



February 17, 2022

Competition and Markets Authority

The Cabot

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Via email: [musicstreaming@cma.gov.uk](mailto:musicstreaming@cma.gov.uk)

*Re: Music and Streaming Market Study*

To Whom It May Concern:

Digital Media Association (“DiMA”) is a U.S.-headquartered non-profit trade organization advocating for the digital music innovations that have revolutionized the way music fans and artists connect. DiMA’s member companies – Amazon, Apple Music, Pandora, Spotify, and YouTube – connect fans around the world with essentially the entire history of recorded music. DiMA’s members actively combat piracy by promoting music discovery and accessibility through unique, innovative listening experiences. This results in billions of dollars paid to rightsholders annually.

By providing unlimited shelf space for music, DiMA members have simultaneously opened up global audiences to artists of all genres, while broadening the opportunities for fans to explore new musical horizons. In doing so, streaming benefits creators, rightsholders, consumers, and the industry overall. DiMA firmly believes in a music industry that ensures all participants continue to share in the growth that streaming cultivates.

We appreciate this opportunity to comment on the UK Music and Streaming Market Study (“Market Study”) and welcome the opportunity to serve as a resource for the Competition and Markets Authority (“CMA”) on the role of streaming in today’s music industry.

### How Streaming Has (and Continues to) Revolutionize the Music Industry

Twenty-eight years ago, Stanford University law professor Paul Goldstein popularized the term “Celestial Jukebox” to describe a cultural opportunity that at the time was impossible to achieve, if not altogether fanciful: a future in which consumers might have instantaneous, distributed access to essentially all the world’s recorded music, through remote-storage digital

technologies.<sup>1</sup> Today, those technologies have advanced to the point that there is not just *one* “celestial jukebox,” but several—multiple digital music services, offering every-day music fans affordable, fully licensed access to tens of millions of recordings, embodying tens of millions of songs. New entrants have emerged repeatedly in the short history during which such services have been technologically feasible. And the impact is calculable.

As the Market Study states, “[a]ccording to the BPI, in 2021 around 83% of UK music consumption was through streaming.”<sup>2</sup> According to the Guardian, this percentage equates to £1.7 billion in total UK industry income in 2021 that was generated from music streaming.<sup>3</sup> This follows on several years of total streaming growth in the UK: from 114.2 billion streams in 2019,<sup>4</sup> to 139.3 billion streams in 2020,<sup>5</sup> to 147 billion streams in 2021.<sup>6</sup> In 2021, UK spending on subscriptions to music streaming services “hit £1.3 billion, compared with just £135.6 million on vinyl albums, and £150 million on CDs.”<sup>7</sup> Music streaming is also boosting the UK’s music industry overall: according to the BPI, in 2020, streaming income (at £736.5 million) made up about 66% of UK recorded music revenues.<sup>8</sup>

In the U.S., the story is similar. In 2020 (the most recent full year of data), streaming revenue in the U.S. grew by 13.4 percent to \$10.1 billion, accounting for nearly 83 percent of the total revenue of the U.S. recording industry, according to the RIAA’s year-end report.<sup>9</sup> The report hails streaming services as the “primary driver of revenue increases” for overall U.S. recorded music revenues, which grew by 9.2 percent in 2020.<sup>10</sup> Publishing revenues have also

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<sup>1</sup> See generally Paul Goldstein, *Copyright’s Highway: The Law and Lore of Copyright from Gutenberg to the Celestial Jukebox* (1994).

<sup>2</sup> Competition & Markets Authority, *Music and streaming market study, Statement of Scope*, at 8 (Jan. 27, 2022).

<sup>3</sup> Mark Sweney, *UK Watchdog to Study Music Streaming Amid Claims of Raw Deal for Artists and Fans*, *The Guardian* (Jan. 27, 2022), available at <https://www.theguardian.com/music/2022/jan/27/uk-watchdog-to-study-music-streaming-market-amid-claims-of-raw-deal-for-artists-and-fans>.

