



Submission to the Competition and Markets Authority (CMA) in relation to the CMA's Statement of Scope for its Music and Streaming Market Study

1. What is IMPEL?

IMPEL Collective Licensing Management Limited (“IMPEL”) is a licensing body established by a group of independent publishers to license their digital rights to the multi-territory streaming platforms such as Spotify, Apple, Amazon, YouTube and others. It is a UK company limited by guarantee (with company registration number 11152660) that is fully owned and controlled by its members who are comprised of independent music publishers. The key membership criteria in IMPEL’s articles are (i) that a publisher owns and controls rights in musical works with an annual share of the global market of less than 5% (although there are circumstances where this criterion can be waived if the IMPEL board reasonably believes for objectively justifiable reasons that it is in the interests of the organisation that a publisher should be refused or admitted to membership notwithstanding that this condition has or has not been met in a particular instance) and (ii) that the publisher is able to license the reproduction or mechanical rights in some or all of its catalogue of works (this is referred to within IMPEL as “qualifying repertoire”)¹.

IMPEL started on or around 2013 as a group of independent music publishers within MCPS but became fully independent when it incorporated as a separate company and entered into a licensing and administration agreement with the French PRO, SACEM.

As a collective of independent music publishers who have taken control of licensing their digital rights to the streaming services, we believe we are unique in the publishing world.

2. Who are IMPEL’s members?

IMPEL started in 2018 with 20 members from a total of 3 countries. As of the date of this submission, it has 47 members across 9 countries. Members are located in UK, USA, Canada, Netherlands, Israel, Japan, Turkey, Portugal and Cote d’Ivoire. They range from large independent publishers such as Reservoir Media, Bucks Music and Beggars Music to smaller boutique publishers such as Manners McDade and Truelove Music. A minority of members are allied to record

¹ Whether works (or shares thereof) “qualify” depends on the PRO membership of the writer. If the writer is a member of either ACUM, ABRAMUS, APRA, ASCAP, BMI, GMR (only to the extent that an online licence covers the United States of America), IMRO, MESAM, NEXTONE, PRS, SAMRO, SESAC, SOCAN (or such other PRO as IMPEL may from time to time be able designate as a qualifying society) then the writer may grant a mandate to its publisher to license his or her mechanical rights and the publisher may, in turn, mandate IMPEL to license such rights. If the writer is a member of a different society (often referred to as a “BIEM Society”) then the writers mechanical rights must be licensed through the writer’s home society and cannot flow through IMPEL.

companies (eg. Cooking Vinyl, Beggars Music) but most are stand-alone publishers. Details of IMPEL members can be found on www.impel-music.com.

3. How does IMPEL license the streaming platforms?

IMPEL takes a mandate from its members (acting as agent). Under its service agreement with SACEM, IMPEL is able to license the mechanical rights of its members' qualifying repertoire to multi-territory digital streaming services and, provided that the license meets certain quality assurance criteria, SACEM is able to license the matching public performance rights under mandate agreements that it has in place with the relevant PROs (see Footnote 1 below for a current list). In this way, IMPEL members are able to license the qualifying works that they represent across over 190 territories and to receive most of the resulting income (100% of the mechanical share and the "publishers share" of performance income within 6 months of usage (3 months from usage in the case of Apple Music). The "writer's share" of public performance income is remitted to the writers' home PROs which distribute it to the writers.

Under its arrangements with SACEM, IMPEL can either license its mechanical rights directly to a digital service (with SACEM licensing the matching performing right as described above) or it can opt to add its repertoire to the repertoire being licensed by SACEM under SACEM's own licence. Where IMPEL licenses directly, strict "Chinese Wall" arrangements are put in place with SACEM to avoid IMPEL knowing the terms of SACEM's own licence and to avoid the SACEM licensing team knowing the terms of IMPEL's licence.²

Although SACEM is IMPEL's main licensing and administration partner (covering EEA, UK, Switzerland and other territories on a licence-by-licence basis with members' consent), IMPEL also has an agreement with LATINAUTOR which allows opting-in members to license their rights to digital services covering 15 Latin American countries.

IMPEL is currently working on providing members with additional options to license into other territories and regions.

