users and use).

## **Introduction: CREATE Research and the Music Streaming Debate**

This submission was authored by CREATE researchers at the University of Glasgow examining [competition and markets](#), the [music copyright industries](#), and Intellectual Property issues in the [wider creative industries](#). The underlying research is part of a workstream for the AHRC Creative Industries Policy & Evidence Centre ([PEC](#)).<sup>1</sup>

The submission responds to three questions posed in the CMA market study Statement of Scope:

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- 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?
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As nascent markets emerge and develop in the digital cultural industries, the rapidly changing technological and business-model landscape presents opportunities but also considerable challenges, not least in terms of defining markets and evaluating how these emergent markets are functioning for participants. This is particularly apparent in the streaming sphere.

This submission primarily focuses on two elements of the ongoing debate around music streaming that has led to this market study: challenges contingent in defining the music streaming market; and the role played by legacy and new-entrant intermediaries in the music streaming value chain.

It is noted that some themes of particular interest to the authors of this report and CREATE as a research centre are largely beyond the scope of this study, namely the regulation of copyright contracts and the application of a right to equitable remuneration.<sup>2</sup>

### **Defining the (music) streaming market**

The first main proposition in this submission is that the market study ought to consider the relevant market in more depth. It is essential to engage in a process of market definition. The extent of this market definition exercise may vary and be more or less formal depending on the context of the analysis, but it is crucial to identify the competitive landscape and understand the interactions between different economic actors in the market (Eben 2021). A definition of the market determines the focal products (goods/services) at the different levels of the supply chain, and the relationships between economic actors in the supply of those focal products (Eben 2019).

In its Statement of Scope, the CMA proposes that the study will cover the ‘music streaming

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<sup>1</sup> The work stream led by CREATE focuses on [Intellectual Property, Business Models, Access to Finance and Content Regulation](#).

<sup>2</sup> The Statement of Scope says at paragraph 105 (under *Areas where the CMA does not intend to focus*): ‘These are important matters of wider policy that the CMA considers the Government and the IPO [Intellectual Property Office] 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; and the IPO has recently published research on creators’ earnings in the digital era.’

value chain’, encompassing in particular the supply ‘via music streaming services’ (paras 82-83). This limitation of the scope raises two crucial questions: what is ‘music streaming’, and is music streaming part of a broader (audio) streaming? We submit that a narrowing of the study purely to ‘music streaming’ without first considering these questions runs the risk of overlooking competitive constraints and/or competitive concerns.

Technological and business-model innovation in cultural sectors presents considerable definitional challenges, to policymakers and regulators (Barr and Kretschmer 2020). Indeed, while streaming as a means of accessing recorded music has been widely available for well over a decade, the legal definition of music streaming remains fiercely contested (IPO 2007, Hesmondhalgh et al 2021: 94). The answer may differ depending on the focus of the analysis, so that even if there were an accepted legal definition, it may not or only partially overlap with the focal product in a competition analysis.

To determine the focal product from the demand perspective, it is necessary to understand the consumer want a service satisfies. The Statement of Scope frames the term ‘music streaming services’ as follows (paragraph 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 assumes that consumers use streaming services particularly for their music content. As reasonable an assumption as this may be, it overlooks the increased diversity of the offering on streaming platforms. Undertakings, particularly in digital markets, are continuously aiming to stay relevant and attractive to consumers by differentiating and expanding their offering. They may grow their service offer to include new components. This expansion makes it difficult to draw a hard line: are added services features of a broad focal product or are they products in their own right? (‘product-or-feature problem’, see Eben 2019: 113-115) The Statement of Scope recognises this diversity of services in principle, noting in paras 75-76 that music streaming is ‘part of a wider suite of services available to consumers’, but does not extend this reflection to audio streaming itself. Consumers may consider that ‘music streaming’ is the product they obtain when they use a streaming platform, or they may see it as part of a broader (audio) streaming package, which may also include podcasts or audiobooks or other audio streaming services. This, in turn, changes which platforms/undertakings they consider as alternatives.

The current competitive landscape is more complex than a focus on ‘music streaming’ may indicate. In a similar vein, current consumer demand may shift in the short or medium term, under the influence of changes made by platform operators. Providers of music streaming services operate in dynamic digital settings. Companies frequently bundle and unbundle online services, assembling the same services in different ways or combining them with wholly new services, with the same components in different ways, or with totally new components. This dynamism makes it difficult to pinpoint when the combination of several services means a new product has arisen, changing consumer demand and thus the competitive relationships in the industry. Not only is the current competitive landscape more complex than indicated, it does not take into account the potential changes in the short to medium term.