<sup>4</sup> MusicBusiness Worldwide, *Audio Streaming Volume Grew by its Biggest Ever Amount in the UK in 2020, As Brits Turned to Music During Pandemic Lockdown* (Jan. 4, 2021), available at <https://www.musicbusinessworldwide.com/audio-streaming-volume-grew-by-its-biggest-ever-amount-in-the-uk-in-2020-as-brits-turned-to-music-during-pandemic-lockdown/>.

<sup>5</sup> *Id.*

<sup>6</sup> Andre Paine, *UK Recorded Music Market Growth Continues with 147 Billion Streams in 2021*, *Music Week* (Jan. 4, 2022), available at <https://www.musicweek.com/labels/read/uk-recorded-music-market-growth-continues-with-147-billion-streams-in-2021/084901#:~:text=During%202021%2C%20consumption%20was%20powered,year%2Don%2Dyear>.

<sup>7</sup> Mark Sweney, *UK Watchdog to Study Music Streaming Amid Claims of Raw Deal for Artists and Fans*, *The Guardian* (Jan. 27, 2022), available at <https://www.theguardian.com/music/2022/jan/27/uk-watchdog-to-study-music-streaming-market-amid-claims-of-raw-deal-for-artists-and-fans>.

<sup>8</sup> Competition & Markets Authority, *Music and streaming market study, Statement of Scope*, at 8 (Jan. 27, 2022).

<sup>9</sup> “Streaming revenue” includes paid subscription services, ad-supported on-demand services, and digital and customized digital radio in addition to music license revenues from social media sites and streaming. RIAA, *Year End Music Industry Revenue Report 2020* (Dec. 15, 2021), available at <https://www.riaa.com/wp-music/uploads/2021/02/2020-Year-End-Music-Industry-Revenue-Report.pdf>. Based on data from the first half of 2021, these numbers will be even higher for 2021. RIAA, *2021 Mid-Year Music Industry Revenue Report* (Jan. 2022), available at <https://www.riaa.com/reports/2021-mid-year-music-industry-revenue-report-riaa/>.

<sup>10</sup> RIAA, *Year End Music Industry Revenue Report 2020* (Dec. 15, 2021), available at <https://www.riaa.com/wp-music/uploads/2021/02/2020-Year-End-Music-Industry-Revenue-Report.pdf>.

grown by 9.6 percent in 2020 to \$4.1 billion, with streaming at the heart of that increase.<sup>11</sup> Streaming has been a central driver of successful music company IPOs,<sup>12</sup> billions of dollars of rights catalog acquisitions,<sup>13</sup> and major investments throughout the industry.

Streaming's convenience, ease, and value to rightsholders, creators, and consumers alike have created – and continue to create – baseline expectations of stable, predictable, and growing revenues at scale across the music industry.<sup>14</sup> The state of the music industry in early 2022 represents a true sea-change from the circumstances of just a decade ago, when the music industry was faced with declining revenues and struggling with how to get people to pay for music. DiMA's members and their rightsholder partners changed that trajectory<sup>15</sup> as did the well over 50 innovative digital music services of various shapes, sizes, and business models in operation around the world today.<sup>16</sup> As of 2020, streaming accounted for 54% of the global value of music copyright, a meteoric increase from just a few years prior.<sup>17</sup>

### Benefits of Streaming

Music streaming services benefit customers in a number of ways. First, innovative curation provides a unique and personalized experience for every user based on their likes, interests and listening habits. Personalization is and will continue to be a core characteristic of the streaming music universe—identifying and inventing new ways for music fans to connect, engage, and expand their music listening experience.

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<sup>11</sup> Billboard, *Music Publishing Revenue Topped \$4B in 2020, Says NMPA* (June 15, 2021), available at <https://www.nmpa.org/music-publishing-revenue-topped-4b-in-2020-says-nmpa/>.