4. IMPEL's history of involvement and expertise in the subject matter

IMPEL and its publisher members have been developing expertise in digital licensing since 2013, with an exponential growth in experience and expertise since it became a fully independent entity in 2018. It consults with SACEM on all significant SACEM-negotiated deals and discusses issues of importance and concern in regular meetings. Conversations involve board members and members of IMPEL's licensing, operational and distribution committees and topics cover individual licences and thematic issues. IMPEL also has a goal to provide its members with as much information as possible (within the bounds of Competition Law and commercial confidentiality) in order to empower them to make optimal business decisions. As their digital business is becoming more and more important, it is necessary to understand the digital licensing landscape as it evolves and to receive as much information as possible on the performance of their qualifying works within IMPEL licences. IMPEL therefore holds regular webinars and provides members with Licensing and Operations Bulletins. Together with the Independent Music Publishers Forum ("IMPF") it has commissioned a Digital Licensing Handbook which was made exclusively available to IMPEL and IMPF members in July 2021.

² Within this submission, any reference to IMPEL licences includes both IMPEL-negotiated licences and SACEM-negotiated licences that include IMPEL repertoire.

5. IMPEL's Vision

Through increased strength through a growing market share and through continually increasing expertise (from its executive team, its members and its partners) IMPEL aspires to play a leading role in creating the future for independent music publishers.

In furtherance of this goal, IMPEL has entered into a Charter of Co-operation with IMPF in which IMPEL and IMPF have agreed to collaborate in the following areas ("Charter Issues").

1. Improved streamlining of digital licensing.
2. Increased choice, flexibility and transparency for independent music publishers within the arena of digital licensing.
3. Driving innovation in digital licensing for the benefit of independent music publishers.

To provide guidance and a positive direction of travel, IMPEL and IMPF have published a shared Statement of Principles relating to digital licensing. These Principles are:-

1. **Music is not fungible; It is unique.**
2. **Independent publishers develop songwriters in the earliest stages of their professional careers and they are indispensable to the music ecosystem.**
3. **The value of repertoire should be measured by its contribution to a digital service's success.**
4. **IMPEL, and the independent music publishing community generally are more than their raw market share. In a world of personalised programming, diverse catalogues hold a higher value as a conduit to multitudinous users.**
5. **Value should be given to the way songs resonate with listeners, reduce churn and attract advertisers and brands.**
6. **Commercial licensing models should suit both the digital services and the rightsholders.**
7. **Digital services should provide publishers with the information needed to achieve a fair bargain.**
8. **Collaboration with digital services is the key to a better understanding of the real and measurable value of songs and for innovation of features that leverage that value.**
9. **Together, digital services and publishers need to focus on a vision of operational excellence.**
10. **Ultimately, streaming services should be contributing more revenue to songwriters and publishers.**

Having set out IMPEL's role and relevance to the CMA's Music and Streaming Market Survey, we would make the following comments on the proposed Statement of Scope and Key Questions posed by the CMA.

6. Point 1 - Overall concern regarding the secondary role of the publisher within the proposed Statement of Scope

We are concerned that the statement made in Paragraph 84, namely that

Of the possible concerns that the CMA is aware of, 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.

Songs and publishing rights are not merely a function of or offshoot of records and have many unique features that play out in the streaming environment quite separately to records. Within the digital streaming environment there are significant issues of importance and concern in which the publishing rights are foregrounded and rights in recordings are much less salient ("Song-Oriented

Services”). For example, karaoke services (eg. Singa, Smule), educational services (eg. Yousician and Guitar Tuna) and UCC services (eg, YouTube, Triller).

Firstly, treating publishing as inextricably linked to the master side of licensing risks losing sight of important issues that relate principally to songs, songwriters and publishers. For example, there are licensing practices relating to Song-Oriented Services that can create barriers to entry. For example, digital services that work with limited repertoire such as karaoke and educational services may freely choose to enter into licences with the major publishers before looking further afield but this can easily create an unfair advantage if, for example, a publisher were to insist on licensing under conditions of exclusivity. These can be valuable services for publishers to license but there is a risk that smaller publishers might not have the opportunity to pitch their repertoire.

