



CMA Music and Streaming Market Study

Response to Statement of Scope from PRS for Music

PRS for Music represents the rights of over 160,000 songwriters, composers, and music publishers in the UK and around the world. On behalf of its members, it works to grow and protect the value of their rights and ensure that creators are paid transparently and efficiently whenever their musical compositions and songs are streamed, downloaded, broadcast, performed and played in public. In 2020, 22.4 trillion performances of music were processed, with £699m paid out in royalties to its members, making it a world leading music collective management organisation.

PRS for Music welcomes the opportunity to respond to the Statement of Scope published by the CMA on 27 January 2022.

Development of music licensing

The past two decades have brought profound changes to the way Collective Management Organisations (“CMOs”) license the musical works they represent. This evolution has been driven by the needs and expectations of rightsholders, music streaming services and the global online marketplace.

Phase 1 – Territorially-limited CMOs

Throughout their long history, CMOs have largely acted on a domestic basis, their members primarily coming from their country of establishment and their licensing limited to domestic territories. A framework of reciprocal agreements between CMOs in different territories meant that each CMO was capable of licensing and enforcing exploitation of the others’ repertoire in its home territory.¹

Phase 2 – The growth of Digital

By the mid-2000s, technology for the digital delivery of music had developed significantly and the market was beginning the transition from downloads to streaming services. In the absence of a physical supply chain, digital distribution allowed for the seamless and simultaneous provision of music, in multiple forms, to consumers across multiple territories. The requirement to negotiate licensing agreements on a territory-by-territory basis was identified as a risk to many streaming services’ appetite to grow their operations internationally. Rightsholders themselves were also frustrated by the complexity of licensing multi-territory services in a fragmented manner, as it led to increased costs and delays, and called for a centralised approach to allow better control over the administration and exploitation of their rights.

In 2005, the European Commission published its *Recommendation on collective cross-border management of copyright and related rights for legitimate online music services (2005/737/EC)* (“the Recommendation”). At its core, the Recommendation was intended to promote “freedom for right-

¹ The rationale for this network of agreements was discussed in the “CISAC Case” COMP C2/38.698.

holders to choose the best placed Collective Rights Management (CRM) and to switch between CRMs”, which the Commission believed would “counteract any tendency towards monopoly at the Community level”.² The Recommendation provided the pathway for a new model of collective licensing of online services on a pan-European basis, in which CMOs competed on the quality of the service they provided and rightsholders were able to actively appoint one (or more) CMO which they believed would best manage their rights. These principles were later enshrined into national law via Title III of the Collective Rights Management Directive 2014/26/EU which in the UK became the Collective Management of Copyright (EU Directive) Regulations 2016 (“CRM Directive”).

This model, based on rightsholder choice, became known as ‘Option 3’, it being the third of the options originally considered by the Commission.

In 2006 PRS,³ in partnership with the Swedish CMO STIM, began the development of a copyright database to create a single authoritative source of rights ownership which we, as well as other independent CMOs, could use to support the administration of licensing activity. The database and JV entity was launched in 2010 and named ICE, or “International Copyright Enterprise”.

Phase 3 – Multi-territory market

PRS has been at the forefront of market leading initiatives to facilitate multi-territory licensing, including winning the first tender for Option 3 business by EMI in 2006, establishing its own pan-European Licensing initiative “Alliance Digital” in 2007 and being one of the first CMOs appointed to Warner Chappell’s Pan European Digital Licensing (PEDL) panel in 2008. PRS for Music also supported in the development of the IMPEL initiative which aggregates independent music publishers’ rights on a multi-territory basis.

In 2012, the German CMO, GEMA, expressed its interest to join ICE as a shareholder. Following approval for this merger being granted by the European Commission in 2015, ICE extended its activities and began to offer a broader suite of copyright, administration and licensing services. This consolidation of the core functions in one place benefited both rightsholders and music streaming services by a) maximising the scope of the repertoire available through a unified licensing process, b) improving efficiency and accuracy in the collection and distribution of royalties, not least by reducing duplication in the claiming and matching process, and c) minimising the cost of administration and offering separate copyright, processing and licensing services to rightsholders and CMOs.