This raises questions not merely from the perspective of consumers and their wants, but also for the suppliers on every level of the supply chain. The revenue generation models of music streaming platforms vary, as do the models and shares of revenue creators can obtain from them. For services like Spotify and SoundCloud, music streaming is the core revenue-generating activity. Whereas in the case of many other major music streaming brands such as

Amazon, Apple and YouTube, music streaming is a complementary but secondary component of business models reliant on other primary revenue sources (Barr and Kretschmer 2020). Where the product itself changes (as the bundle of services offered is modified), the (package) price paid by users covers more and/or different services. This may have consequences for the revenue models adopted and the share of the benefits the creators can derive from them. Moreover, it can have an influence on the position of the ‘majors’ (music groups such as Sony Music Group, Universal Music Group and Warner Music Group), as their bargaining power may vary depending on the relative importance of their input into the overall package offered to consumers.

It is the contention of this submission that the market study ought to be used as an opportunity to fully explore the dimensions and dynamics in audio streaming. To comprehensively identify potential competitive concerns, the scope of the study might have to be expanded, by querying whether the focal product is broader than ‘music streaming’, either now or in the foreseeable future.

### **The nature of relationships between self-release creators/micro-enterprises and music streaming services**

The second main proposition advanced is: the market study should evaluate how the market is functioning for self-release music creators and micro-enterprises seeking to commercially exploit works in the music streaming market. Consideration should be given to two important factors that may affect these constituents’ ability to compete in the market. First, the role of third-party distributors in the re-intermediation of the music industries. Secondly, the effects of information asymmetry for those operating outside the corporate structures of large music/media companies.

The Statement of Scope explicitly identifies three key areas of interest that are reflected in the consultation questions. The first is, ‘competition between music companies’ (paras 91-95), with a focus on the services recorded music companies provide to music creators. The second, ‘competition in music streaming services’ (paras 96-98), places the focus on consumer issues. The third area is ‘agreements and inter-relationships between music companies and music streaming services’ (paras 99-101). These are important elements of the value chain, but there is a danger that a key dimension of the market is not afforded sufficient attention: the highly mediated nature of music creator/micro-enterprise relationships with music streaming services.

The music copyright industries (music publishing and recording) are dominated by a small number of highly integrated conglomerates with many smaller operators on the margins. The global music streaming sector also displays a high degree of concentration, with a handful of services dominating market share (Mulligan 2022). Similarly, ‘winner take all’ patterns are observable in the distribution of popularity of ‘superstar’ music creators and ‘hit’ works (Rosen 1981, Frank and Cook 1995, Kretschmer et al 1999). Counterintuitively, in the streaming sphere where consumers have access to ever-growing catalogues of works to choose from, it has been argued that concentrations of popularity have become even more pronounced than was the case in previous eras (Blake 2020). In music streaming, hit songs by superstar artists signed to major music companies remain dominant. In this respect, predictions that the digitally-induced ‘disintermediation’ of the music industries and the ‘long tail’ of demand would significantly correct these skewed patterns of popularity have failed to materialise (Anderson 2006).

Yet it is clear that self-release creators and micro-labels now supply huge volumes of content to the mainstream market in ways that were not practicable in the pre-digital era (Ingham 2021).

Moreover, there is some evidence of modest adjustments in the patterns of demand for works by music creators operating outside the major music company system (BPI 2021, Hesmondhalgh et al 2021: 211). It is therefore vital that the CMA considers these significant constituencies of stakeholders in the market study and examines how they gain access to the mainstream market. Where services, such as YouTube and SoundCloud, permit user-uploaded content (UUC), other main services including Amazon, Apple and Spotify require individual creators and small-scale producers to engage with third-party digital distributors in order to place recordings on these services. A key role of digital distributors is assigning identifiers to works and administering content metadata, a matter that will be addressed in the third proposition of this submission. Securing entry to these markets invariably requires payment of an up-front fee to the distributor and/or a percentage of revenue generated from exploitation of the works.