<sup>12</sup> Billboard, *Why UMG's Public Debut Boosted Warner & Other Music Stocks Too* (Sept. 21, 2021), available at <https://www.billboard.com/pro/universal-music-public-listing-warner-stocks/>.

<sup>13</sup> MusicBusiness Worldwide, *At Least \$5 Billion was Spent on Music Rights Acquisitions in 2021. Could 2022 be Even Bigger?* (Jan. 10, 2022), available at <https://www.musicbusinessworldwide.com/at-least-5-billion-was-spent-on-music-catalog-acquisitions-in-2021-could-2022-be-even-bigger/>.

<sup>14</sup> “The main takeaway from our research is that online piracy is declining. The key driver for this decline is the increasing availability of affordable legal music, rather than enforcement measures. Where the legal supply of music is affordable, convenient and diverse, there is increasing consumer demand for it. Under the right conditions, consumers are willing to pay for copyright-protected music and to abandon piracy.” João Pedro Quintais and Joost Poort, *The Decline of Online Piracy: How Markets – Not Enforcement – Drive Down Copyright Infringement*, 34 Am. U. Int'l L. Rev. 807, 876 (2019).

<sup>15</sup> “Over six in ten (63%) that have stopped illegally downloading music now use streaming services.” Russell Feldnman, *Number of Britons illegally downloading music falls*, YouGov (Aug. 2, 2018), available at <https://yougov.co.uk/topics/arts/articles-reports/2018/08/02/number-britons-illegally-downloading-music-falls>; see also Joost Poort et al., *Global Online Piracy Study*, 48, Univ. of Amsterdam (July 2018), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3224323](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224323) (in 13 countries studied by the University of Amsterdam, streaming is the most commonly used channel to access music, ahead of digital downloads and physical copies).

<sup>16</sup> See *DSP Notices*, The Mechanical Licensing Collective, available at <https://themlc.com/dsp-notices>.

<sup>17</sup> Will Page, *Global Value of Music Copyright up 2.7% to \$32.5bn in 2020; scales tip in favour of labels whose boom in streaming growth offset the bust in public performance for publishers*, Tarzan Economics (Nov. 16, 2021), available at <https://tarzaneconomics.com/undercurrents/copyright-2021>.

Second, it presents endless opportunities for burgeoning artists.<sup>18</sup> Streaming not only allows for unlimited “shelf space”; it often provides artists of all genres and levels of fame their own platforms. Streaming allows for artists to be discovered around the world, by breaking down historical limitations of music consumption that were once defined by geographic borders. As noted in the Market Study, “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>19</sup>

Third, and relatedly, streaming provides fans with greater opportunities for music discovery and engagement. No longer are fans limited by songs played on the radio, or albums available in retail stores. There has never been a music discovery engine like streaming, allowing fans to find new artists and rediscover old favorites, with each stream generating revenue for that work. More people discover more music via streaming than anywhere else, despite the incredible range of places music enters their lives.<sup>20</sup>

Fourth, streaming services have increased the accessibility of music. Music services can be reached via desktop computer, mobile phones, smart speakers, and in the car. The ability to listen to music (and for that listening to generate revenues) in virtually any environment across numerous devices has broadened music consumption far beyond the home and car.

And lastly, streaming users have access to tens of millions of songs. This choice and variety was not something consumers were able to enjoy before the creation of streaming services – although radio, record shops and live music are an important part of the music fan experience, consumers have been able to find an increased breadth of music thanks to a streaming service.