Today ICE is a world-leading rights management hub, licensing over 50 online music providers, across more than 190 territories.

In summary, nearly twenty years on from ‘the Recommendation’ the multi-territory market for licensing musical works has evolved substantially from one where administration of rights licensing was done locally to one where administration and licensing is done primarily on a multi-territorial basis via competing rights administration vehicles, including the following:

- a. Well-established multi-territorial licensing and processing entities (such as ICE) that are owned by CMOs and aggregate the rights both of those CMOs and other rightsholders.
- b. Structures in which a single large publisher's repertoire is licensed through one vehicle, such as SOLAR (a JV owned by PRS and GEMA) which licenses the mechanical and performing rights in the repertoire of Sony Music Publishing.
- c. Contractual arrangements under which one set of rights to a repertoire is licensed individually, such as the PEDL contract for Warner Chappell’s repertoire whereby Warner

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52005SC1254&from=EN>.

³ PRS for Music is the operating company of PRS, which is owned and controlled by its members.

Chappell's Anglo-American mechanical rights are licensed by Warner Chappell and the matching performing rights are licensed by a CMO.

- d. Individual CMOs, which grant multi-territory licences in respect of the repertoire that they control, which may be repertoire originating only from their direct members, and if they also act as a local CMO, the rightsholders they represent within their local market through reciprocal arrangements (e.g. HDSZamp).

Impacts of the growth in the online music market

The growth of the music streaming market in the UK and around the world accelerated quickly since the market's inception, to the point that streaming is now one of the dominant forms of music consumption.⁴ This is reflected in the online royalties collected by PRS for Music, which grew from £9.7m in 2007 to £188.3m in 2020.

As the growth in revenues accelerated, so did the volume of usage data which needed to be processed to both claim and distribute royalties. In 2009 PRS for Music processed 3.8 billion lines of music uses. By 2020 this had grown to 22.4 trillion.

The effective management of such data requires very different infrastructure and processes than those previously undertaken by CMOs. The need to process large data volumes was recognised by PRS for Music and informed our strategy to consolidate administration activities in ICE. PRS for Music, in partnership with its licensing hubs, has been leading the market in the development and investment in the new technologies essential to quickly and accurately match online uses with individual works and the corresponding rightsholders. ICE employs a three-stage matching system. First, the uploaded data is run through Auto-Match, which generally matches more than 90% of uses; then any remaining works go through a manual matching process. Finally, where even this two-stage process is unsuccessful, the data is uploaded online where members can claim their works.

Essential to the data matching process is the record of works and their ownership, the copyright database. The transition from domestic to multi-territory licensing highlighted the competing rights pictures of CMOs, where CMOs have competing records of who controls which rights in works and individuals' share of those rights. These discrepancies create barriers to the flow of royalties to rightsholders, as they create disputes in the claims process which must be resolved. The management of multiple CMOs and rightsholders under multi-territory licensing hubs, such as ICE, has provided the opportunity to consolidate the copyright data. Consolidation on this scale, managing millions of different works and shares, cannot be done manually; it needs automated solutions. ICE is investing in world-leading cloud-based tools to integrate existing copyright databases, to ensure a single source of truth in the ownership of rights. Once completed, this will allow for the seamless integration of copyright data from existing and future ICE customers and significantly reduce disputes in the claims process.

The online streaming market has also provided an easier route to market for songwriters and composers. This is especially true on services where works can be uploaded by users. The so called 'DIY' market has been one of the key drivers of the significant growth of PRS membership over the past decade. In 2010, nearly 100 years after the CMO was established, we represented just under 80,000 members, whereas in the subsequent eleven years the number of members doubled to over

⁴ Figures released by record labels' association the BPI, based on Official Charts Company data, suggest that streaming accounted for 83% of UK music consumption in 2021: <https://musically.com/2022/01/04/bpi-reveals-music-consumption-stats-for-uk-in-2021/>.

