<u>MUSICIAN'S UNION</u>

Streaming Market Study

On behalf of the Musicians' Union (MU) I would like to thank you for launching a market study into the music streaming market. We believe this study is vital to address a market failure stemming from the market power of the following major global corporations:

- Google, Amazon and Apple – Digital Service Providers (DSPs) who run streaming platforms as part of their businesses;
- Sony, Universal and Warner – the major music companies that dominate the global music market (record labels and publishers).

The Musicians' Union represents more than 32,000 professional musicians, working in all sectors and genres of the music industry. We set out our main concerns regarding competition in the music streaming market in this submission and would be very happy to meet and provide further information as and when required.

We were extremely grateful to the Digital, Culture, Media and Sport Select Committee for their Inquiry into the Economics of Music Streaming, which drew attention to the impact of issues with the streaming market on our members. We made a thorough submission to the Inquiry both in writing and through oral evidence given by our General Secretary, Horace Trubridge. We were also pleased to see the Government's response to the recommendations made by the Committee, for continuing to investigate the issue through meetings convened by the Intellectual Property Office and for referring the matter to the CMA. This market study is vital and warmly welcomed by performing musicians, songwriters and composers alike.

The careers of musicians and songwriters have for years been hampered by the abuse that arises from the market dominance and power of the major music companies. To have this recognised by the Select Committee, cross-party MPs and the Government, especially during the pandemic when so many have faced financial hardship, has given them hope of a fairer and less stifling music market.

We are also concerned about the impact of Google, Apple and Amazon on the music streaming market and the suppressing effect they have on pricing and music licensing. Companies such as Spotify, Deezer and Soundcloud, which focus primarily on music streaming, cannot put their prices up because they are competing with corporations whose profits are derived from other areas of their business and who can therefore afford to run music streaming as a loss leader. This must be addressed as it is having an impact on the revenue generated for musicians, songwriters and composers.

There are many issues with the distribution of music streaming revenue and how it filters down to our members. However, in this paper we will focus primarily on the issues around competition, market dominance and where we think the market is failing both our members, consumers and to a certain extent some streaming platforms and the music publishing business.

<u>Creators' earnings in the digital era</u>
Music streaming is a phenomenal success. It has revolutionised music consumption, reduced piracy and labels are reporting record profits from it. The IFPI's Global Music Report 2019 showed that the recorded music market grew by 9.7% worldwide in 2018, the fourth consecutive year of growth. Streaming revenue grew by 34% and accounted for almost half

(47%) of global revenue, driven by a 32.9% increase in paid subscription streaming. There were 255 million users of paid streaming services at the end of 2018 accounting for 37% of total recorded music revenue. Growth in streaming more than offset a 10.1% decline in physical revenue and a 21.2% decline in download revenue. However, this growth is not reflected in musicians' earnings. The vast majority of musicians earn less than £30k from music and 45% earn less than £20k. 90% of musicians are freelance and have very little in the way of a financial safety net. During the first few months of the Covid-19 crisis, this was demonstrated clearly when over 20,000 applications were made by musicians to music industry hardship funds. Musicians can very quickly fall out of the music industry when their income dries up.

A survey of members of the Musicians' Union and The Ivors Academy on streaming income in November 2020 (with 320 respondents) returned the following results:

- More than 80% of respondents had earned less than £200 from streaming in 2019.
- 63% of respondents had earned less than £50 from streaming in 2019.
- 82% of respondents had earned less than £50 from their most streamed track in 2019.
- Over 90% of respondents said less than 5% of their earnings came from streaming.

Traditionally, royalties paid to performing musicians by the collecting society PPL covering broadcast and public performance of their recorded performances help to sustain them. Royalties provide a regular source of income and therefore help to keep musicians working in music. However, these royalties do not currently apply to streaming revenue. For the Musicians' Union which represents session musicians as well as featured artists, this is one of the most significant issues with the music streaming market in terms of how musicians are remunerated.

During the Covid-19 pandemic, Public First carried out a consumer survey on behalf of UK Music which showed the very significant value of British music to British consumers. The survey found that:

- 75% of the public are proud of the UK music industry and its heritage
- 59% believe music improves the UK's reputation overseas
- 74% say music is important to their quality of life
- UK listens to 60 billion hours of music a year – the equivalent of 7 million years

If musicians, songwriters and composers are unable to make a living from their work, then British music will dry up. We cannot afford a situation where only the privately wealthy can pursue a career in music as this will diminish the diversity of new British music available to consumers. This is a very real threat if issues with the music streaming market are not addressed.

<u>Payments to Non-Featured Artists (session musicians)</u>

Non-Featured Artists (NFA's) more commonly referred to as session musicians perform on many recordings that are released by labels and streamed on DSP's. The NFA is most often hired by the record label to perform on an artist's track and is paid by the record label for the studio session, they receive no further payment from the record label regardless of how successful the recording becomes. However, through a collecting society (PPL in the UK) the NFA receives further payment for the use of their recorded performance in a radio/TV broadcast or when their recorded performance is used in a business premises. However, the DSP pays nothing to a collecting society or the NFA for the use of their recorded performance. We believe that this is inequitable and the DSP should be paying for the use of an NFA's recorded performance on the platform.