As a result, music streaming customers span the breadth of the UK population. While over 80% of under 25-year-olds have a music streaming subscription, over-55-year-olds were the fastest growing demographic in streaming over the past 12 months with an increase of over 1.1 million users.<sup>21</sup> According to IET, the “90 per cent increase in the number of over-55s paying to stream music over the [12-month period] was more than four times the growth in the number of people across the population (18.5 per cent).”<sup>22</sup>

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<sup>18</sup> “In 2021 nearly 2,000 artists (1,918) were streamed over 10 million times in the UK (excluding global streams, which tend to be x4 greater). This compares with 1,798 in 2020 and 1,537 in 2019, up a quarter in two years. *It means nearly twice as many artists are now earning meaningful royalties as could do so in the CD era.*” *2021 in Music: More artists succeed as streaming drives music growth, fuelled by record label investment*, bpi (April 1, 2022), available at [2021 in Music: More artists succeed as streaming drives music growth, fuelled by record label investment - bpi](#).

<sup>19</sup> *Music and streaming market study, Statement of Scope*, Competition & Markets Authority, at 8 (Jan. 27, 2022).

<sup>20</sup> DiMA, *Music Discovery Survey Infographic*, (June, 2021), available at <https://dima.org/wp-content/uploads/2021/06/DiMA-A2IM-Indie-Week-Infographic.pdf>.

<sup>21</sup> Jack Loughran, *Music-streaming services booming in the over-55s*, IET (May 6, 2020), available at <https://eandt.theiet.org/content/articles/2020/05/music-streaming-services-booming-in-the-over-55s/#:~:text=The%20research%20suggests%20the%20number,in%20the%20older%20age%20groups>.

<sup>22</sup> *Id.*

## Streaming Economics

The economics of the music industry are complex and highly interdependent. The CMA has indicated that questions concerning the proper amount of royalties paid by streaming services or the most equitable allocation of said royalties are beyond the scope of this study. DiMA agrees with that conclusion. That said, a comprehensive understanding of how streaming revenue is paid and to whom should be helpful to the CMA in analyzing the areas where competition issues arise.

A basic overview of the economic structure follows.

Songwriters and recording artists are not paid directly by streaming services for the use of music they have written and performed. Rather streaming services enter into agreements with record labels, music publishers and collecting societies to make available music that those entities have the rights to license in exchange for payments.

Once streaming services have paid the rightsholders, they have essentially no ability to see who pays whom, and do not know how much ultimately ends up in artists' or songwriters' hands. Streaming services have *no* input into the terms agreed between rightsholders and creators, many of which can be found in agreements negotiated well before streaming emerged.

The labels, publishers and societies share a portion of their revenues with artists and songwriters, but other entities or individuals may also (and often do) participate in the artist's or songwriter's revenue pool – for example, talent managers, lawyers, and business managers.

Approximately 70 percent of streaming revenue is paid to rightsholders and the remaining share funds the costs of operating a streaming service.<sup>23</sup> It is not profit, but used to pay overhead costs as well as ongoing necessary investments in technology to refine compelling user experiences and development of tools that help fans discover their next favorite artists and artists build and connect with their fanbases like never before. Notably, this is less than the margin retained by record stores in the past from the sales of vinyl<sup>24</sup> or CDs.<sup>25</sup>

## Streaming and Competition

As noted above, new music streaming entrants have emerged throughout the short history during which such services have been technologically feasible. Well over 50 innovative digital

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<sup>23</sup>BBC, *MPs call for complete reset of music streaming to ensure fair pay for artists* (July 15, 2021), available at <https://www.bbc.com/news/entertainment-arts-57838473> (finding that 30 percent of streaming revenue goes to the streaming service and the remaining 70 percent is paid to rightsholders).

<sup>24</sup> John Sippel, *Multi-Tiered Pricing Seen On the Rise*, *Billboard* (Apr. 16, 1983), available at [BB-1983-04-16.pdf \(worldradiohistory.com\)](#) (In 1983-1985 at the height of the vinyl era, retailers operated on a 42 percent gross margin).