Thus, a new class of intermediary, and arguably a new market, has emerged in response to the proliferation of music streaming. The Statement of Scope makes some reference to digital distributors, and artist and label (A&L) services that sit between digital distribution and traditional record companies in terms of level of service provided to creators. It is the contention of this submission that greater attention should be afforded to the position of these crucial components in the music streaming value chain.<sup>3</sup> Similarly, while the Statement of Scope states (at para 40) that the collective management organisations (CMOs) are in the regulatory ambit of the Intellectual Property Office (IPO), these institutions simultaneously represent individual creators and corporate rightsholders in the music streaming ecosystem. In effect, CMOs are gatekeepers that cannot be circumvented by other music streaming market participants. Therefore, the role of these intermediaries in the music streaming value chain is a matter the CMA should also examine (as acknowledged in paragraph 82 of the Statement of Scope, where CMOs are tentatively bracketed under ‘other intermediaries’).

In this new industry landscape, an array of routes into the streaming market are available to creators and small enterprises. Digital distribution and collective licensing are conduits that allow self-release music creators to place music on major music streaming services. ‘DIY’ operators can eschew the traditional record deal and still operate in the market alongside ‘superstar’ artists and ‘hit’ works. Decisions about what route to follow often amount to a choice of retaining ownership and control of copyright works versus seeking deals that invariably involve ceding some degree of control to a third-party rightsholder such as a record company or a music publisher.

Aside from financial investment in production and promotion that often accompanies such deals, a perceived advantage of partnering with larger entities in the cultural industries is to gain access to informational advantages said to be available to horizontally, vertically and diagonally integrated operators (Doyle et al 2021: 99). However, a significant and enduring impediment to informed commercial decision-making in this setting is the opacity shrouding the mechanisms that dictate what rightsholders are paid (Barr 2013, Hesmondhalgh et al 2021).

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<sup>3</sup> The Statement of Scope (at para 50) explains A&L services as rather benevolent: A&L services ‘are typically a scaled down version of A&R services provided to either artists or labels, and/or mass market digital 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.’ It is noted that the CMA investigation of Sony’s acquisition of AWAL has significant resonance here. ‘The CMA has provisionally cleared Sony’s acquisition of AWAL, an ‘artist and label’ (A&L) services provider, following an in-depth merger inquiry’, CMA press release of 11 February 2022, available at <https://www.gov.uk/government/news/cma-provisionally-clears-sony-s-acquisition-of-awal>

Therefore, the market study should consider the extent to which opacity might limit these small-operators' capacity to compete in or enter the music streaming market, while at the same time considering the anti-competitive effect disclosure may have on the market as a whole. In effect, the focus of the study should accommodate an interrogation of experiences of stakeholders that *are not* engaged in, 'agreements and inter-relationships between music companies and music streaming services'.

This proposition is closely related to the first (the challenge of market definition), since both require identifying the product and the market from the perspective of the affected actors. Where the concern is with the opportunities of creators and small enterprises, an analysis of the market may have to be refocused to consider their particular demands and concerns (Eben 2021).

### **Control and Interoperability of metadata**

The final proposition of this submission is: the market study should closely examine the function of content identifiers, content metadata (such as ownership) and data associated with the digital identity of artists (such as their followers and other information about users and use).

In our view, the control over data has become central for structuring the music streaming market. In terms of the Statement of Scope, this comment addresses key question 3 (p. 36, Box 1): '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?'

There has been analysis why attempts to combine data between the two codes for works (International Standard Musical Works Code, ISWC) and recordings (International Standard Recording Code, ISRC) have failed repeatedly.<sup>4</sup> The industry still does not have single identifiers for what are in effect single files that are streamed. The DCMS Select Committee Report (2021, p. 50) recognised that '[t]hese data are fundamentally important to the economics of music streaming because they account for who is remunerated, by whom, how and on what terms'.

This is correct. However, we want to draw attention to a further aspect of data control that is pertinent to the proposed market study. There are severe data obstacles for primary creators to moving their output and digital 'identity' (including user information) to a different streaming service.

The first reason is contractual. Because of the nature of copyright agreements, creators often do not have any choice on which streaming platforms their music appears, nor can they withdraw it. Rights have been assigned to intermediaries, often for the life of copyright (in the UK, 70 years for sound recordings, and life of author plus 70 years for the underlying musical works).

