Competition and Markets Authority (CMA) Open Consultation
Music and Streaming Market Study

The Music Publishers Association (MPA) is a membership organisation representing circa 200 UK music publishing companies, ranging from iconic Independents to the global Major Publishers. Via those members, the MPA represents over 95% of UK song rights. The MPA Group also includes MCPS, the mechanical rights organisation (representing over 23,000 direct composer and songwriter members and seven thousand music publishers) and PMLL, providing a blanket licence solution for photocopied, printed music of original compositions to schools and choirs.

Introduction
The digital economy is key to the future of the UK. The Digital Markets Unit consultation noted that the digital economy contributes over £150 billion to the UK economy. The creative sector contributed £115.9 billion to the UK economy in 2019, including £5.8 billion (as at 2019) directly from the music sector, which is one of only two net-exporter countries in Europe, and one of just three, net-exporters, globally. We stress the importance of music and other creative works as being the main drivers for the success of the digital economy. Without creative content, the global digital entertainment, retail and streaming firms have no business. The pandemic has further highlighted the importance of creative works for the UK economy and the essential role of our IP in global markets. We urge the Government to tackle the barriers to innovation, competition and due revenues, caused by dominant tech services controlling the consumer content market. The digital economy has changed the landscape of music publishing. Labels and publishers once mainly used physical mediums like CDs to generate revenues at point of sale. Now Digital Service Providers (DSPs) with entirely different economic goals have the ability to control and set the consumer price of music products, whilst also structuring their services to minimise the amount of revenues they argue are available to pay for music rights, by offering it as part of digital product bundles with non-music products that give the DSPs greater profit margins.

Below, we present answers only to the questions available to us as a collective organisation. As representatives of the music publishing sector, we ask the CMA to improve the market for music rights online by:

- **Creating joined-up and comprehensive enforcement regimes clearly communicating to music-using services of their obligations to rightsholders.**
- **Analysing the effects of streaming service market dominance beyond consumer pricing. Rightsholders must be able to properly access the full value achieved by services from the engagement of consumers with music.**

Questions

1 *What have been the main changes in the music industry as part of the shift to music streaming, including any changes to: a. business models; b. the cost structure of the industry (e.g., costs of music companies, costs recouped from music creators; and costs of music streaming services); c. risks that music companies and music streaming services take on; and d. the way firms compete at different levels in the music streaming value chain?*

Labels and publishers once mainly depended on music sales through mediums like CDs to generate revenues, which linked the final point of sale price (through Recommended Retail Price (RRP) & Published Dealer Price (PDP)) to the value of the revenues generated. DSPs have different economic goals and are able to leverage the consumer price of music products and their vertical-integration business models to minimise remuneration to rightsholders in music content. Factors such as the value of sales for mobile phones, the increase of company stock value and the value of data mining in generating what consumers want all greatly outweigh the values achieved solely through music sales. The DSPs also retail digital music to draw customers towards buying other non-music products at high consumer price points that give them greater profit margins. Similarly, there is a profound information asymmetry between streaming services and rightsholders. The vast disparity of information available to parties when negotiating streaming rates has tilted the scales away from rightsholders and towards streaming services, who hold much of this information. This imbalance has been the subject of focus in the ongoing rate-setting proceedings in the U.S. All of these additional factors now impact on the value set for music and other creative content.

Further, the licensing online and digital exploitation of musical works, required a significant change to the operational capacity and capabilities of music royalty management. For example, independent record labels need to submit label-copy (i.e., identifying information on the musical works, their ownership, durations etc.) to Mechanical Rights Organisations (MROs) (under a published AP2 licensing scheme in the UK) prior to release of physical products (e.g., CDs), thus the matching of recordings to musical works/compositions is carried out prior to release of recordings on such formats, meaning low levels of unidentified usage. In comparison, for online exploitation, multiple copyright controls are required, such as the inclusion of performing rights information relating to the communication to the public. However, record companies are not required to submit label-copy to MROs or Performing Rights Organisations (PROs) when they make their sound recordings available to DSPs, and sometimes the sound recordings are made available on digital formats before the equivalent physical product release. This increases the burden on MROs and PROs in respect of data gathering and matching because DSPs report usage without this comprehensive information.

Rights ownership continues to become diversified as these further categories of rights are exploited, and data volumes have drastically increased (and continue to do so), in line with the speed of online consumption.

Music publishing rightsholders and RMOs have had to adapt in order to manage these multi-faceted changes and capabilities, so that they can maintain accurate and efficient reporting and distribution of royalties to songwriters and composers. Music publishers are at the forefront of providing solutions to aid songwriters and composers including by way of direct, multi-territory, online licensing by music publishing rightsholders (initiated following the Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services alongside in many cases, PRO partners and processing 'Hubs' (e.g., ICE Services, based in the UK) and partial blanket licencing arrangements on a mono-territorial basis. This has enabled rightsholders to streamline the flow of rights and royalties via fewer, national stakeholders and to deliver faster, more efficient royalty collections, claims and distributions. These frameworks have also provided means for smaller music publishers to achieve competitive royalty rates negotiated collectively and alongside larger stakeholders.

The ability of music publishers to negotiate with a free hand across markets has driven up royalty revenues for music publishing rights and has increased value for music publishing copyrights, internationally. This uplift however has been slow when compared to the value derived outside of the music industry by tech companies benefitting from the efforts of creators and the music publishers who invest in them. The IPO's, Music Creators' Earnings in the Digital Era study, reported growth in revenues for songwriters and composers over the 'digital decade' observed of 2008-2019. Furthermore, the increase in publishing rights revenues was greater for songwriters and composers than for publishers due to the flow-through of the majority of value from music publishers to their clients.