<sup>25</sup> Don Jeffrey, *Trans World Profits Up 24% In Qtr.*, *Billboard* (Apr. 4, 1992), available at [Billboard-1992-04-04.pdf \(worldradiohistory.com\)](#) (In the CD era, from roughly 1983 to 2003, retailers operated on a 35-37 percent margin).

music services of various shapes, sizes, and business models are in operation today.<sup>26</sup> They are innovative companies ranging from genre-specific services, to services marketed to specific users such as audiophiles and fitness buffs, and services that focus on emerging and independent creators. And as a result, amidst a myriad of demands on consumers’ attention, streaming’s ability to diversify, to innovate, and to creatively connect fans to music has only created greater value to the music ecosystem overall.

With respect to the competitive landscape for licensing music rights, DiMA wishes to highlight a critical factor for the CMA’s consideration that does not appear to be explicitly contemplated by the current study scope, but which is vital to an assessment of competition in this industry—the general absence of competition between large rightsholders for licensees. In short, the practical imperative to offer near-comprehensive access to existing and newly created recordings alike has impeded the operation of effective competition with respect to the complex web of transactions that are necessary to maintain a commercially viable music streaming service in 2022. This fact has been recognized by numerous regulators. For example, one agency has found that the major record companies exercise “complementary oligopoly” power over distribution platforms offering customers the ability to hear the song of their choosing, at the time of their choosing.<sup>27</sup> As a court put it, “sound recording rightsholders have considerable market power vis-à-vis interactive streaming service providers, and they have leveraged that power to extract excessive royalties.”<sup>28</sup>

The rise of streaming as the leading channel for music consumption has undoubtedly shifted the array of opportunities and challenges confronting participants at virtually every level of the chain of distribution—from songwriters and performing artists, to music publishers and record labels, through to the music listeners themselves. Some of those evolutions are plainly positive—including among others, as noted above, newfound pathways for music fans to discover previously unknown artists, along with the direct consumer welfare effects of retail-scale access to an unprecedentedly large collection of recordings. Others less so—including among others the exacerbation of competitive inefficiencies that have resulted from the large-scale aggregation of music rights in a handful of companies that license catalogues which are effectively complements, not substitutes, from a commercial perspective.<sup>29</sup>

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<sup>26</sup> See *DSP Notices*, The Mechanical Licensing Collective, available at <https://themlc.com/dsp-notices>.

<sup>27</sup> See, e.g., United States Copyright Royalty Board, *Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies to Facilitate Those Performances (Web V)*, 86 Fed. Reg. 59452, 59455 (2021) (“Simply put, the Judges have found that each Major [record label] is a ‘Must Have’ licensor for noninteractive services . . . meaning that each noninteractive service ‘must have’ a license for the entire repertoires of Sony, Universal and Warner, in order to remain in business. Also, because the *interactive* market was proffered as a benchmark market . . . the judges performed the same inquiry that market, concluding that interactive licensees likewise ‘must have’ access to the repertoires of each Major in order to survive commercially. From a more technical economic viewpoint, the ‘Must Have’ status of the three Majors rendered each a ‘complementary oligopolist. . . [T]his status allows each Major to wield the individual economic power of a monopolist, but the exercise of that power leads to royalty rates that are even greater than those that would be set by a single monopolist.”) (citations omitted).

<sup>28</sup> See *Johnson v. Copyright Royalty Board*, 969 F.3d 363, 382 (D.C. Cir. 2020).

<sup>29</sup> See, e.g., United States Federal Trade Commission, *Statement of Bureau of Competition Director Richard A. Feinstein In the Matter of Vivendi, S.A. and EMI Recorded Music* (September 21, 2012) (“Commission staff found considerable evidence that each leading interactive streaming service must carry the music of each Major to be

We thank the CMA for requesting stakeholder input on the Market Study. We would be glad to serve as a resource on the streaming industry, how it fits in the larger music ecosystem, and the economics of music streaming, and welcome any questions that you have.

Sincerely,



Garrett Levin  
President and CEO  
Digital Media Association

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competitive. Because each Major currently controls recorded music necessary for these streaming services, the music is more complementary than substitutable in this context[.]”).