

ONE CLICK LICENCE LTD

*“Power is about who calls who and whose call you take. That’s power. Power is a combination of the ability to write checks, the ability to make things happen, the ability to block things—political power, the ability to testify and the requirement to testify at a senate hearing and have five commissioners against zero in favor of what you said. Power is the ability to buy and sell businesses. **Power is the ability to stop new services. Power is the ability to create new services. That’s power.**”*

**-Lucian Grainge
Chairman & CEO of Universal Music Group
Excerpt from Billboard Interview 2013**

While the Competition & Markets Authority is looking into the issues surrounding the market forces involved in music streaming, I am writing to ask that the CMA also examine the power of the major record labels to stifle innovation in the technology sector, which I believe:

1. Causes material harm to millions of small developers
2. Prevents the generation of significant uncollected revenue that could help artists
3. Limits choice to consumers in the app and services marketplace
4. Prevents other streaming models, that would help artists, from existing

It is my belief that if these larger issues aren’t addressed, the negative market influences will be:

1. To further enshrine the power these labels have to negotiate the rates and rights that artists are bound to by platforms beyond streaming.
2. Embolden other players, including tech giants and private equity firms, to further consolidate and extract value from music catalogues, at the expense of artists and consumers.
3. To further limit which developers can have access to catalogue, preventing new innovations.
4. To decide the winners and losers in the music industry and technology services space.

Without change, the major labels could continue to use their power to stop new services from being created, and instead leave us only with the services they deem worthy of existing. If they materially benefit from only a handful of well capitalized platforms, they may not allow better solutions for consumers and artists to exist.

If a major label can strike a deal that gives a company access to catalogue, benefits and capabilities, plus rates that no one else can have, this strips consumers of innovative new solutions and the choice to move to another platform, plus it deprives artists of much needed revenue at a time they desperately need it to survive.

“Power is the ability to stop new services.”

My Story

In 2014, I co-founded a company in the UK called OCL with renown record producer, songwriter, and artist, Rupert Hine (Tina Turner, Howard Jones, The Fixx, Rush, over 150 albums), determined to solve the problem of small app developers properly securing the legal access to music for their apps, fans from having the legal and frictionless ability to create amazing user-generated content (UGC), and preventing copyright infringement, all while ensuring that artists were not only remunerated for their work, but had insight and data into how that work was used. I joined this battle with Rupert, knowing it would be difficult, after seeing how his own royalties as a songwriter had practically vanished. I knew something had to be done. ***But my company fell afoul of the “power to stop new services”***, and the company was eventually dissolved. Sadly Rupert passed away in 2020, knowing that OCL would not be able to fulfill its mission. This was heartbreaking, as Rupert had dedicated his last years to this. He chose not to work on music projects, because he felt if something was not done, there would be no future for younger artists.

The Problem & Solution

With an app environment of over 2 million apps, 60,000 app approvals per week, and 16 million developers, it was clear that there was no possible way for labels and publishers to accelerate legal music usage in apps at any type of scale. In fact the average licensing process might typically take a developer 1 - 4 years, and cost hundreds of thousands of dollars in legal fees and advances, all before the developer could even test their business assumptions. Conversely, app approval in an App Store takes 1-2 days and under £100. This is why most developers prefer the model of asking forgiveness instead of permission.

This also meant there was a huge untapped market of billions in potential uncollected monies in what is known as synchronization revenue (sync). A sync being the result of a visual asset and a music asset becoming a new derivative work. In fact, nearly every use of music used by billions of people around the world to create UGC on social media platforms like Tik Tok, YouTube, and Instagram is technically a sync.

Sync is a complex issue when it comes to UGC because the actual legal agreement should be between the person with the rights and the party that wants the rights. This is not the App developer, but is in fact the rights owner and the fan using the media. One of the amazing things we did at OCL was to find a technological solution to this, where we were able to directly licence the fan through the use of an end-user licence agreement powered by our technology.

OCL Quoted in Music Business World 2017:

<https://www.musicbusinessworldwide.com/serge-acker-pj-dulay-join-ocl-andy-heath-named-chairman/>

“Instead of a race to the bottom, we wanted to encourage a race to the top. One of the key partner groups for the Totem framework are the millions of smaller app developers who want to include creative, copyrighted assets such as music, images, videos or text in their offerings.”

Rupert Hine

“There is a graveyard of apps and platforms that failed to pull off obtaining and then monetizing media successfully. Developers aren’t typically rights users, and yet we continue to give them a great deal of responsibility over something they should not be making decisions on. We knew there needed to be another option. OCL and Totem remove these challenges, allowing developers to focus on just building great apps, instead of worrying if they’re doing things correctly, or that their app may be removed from app stores because they made an error somewhere.”

Alan Graham

Our solution was a novel one, where we created both a model and the tech that could support the possibility of same-day access to music in apps, while ensuring that every single use of music was identified, cleared, tracked, reported, and most importantly, paid for, instantly. This was a pioneering model coming out of the UK first as a Software As A Service model (SaaS), similar to how companies like Amazon Web Services operated, and all a developer had to do was sign up, agree to terms, put up a method of payment, pay a small advance against future usage, and install our APIs in their app.