Pricing

In terms of the consumer experience, music streaming offers a previously unprecedented access to all music in one app or device. Despite this, pricing remains relatively low and unlike audio-visual streaming services, music streaming has remained at the same price point for a decade. There is certainly an argument that music streaming platforms should increase their pricing. Price increases by Disney+, Amazon Prime, Netflix, Now TV and other audio-visual streaming platforms have not impacted on subscriber numbers and in fact many consumers subscribe to more than one. One of the market issues with music streaming is that the services predominantly carry the same catalogue of music which is controlled primarily by a few major companies. There is some exclusive content, particularly podcasts, which feature on one music streaming platform or another but generally musical content is the same. In order to remain competitive, therefore, the platforms have maintained the same pricing as each other. The £9.99 monthly rate has not increased in over a decade; surely this is market failure.

YouTube, owned by Google, presents a problem for the paid streaming services because it is ad-funded and therefore free to the consumer. The music industry has united in calling for a resolution to the 'value gap', essentially the undervaluing of content offered on YouTube who don't pay appropriate licence fees for user-uploaded or generated content. This is a result of 'safe harbour' legislation which protects platforms from any liability for copyright material uploaded by users. The EU 'Digital Single Market' Copyright Directive would have addressed this issue but due to Brexit we have not had the benefit of this in the UK.

The most significant issue suppressing pricing is that some of the major music streaming services, for example those owned by Google, Apple and Amazon, make their money from selling devices and from their other services (in the example of Amazon, their sales and delivery service) which means they can afford to offer music streaming as a loss leader. This has a negative impact on music-only services such as Spotify, Deezer and Soundcloud who are then unable to raise their prices for fear of losing subscribers.

If pricing was able to increase gradually, so as to keep pace with inflation, then this would benefit musicians, songwriters and composers and keep them making music.

Catalogue owned by the major labels under 'heritage contracts'

The consumption of 'catalogue' music is growing. According to Universal Music's parent company Vivendi's annual reports**,** catalogue music contributed 57% of Universal's global digital revenues in 2019, up from 54% the year before. Rolling Stone magazine reports that "this trend of [catalogue] eating into the market share of new music tessellates with the fact that the fastest-growing segment of music streaming subscribers in leading markets is now middle-aged. Some 60% of new music streaming subscribers in the UK in the 12 months to end of February [2020], for example, were over 45 years old." This is borne out by the recent Music Creators' Earnings in the Digital Era' research published by the Intellectual Property Office in September 2021. The report states that "catalogue music (i.e. music more than 12 months old) has become increasingly significant across all tiers of popularity. In 2015 the shares of new and catalogue music in the top 0.1% tier of popularity were more or less equal (i.e. close to a 1:1 ratio). The relative share of new music to catalogue music has declined particularly sharply since 2018, so that this ratio is now around 0.45:1 (i.e. new music now accounts for less than one half of the streams achieved by catalogue tracks)."

This trend is a concern for us because catalogue tends to be owned by the three major labels and mostly on contracts signed prior to the advent of music streaming. We refer to these pre-streaming contracts as 'heritage contracts' and we consider that their terms are generally unfavourable to artists and often result in little or no royalties being paid on music streams. On a related point, we are concerned about the lack of transparency and accountability around distribution of royalties by the major labels. Unlike collective management organisations such as PPL and PRS for Music, labels are charged with distributing royalties to creators and performers but are unregulated. CMOs are held to standards under the Collective Rights Management (CRM) directive and we believe that labels and publishers distributing royalties should be held to the same or similar standards.

From a competition and market dominance perspective, the fact that the majors control so much of the catalogue on streaming platforms, and also the top 40 tracks, mean that they can have undue influence over the way that platforms 'push' music to consumers. This has a negative impact on consumers, influencing the music they get access to and there is a lack of transparency around this from a consumer perspective.

We are making efforts to address some of the issues around 'heritage contracts' via negotiation.

Algorithms and Playlisting

Much has been written about the lack of a level playing field, particularly for smaller independent record labels when compared to the majors and larger indies, in respect of the way that tracks appear on playlists and are auto-generated. Spotify recently adopted a scheme whereby a label could 'buy' the inclusion of a track on a playlist in return for accepting a lower pay-per-stream rate. Many critics likened this to 'Payola' and it is yet another example of how the artists share can be reduced in circumstances outside of their control.

A further concern is the way that the DSP chooses where to find a track that a consumer might request to listen to. Very often, if the listener requests a well-known hit from the past, the DSP's algorithm will select the track from a compilation album of 'hits of the day' rather than the original album that the track was originally released on. Under the terms of many record company/artist contracts, sales of compilation albums containing an artist's track are paid at a half rate royalty and this would also apply to streams of that track where it has been selected from a compilation album, further reducing the artists royalty.

