

UK Competition Market Authority market study into music and streaming services

Submission by the European Composer and Songwriter Alliance (ECSA)

Introduction

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 European countries. With 59 member organisations across Europe, the Alliance speaks for the interests of music creators of art and classical music (contemporary), film and audiovisual music, as well as popular music. The main objective of the Alliance is to defend and promote the rights of authors of music at the national, European and international levels and improve social and economic development of music creation in Europe.

In full support to the campaign and advocacy activities undertaken by ECSA's UK Member organisation, the Ivors Academy, including the Fix Streaming and Broken record campaigns, our Alliance welcomed the inquiry on the economics of music streaming by the UK Digital, Culture, Media and Sport Committee (DCMS). ECSA also commended the final DCMS report, including its recommendation to refer a case to the Competition and Markets Authority (CMA), to undertake a full market study into the economic impact of the majors' dominance. Our association published in May 2021 its [position regarding Music streaming and its impact on composers and songwriters](#), which tackles many of the issues put forward by the UK DCMS committee

We are therefore grateful that the CMA is now conducting such a study, which has the potential to bring to light several key issues raised by the domination of the music industry by the major music groups. We welcome the CMA's statement of scope and support a full market investigation, which should encourage other EU and national competition authorities to follow suit. In our view, the CMA should carefully assess, as a matter of overarching priority, the effects of the domination of the music industry by the major music groups, a widespread phenomenon which affects music creators as well as other stakeholders on a global scale.

Anachronistic deals and the loss of value for the song

Historically, in order to offer an alternative to piracy and to counter the decline of CD sales, streaming services started to develop in the 2000s with an economic model based on cheap or free subscriptions, and with a "CD-style model" for sharing income generated between music industry stakeholders, where the record labels get the lion's share of the revenues. Such a repartition could be justified with physical products because of the production, distribution and marketing costs associated with CDs, but

applying the same model to streaming has become largely anachronistic, since streaming services do not entail the same costs and have become much more than a mere substitution of CD sales. In the meantime, and as a result, the exponential growth of music streaming services led to a devaluation of authors rights.

Indeed, in today's streaming deals, the value going to the recording rights is still often 4 or 5 times higher than that going to the authors' rights (or publishing rights). As a result, music author's rights - in other words, the value attached to a song - has been undervalued. In 2020, a survey¹ conducted in US, UK, Canada, Australia, France and Germany with more than six thousand participants concluded that 60% of respondents consider that a good song is the most important factor when they decide what music to listen to. So why is the value attached to the song and the authors' remuneration so low?

Addressing the conflicts of interests in the streaming market

In our view, this loss of value for the song is due to the fact that music majors – who act as both record labels and music publishers - usually favour the recording rights to the detriment of author's rights (or publishing rights). This is because - as a result of industry conventions - they make more revenues out of recordings, where only a small share is usually paid to the performers, compared to publishing rights, where the publisher usually receives a minority share of income. Publishing companies can therefore be restricted from negotiating freely with streaming services to obtain the best possible deal for the writers and composers signed to them, which may result in a reduction in the percentage of the total royalty pot flowing to the recording side. Those conflicts of interest also occur when collective management organisations (CMOs) are negotiating and licensing the music major publishers' repertoire to streaming services because of the music majors publishers' influence and power within the CMOs.

Preferential treatment and its effects on cultural diversity and consumer choice

In addition, an examination of the music value chain should focus on the fact that the major music groups have preferential market playlisting and positioning which works not only against the individual and independent actors in the market, but also limits cultural diversity and concentrates consumer listening to a narrow number of music recordings. Those concerns are exacerbated by the fact that some music companies also hold equity stakes in some streaming services. In particular, the major music companies and Merlin invested in Spotify's early development and Universal and Sony still retain direct shareholdings in Spotify.

User generated content platforms and their detrimental impact on the streaming market

Today, online content-sharing service providers (such as YouTube) compete with fully licensed streaming services (such as Spotify) in a largely unfair manner. This is mainly due to safe harbour provisions, that have allowed them to circumvent fair remuneration for copyright protected content on their services. We are a strong supporter of

¹ Rebalancing the Song Economy, Midia Research, April 2021, <https://www.midiaresearch.com/reports/rebalancing-the-song-economy>

measures aimed at reducing the harmful impact of safe harbour provisions on music authors and other rightsholders, such as Article 17 of the EU 2019 Copyright Directive, and we encourage the UK to put in place measures that would ensure that UK music creators are not put at disadvantage with music authors in the EU.

A CMA investigation into this area could result in reforms that would solve the problem of copyright safe-harbours and remove the current structural conditions preventing a fair competition and harming consumers in the music streaming market. This would grow the music pie, enable a fairer remuneration for all those involved in the music market and release immense benefits to consumers in the future. It would also help promote fairer competition between those platforms and subscription-based services, and level the playing field for all music streaming services. Indeed, the fact that subscription-based services have free tiers (with very low income for authors) and/or have not raised their monthly subscription price in years (in contrast with VOD services such as Netflix) is largely due to the competition from content sharing services.

Conclusion

Reforming streaming and make it sustainable is one of the core objectives of our Alliance. There is no one single magic solution to do so, but rather several key changes required to improve the music market, restore the value of songs and compositions, evaluate and reform the current allocation of revenues per stream, and increase transparency (including for algorithms and playlists). In that regard, the UK CMA study represents a key opportunity to assess the effects of the dominance of the music market by the main music majors and, as a result, its consequences on the fair remuneration of music creators.

ECSA (European Composer and Songwriter Alliance) - The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 European countries. With 59 member organizations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music. Web: www.composeralliance.org / EU Transparency Register ID: 71423433087-91