We believed within a few years, and our models showed, this revenue (that is to this day still uncollected) could be worth billions to songwriters because it opened a new market of sync licensing where typically music was not accessible to developers or fans. This would also open entirely new areas of innovation because now the costs and time involved in getting access to catalogue would no longer be prohibitive. This would mean greater opportunities for consumers of music as well, as they would have new ways to enjoy music, including new streaming opportunities beyond the existing giants, or perhaps new types of music usage from a developer that had yet to be envisioned.

We spent six years in discussions and negotiations with major labels and publishers. We showed revenue models, gave access to our intellectual property, showed them our technology, and provided deep insight into how everything worked. During this period we were instructed by many parties to not call what we were doing a sync licence in the presence of major labels, and to not even suggest what we made possible was a sync, since this would change the typical 80/20 type revenue split in favor of the label over the publisher, to the typical sync split of 50/50. This would change the major labels power dynamic and would likely mean we would possibly not get our own licenses approved.

To avoid this, we had to invent a new terminology for a UGC licence, come up with convoluted revenue models so that labels didn’t have to do a 50/50 split, and then invent other ways to ensure publishers got a fair and equal share of the licensing revenue, while not falling prey to the UK’s anti-compete laws. It was a very precarious minefield.

While actually building our technology was quite fast, the negotiations took years, all the while making it impossible for us to actually generate any revenue or launch our platform. We were stuck in a waiting game. During one of these periods of waiting, we learned it was because Facebook was interested in writing a very large check for rights to music, delaying our deal, and again showing how anti-competitive the entire system was for smaller players.

At one point, one of the major labels was sending startups to work with us, to solve their licensing issues, even though that same label had not actually granted us rights to their catalogue. This made no sense. While we did secure some rights from one major, a couple indies, and some publishers, the startups we were in talks with didn't want to use our solution to power their apps unless they also had access to the catalogues from the two other majors, in which we were still in a limbo of negotiations. ***Without the permission of the three major labels, we essentially were not allowed to exist or operate as a company.*** We had the solution developers told us they wanted, but not the catalogue to make it a reality.

During this time, one of the executives at a major label, who was one of the parties in charge of our getting our licence approved, launched their own internal global licensing accelerator at the label, which in many respects was in direct competition to our own efforts. We were now in direct competition with the label, which is impossible. Another label requested we pay them significant advances on catalogue (that we could not afford), when in fact we were solving their own licensing and accounting issues. It almost felt that they all wanted to string us along to have the appearance of doing something to solve these issues, while never actually intending to do so.

During this period we heard countless stories from developers at how the major labels were using the carrot of getting access to catalogue, while also using the stick of extracting value from them in advances and/or equity. In one case, a developer shared with us that a major wanted 1.5% ownership in exchange for catalogue access, which across the other majors would add up to 6% total. Several of them failed to launch, and others went out of business. This included our company, that simply ran out of money during the protracted negotiations. ***The ultimate irony is that the exact problem we were attempting to solve, was in fact the one that killed our company.***

Which brings me to some questions I'd like to see answered, as I feel that the major labels have used monopoly-like powers of their catalogues as an anti-competitive tool, to extract value, and to limit innovation that might challenge their power.

1. Why are major labels allowed to invest or take stakes in any company that requires catalogue access?
2. Considering the job of the label is to negotiate the best rate for the artists they represent, is it not a conflict of interest if they also own part of the company they negotiate with?
3. Why is a company, like Tencent, a tech giant that owns streaming platforms and a stake in Spotify, allowed to own a large stake in Universal Music Group (UMG), while UMG also has a stake in Spotify, and Spotify a stake in Tencent?
4. How many companies have applied for access to a licence in the past 5 years?
5. How many companies were granted access to a license in the past 5 years?
6. How many were turned down?
7. If companies who sought access to catalogue were turned down, what was the reason?
8. What is the average time to secure a licence?

9. How do major labels decide what developers are allowed access to catalogue, do they get equity in exchange, and do they give preferential treatment or rates to companies where they own a stake in that company?
10. 10. What were the terms of these agreements? Was equity given in exchange? What were the advances paid? Is that money paid to artists?
11. 11. If a company refuses to give up equity in their company in exchange for access to catalogue, what requirements are then placed on that company instead? How much are they required to pay in advances? How do their requirements differ from companies who give up equity? Are they turned down?
12. 12. What tech companies do major labels currently or in the past 5 years have stakes in, where catalogue or royalties are involved? How many of these came through their own accelerators? Who else holds equity in these companies?

Through consolidation of catalogue, the three major labels have found themselves with unprecedented power to decide which companies that might want access to music can exist. They have the power to leverage that catalogue to extract massive value from these companies in advances or equity. This gives them incredible power as to what competitive platforms can exist, and ultimately this has a negative bearing on smaller developers, artists, and consumers. It limits choice, it stagnates innovation, and it helps other tech giants secure their own places of power in the music and technology space. If only companies like Tik Tok, Instagram, and Spotify are allowed to exist, due to this structure, how does this benefit society?

Sadly, OCL's attempts at securing licensing were halted in 2020, and the company ultimately dissolved in 2021. It is too late for us to make a difference for artists and their fans, but it is not too late to do something to protect future companies, like ours, in the immediate future, and propel new ideas and innovation that is immune to the **powers that can stop new services**.