Pro Rata vs User Centric payment models

The way that streaming revenue is shared with rightsholders is generally under a 'pro rata' model which means the major labels get by far the biggest share. This explanation of the model was taken from the Creators' Earnings research report:

"Streaming platforms (with the exception of one strand of SoundCloud's business) operate a pro-rata system of payments, whereby the total revenues for each of the provider's services (advertising-supported; premium subscription rate; family subscription rate; student subscription rate; etc.) are pooled separately, as is the activity of the users of each service. The service providers then allocate revenues proportionately in respect of each recording's share of that total activity. The formula for recording rights holders is as follows: Total pool of revenues after tax has been deducted ÷ the rights holder's catalogue share of total streaming activity x the rights holder's licensing terms (based on percentage share of revenue or, if established payment thresholds are not reached, an agreed minima per-stream rate). In respect of the publishing rights, the service providers issue streaming data to each of the rights holders, who then claim which of their works have been used. The revenues are then paid out in relation to the rights holders' share of total streaming activity and in accordance with their negotiated percentage of revenue or, if established payment thresholds are not reached, an agreed minima per-stream rate. Following their receipt of revenues, each recording rights holder will divide their money between the recordings in their repertoire in accordance with their relative popularity; each publishing rights holders will do the same in respect of the compositions in their repertoire."

We believe that a 'user-centric' model of distribution would be better for consumers and artists as it would mean a user's subscription payment being divided between the tracks they actually listen to. This would create a link between fan and artist which has to date been lost in the streaming market. It would enable a music fan's subscription to directly support the career(s) of the artists they themselves listen to. There have been various studies into how this would work in effect and Soundcloud have put it into practice where they have direct relationships with artists, i.e. where there isn't a label involved. To date, the major labels and publishers have blocked the user-centric model from being trialled or implemented in relation to their repertoire and we believe this is because the pro-rata model favours them. This would be another crucial issue for the CMA market study to investigate. It is notoriously difficult to obtain streaming data or understand what negotiations take place behind closed doors between platforms and rightsholders. We hope that the CMA can bring some of these issues into the light.

<u>'Black Box' income</u>
The term 'black box' refers to royalties which cannot be identified as belonging to a particular rightsholder. Where streaming revenue forms a 'black box', it is distributed according to market share. This favours the major labels and publishers again. However, it is a likely hypothesis that recordings owned by the major music companies are far less likely to be unidentifiable, i.e. not to include all the necessary rights metadata, than recordings produced and owned by individual artists or smaller labels. Once again, therefore, the major companies are receiving the lion's share of revenue and this bolsters their dominating position in the market.

Furthermore, it is understood that in agreeing to allow the taking of a licence for a body of catalogue, the label has requested that the DSP make an advance payment against receipts and sometimes even a 'golden handshake' that is not recoupable by the DSP against the per stream rate, it is unclear how much of this advance/additional income is shared with artists.

<u>Value of the song</u>
Streaming revenue is currently divided roughly as follows:

25-35% streaming platform
52-55% record label (which will account to signed artists)
15% music publishing (shared between music publisher and songwriter/composer).

We believe that the music publishing share is suppressed because the major publishers are controlled by the major labels. It is in their interests to take a greater share of revenue on the recording side because they pay a far smaller share of it out to artists. On the music publishing side, deals tend to be 80/20 in favour of the songwriter or composer. This should be explored as part of the CMA investigation.

<u>Label Equity in Spotify</u>
Another distorting and concerning factor in music streaming has been the major labels owning equity in the platforms. Whilst it is understood that Sony Records shared in the sale of some of their equity in Spotify with their artists, it is unclear to what extent this has been mirrored by the other two majors and how much equity the major labels continue to own. Clearly, there is a direct conflict of interest in a business's suppliers owning equity in that business and could influence or distort elements of the DSP's cost base such as per-stream rates and subscription rates.

Conclusion

The Covid-19 crisis hit songwriters, featured artists, session musicians and composers hard. Gigs and commissions were cancelled, festivals and performances postponed, and recording studios had their capacity significantly reduced. The crisis brought into sharp relief the fact that creators and performers are sustained primarily by income generated by the live side of the music business and that streaming royalties are woefully insufficient. There has never been a more urgent time to fix streaming so that it becomes a real source of income for musicians and composers.

We look forward to the CMA investigating some of the issues in the market which negatively impact musicians, songwriters and composers as well as consumers of music.

We would like to see the suppression of pricing investigated and in particular the limiting effect of the DSPs whose financial interests lie not in music streaming but in other more profitable areas of their business model. We would also like to see the impact of the major labels' ownership of the major publishers illuminated so that we can see how it may devalue the song rights; we believe that a 15% share for the music publishing side of the business is insufficient. Given publishing pays out far better and fairer shares to our members, addressing this could have a significant impact on creators' earnings. We would also like to better understand the impact of major label dominance on algorithms and playlisting, which could impact on consumers as well as our members. And finally, we would like the major music corporations' control of revenue distribution models investigated as we believe the consumer to artist relationship would benefit from a move away from the 'pro rata' approach.