Secondly, if publishers and publishing licensing is not examined separately, the study will miss gaining insights into the way in which publishers develop writers (and writer/artists). Previously, labels were predominant in A&R development but as the industry has changed, it is often the longer-term commitment and investment that comes from publishers that sets writers and writer artists on a growth trajectory. This is an important part of the value chain and deserves consideration.

Finally, there is a risk that if the study works on the basis of an assumption that key competition and consumer impacts flow from issues relating to recordings, will serve to further entrench the lower status that publishing rights have been given within the value chain. There is more nuance to this issue and the study should take it on board.

7. Point 2 - Business models and the need for music companies and licensing organisations to have relevant and appropriate commercial information around which to create the licensing model and upon which to base the licensing negotiation.

As digital services have evolved, the business models have become more complicated. For example, bundle deals, telco and hardware tie-ins in which the music is an incentive to buy another product. In addition, there is an increasing focus on the ‘monetisation of fandom’, which whilst predominant in Asia is making its way to the West with services like Patreon. The song is highly relevant to these services, particularly, for example, in live streamed performances where, for example, tipping the performer is an option. How do we value the contribution of the song in this context? Should the publisher be entitled to receive a share of the tip given that it is the live performance of a song that has contributed to the listeners’ pleasure.

Evaluating the contribution of the musical works relative to the profitability of the service as a whole (or at least to relevant parts of the service) is a real challenge, particularly in an environment where digital services try to silo different aspects of their business model and ‘quarantine’ those aspects that may not have a traditional music streaming function. It is important that, within the reasonable boundaries of commercial confidentiality, licensors should have solid data upon which to argue for a particular license model and to base their negotiations to secure the appropriate value for the rights that they represent. This information should come from the digital services themselves but PROs and CMOs are also great sources of generalisable data that could be made available to the industry to understand the income and usage patterns on particular services. We would urge the CMA to consider the need to provide relevant information to music companies and licensors in order that they can optimally secure the value of the rights that they represent.

8. Point 3 – The need to specifically consider the contribution of multi-territory licensing to effective competition and its contribution to efficiency, speed and transparency, and revenue growth.

The opportunity to license effectively on a multi-territory basis is essential for creators and music companies to receive the value of their rights. Although there can be valid reasons for taking a national licensing approach in certain circumstances, the downside is that each national CMO has to separate the income relating to national repertoire and remit it to the writer's and/or publisher's home CMO or to a local sub-publisher. This means that there are two or three sets of commissions being taken before the income reaches its final destination. The licensing CMO in the first territory has to identify the usage and income in a large quantity of data, takes a commission and passes the balance through to the local sub-publisher and/or the publisher's or writer's home CMO. If it is received by a sub-publisher, the sub-publisher takes a commission and remits to the original publisher, who then shares the income with the writer in accordance with the contract. For certain types of income, this is currently the only way to license but it is slow, expensive and error-prone. The publisher and the writer will receive the information from different territories in different formats and it will be hard to triangulate. However, for streaming services, multi-territory licensing is a much better option. In the case of IMPEL, the publisher will be accounted for all the territories covered by the relevant licence at once (6 or 3 months after usage in the case of the main streaming services) and will receive data which gives a full picture of the international performance of its catalogue. There is just one commission (that taken by IMPEL, which includes the commission payable to SACEM). BI tools are constantly evolving which place publishers and writers closer to the point of exploitation of their works and provide the data and cashflow that facilitate their business, careers and lives.

Multi-territory licensing was made possible by the creation of a structural framework, provided in 2005 by the EU Commission. This has required cooperation between CMOs (which would have been hard to achieve absent a degree of coercion) but also incentivised many CMOs to capture new opportunities, and for entities like IMPEL to come into existence. The insistence by the EU that rightsholders should have choice over their administrator for these types of services, when operating in Europe was critical to the huge strides that have been made and, in a new Brexit environment, it is essential for the CMA to maintain a complimentary multi-territory online licensing framework to that of the EU. That being the case, we believe that there should be specific reference to and focus on that framework within the study scope.

In conclusion, IMPEL shares the strategic goal of the CMA to foster effective competition in digital markets and would appreciate the opportunity to contribute its unique perspective to its market study.