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<sup>4</sup> Attempts to establish a Global Repertoire Database (GRD) received substantial funding from the EU since 2008 but was abandoned in 2014. Negotiations under the umbrella of the DDEX (Digital Data Exchange) standards consortium are ongoing since 2006. Cf. Intellectual Property Office (2019) 'Music 2025: The Music Data Dilemma: issues facing the music industry in improving data management (2019)', p. 8: 'This multi-layered fragmentation of metadata and a preference for proprietary walled data silos, have inevitably undermined cross-system interoperability.' Senfleben et al. (2022) argue that publishing companies, record companies and CMOs have conflicting incentives to control relationships with suppliers and defend their own role in the industry structure.

The second reason is the ownership of data associated with a creator’s digital identity: knowledge about followers and listeners (who they are, where they access); knowledge about patterns of use (including the effects for playlist curation and recommendations).

In the terms of paragraph 95(a) of the Statement of Scope, these are ‘barriers to music creators switching and/or taking advantage of new type of deals or services to bring their music to market’. Paragraph 103 helpfully seeks ‘transparency around business practices such as how playlists are compiled and music recommendations made to consumers; and the collection and use of consumer data’.

To address the contractual barriers, we have recommended elsewhere that reversal of rights to primary creators should be considered after a set period of time (i.e. limiting the assignability of rights for life of copyright), and in any case rights reversion should be ensured in cases of non-exploitation (Kretschmer 2012, Giblin and Weatherall 2017, Furgal 2021). Furthermore, the CMA may consider transparency, interoperability and data portability requirements, where these would alleviate concerns regarding the control of data. These interventions may be considered as remedies on competition grounds (in enforcement action or pursuant to a market investigation reference) if the market study results in findings that the market does not work in the interest of creators and consumers. They could also be implemented through codes of conduct or practice rather than primary legislation. Though there may be an overlap here with the activities of the Digital Markets Unit in case digital platforms were to be designated as having ‘Strategic Market Status’, as noted in the Statement of Scope paragraph 30, data obstacles may also exist on platforms without such designation.

To address the control of digital identities and user related data, lessons need to be learned from interoperability and portability interventions in other markets. For example, the CMA’s successful Open Banking remedy under the Retail Banking Market Investigation Order 2017 unlocked competition in retail banking.<sup>5</sup> A process of technological standardisation and governance enabled consumers and small and medium-sized enterprises (SMEs) to share their bank and credit card transaction data securely with trusted third parties. This facilitates the switching of providers and also incentivises new entrants to provide applications and services.

A less successful precedent is the ‘Right to data portability’ enshrined in Article 20 of the EU General Data Protection Regulation (GDPR, retained in the UK).<sup>6</sup> It allows individuals to obtain and reuse their personal data across different services, including copying or transferring personal data from one IT environment to another in a safe and secure way, without affecting usability.

We recommend that within the proposed market study, barriers to data interoperability and portability feature prominently. If the study finds that the market does not work in the interest of consumers, an Open Streaming intervention may offer a potential remedy, ensuring interoperability and independent governance of meta data and application programme interfaces (APIs) associated with key aspects of primary creators’ digital identity.

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<sup>5</sup> See CMA update report on Open Banking (5 November 2021): <https://www.gov.uk/government/publications/update-governance-of-open-banking/update-on-open-banking>

<sup>6</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council. For guidance by the Information Commissioner’s Office (ICO) on the portability provision, see <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-data-portability/#ib1>



## **Conclusions**

This submission applauds the approach of the proposed market study as covering the whole ‘music streaming value chain’. It is indeed appropriate that the study ‘will cover the supply of music to consumers and the supply of services connected with the supply of music to consumers’ (para 82).

Our first recommendation is to take seriously the notion of connected services and refer to the latest academic work in defining markets for multisided platforms.

Our second comment recommends a focus on new intermediaries between self-release creators/micro-enterprises and music streaming services (such as A&L services), but with particular attention on the (unavoidable) old intermediaries of Collective Management Organisations (CMOs).

Thirdly, we stress that control over data has become central for structuring the music streaming market. We recommend a focus on data interoperability and portability.

In conclusion, we would like to stress that for reliable non-stakeholder driven information on the music sector, many academic researchers still refer to the studies by the CMA’s predecessor. The Monopolies and Mergers Commission’s reports from the 1990s, *The Supply of Recorded Music* (MMC 1994) and *Performing Rights* (MMC 1996) set an admirable standard. Understanding the music streaming market against these 25 year old benchmarks is an opportunity for the CMA to offer empirical insights of global relevance.

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