Music publishing rights administrators continue to regularly invest heavily and swiftly in systems and expertise to be able to deliver these results successfully, by developing capabilities able to manage new suites of rights, at speed and volume, and from multiple territories. That investment does not stop, and unless fair remuneration is delivered to rightsholders through their DSP licences, this will lead to increasingly diminished returns.

4. *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?*

The CMA Study should give due focus to the digital music services' control of revenues available to music rightsholders. We welcome attention to vertical integration and networked customer acquisition. In that, it is important to note that these activities have a negative impact on rightsholders which will ultimately affect music creators and consumers.

For example, the general entertainment streaming sector (Amazon et al), widely operate a correlating relationship between single consumer price-points for streaming and volume consumption (through upsell and rental fees). Audio-only streaming services do not escalate returns proportionately with consumption which dilutes the value of content over time and usage. Furthermore, audio-only streaming services have constrained single subscription costs for over a decade, alongside extending discounts, further diminishing returns for copyright. As formats converge enabling broader consumption, the returns from users must be able to grow proportionately, to ensure that copyright is duly remunerated in line with exploitation, rather than being fixed to a sliding value scale. Undermining usage values undermines revenues available to rightsholders, which undermines value for copyright and in turn, undermines the achievable returns for creators. While we recognise the DSP platforms' argument that their subscription price is competing with free or pirated services, that is only one consideration in both their vertically-integrated consumer offerings and within their overall economics of doing business. For example, services also achieve value from music content products beyond subscription revenues. Consumer data, advertising, upsell commissions and platform fees are amongst valuable market rewards which may not be included in music-rights licencing deals (particularly for publishing rights). There is no value added to creators if rightsholders cannot pass through these rewards as only the DSPs receive the revenues associated with the sales of their non-music related products. Large DSPs often retain a 30%-40% margin. This would be unheard of in many sectors but, their market dominance denies rightsholders platform choice for market access so the usual competitive incentives to reward suppliers are not there. The music industry can converge on the need to analyse such serious competition issues which restrain achievable revenues for their copyright assets.

An analysis of an economic system cannot only look at the revenue distribution pipeline. It must also look at the market's generation of wealth and its supply into our sector's economic funnel.

19. *What barriers, if any, are there to: a. entry and/or expansion in music streaming services; and b. innovation in music streaming services? and*
21. *How can competition in music streaming services be strengthened?*

Dominant, integrated services present barriers to entry and innovation by being end-to-end 'gatekeepers' to the market. Large platforms may be inescapable for new products and services, who have limited or no choice in the market to reach consumers. The same, integrated businesses, also provide the globally dominant app stores. These closed ecosystems benefit from the fees, upsell commissions and consumer data achieved by the apps they host, which limits available returns for innovation and growth. The cost of selling through app stores further removes value from creators. Moreover, app store services may be able to 'incubate' innovative services which they can then acquire into their own businesses, flattening the trajectory of potential competitors into the market and capturing the consumer trends and technologies they create.

At the same time, these app stores and platforms do not prioritise the hosting of legitimate services. This enables the hosting of illegal content providers and file sharers willing to pay the platform fee and it affords them a legitimacy to consumers, by being made available alongside properly licensed services. Legitimate services cannot compete with unlicensed competitors who avoid the necessary costs of licensing, identifying and operating copyrights. Whilst these proprietary platforms are able to control access to the market and support illegitimate services, innovation, consumer pricing and the value for copyrights will be diluted.

22. *How can better outcomes for consumers be achieved in music streaming?*

The IPO's Creator Earnings Study and the DCMS Select Committee Inquiry observed that music publishers and the agreements they have with their songwriters and composers, are demonstrably positive for those creators' earnings. Music publishers have maintained revenues for their creators and, they pass through revenues achieved, in the creators' favour. It is standard practice in most music publishing arrangements, to pass the majority of royalty earnings to creators (e.g., circa 80%/20% to the songwriter/composer, in many circumstances). Supporting music publishers and encouraging a positive, stable environment for investment by publishers in all musical works ensures that consumers and creators alike will benefit from the continuous delivery of music content, which is rewarded, protected and sustainable.

Specifically, proposals have been made to offer writers the right to reverse any grants of copyright made to publishers after 20 years and allow the writers to renegotiate contract terms at this point (Private Members Bill entitled *"Copyright (Rights and Remuneration of Musicians, Etc.")* presented by Kevin Brennan, MP, 2021). These practices have no impact on changing the economics of streaming but could destabilise the existing publishing investment environment. A better outcome would be to focus on making reporting by DSPs more transparent so that composers, publishers and governing bodies could better understand current DSP usage and values.

The CMA can support a level playing field for legitimate services and the sustainable creation of music by stronger licensing obligations (for example, in relation to the DSP's safe harbour arguments), the enforcement of those licensing obligations and the application of obligations universally, to all music-using services and product. Notable (and addressable) gaps in this enforcement include:

(i) widescale availability of unlicensed services through Apps on Apple, Google etc. who don't address this responsibly; and
(ii) widescale availability of UGC services and illegal 'ripping' services with business models that makes it difficult for rightsholders to enforce rights and harder to secure fair value in negotiation.

The ability for rightsholders to license effectively will redress the ability of incumbent services to own the access to and values derived from consumers. To properly address the streaming market, the CMA must give focus to the market's generation of wealth and its supply into our sector's economic funnel.