160,000. In addition, many more creator members are earning income than before, up from 36,170 in 2009 to 62,505 in 2019, an increase of 73%. Of these, 3,882 members earned over £10,000 from songwriting and composition in 2019, up 51% from 2,573 members in 2009.

Despite the overall increase in the number of members receiving royalties, many songwriters and composers submitted evidence to the DCMS Select Committee inquiry showing that the royalties derived from streaming are too low to sustain their careers. The rights in the musical works are widely exploited across the online market, through traditional sound recording but also in covers, video games, films, TV and live streams; this is well evidenced by the growth of usage data over the last decade. In this context, there is clearly a need to ensure that the full value which online services are generating from the works of music creators is better reflected in the royalties they are paid.

Competition amongst music streaming services

PRS for Music welcomes the CMA's decision to consider the role of user-uploaded content (UUC) services within its Statement of Scope.

UUC services have almost universally launched with the primary purpose of rapidly growing their user base (as establishing a large user base is essential to their advertising-funded model), by offering music free at the point of consumption. In many cases the content they provide is identical to that available via subscription music services. UUC services have been able to launch on a free at the point of consumption model by claiming they are not liable for the copyright works uploaded by their users, by virtue of the limitations provided in the "Hosting Defence" (which originates from Article 14 of the E-Commerce Directive (2000/31/EC)).

In most cases UUC services, or at least those which survive long enough to build a sustainable funding model, will ultimately seek a licence from rightsholders for the use of music on their service, although this will be at a time of their own choosing, on their terms, and often without an admission of liability. This, often called "use first, license later" model, has a detrimental impact on the value of music online, as UUC services will have actively avoided collecting usage data, to avoid acquiring actual knowledge of works used, limiting our ability to accurately distribute against usage. Even when licences are in place and recognition technology is deployed, the policies applied to its operation are determined unilaterally by the services without sufficient oversight or consultation with rightsholders.

At the most basic level, the value derived from copyright is determined by the ability to authorise, and to prohibit, the use of a work. It is the seeking of this authorisation and the negotiation on any remuneration via a "willing buyer, willing seller" regime which provides the licensing and royalties framework. Where the ability to grant or withhold authorisation is removed, as has been the case when UUC services have incorrectly claimed the Hosting Defence limitation, this significantly suppresses the value of the rights. For example, if rightsholders cannot in practice require a platform to remove their works, the negotiation of licensing terms is no longer one of a willing seller, but rather of one who has little choice but to sell.

There is little question of the growth in subscription music services. At the end of Q2 2021 there were 523.9 million music subscribers globally, up 109.5 million (26.4%) from one year earlier and exhibiting faster growth than the year before.⁵ The revenue growth of subscription music services has, to date, been primarily driven by growing the number of subscribers in established and emerging markets or introducing new packages and offers, such as family plans. As the CMA itself notes in the Statement

⁵ <https://mediaresearch.com/reports/music-market-subscriber-shares-2021-growth-is-not-letting-up-yet>.

of Scope, the standard price of a subscription to Spotify, for example, has not increased for a number of years, not even in line with inflation.⁶

Competition concerns relating to negotiations between CMOs and music streaming services

The music streaming market is predominately populated by a relatively small number of large international companies. YouTube alone reached 2.2bn users globally in 2021⁷ and Spotify continues to have the largest music subscriber base, with its 165 million Q2 2021 subscribers representing 31.5% of the global total.⁸ The main streaming services have a primary position in the market, meaning the commercial ramifications for rightsholders of not licensing are very extreme. This has led some in the industry to question whether it is still possible to refuse a licensing request from the largest services.

We therefore welcome the CMA's statement that, whilst limitations to copyright are a matter for Government, they are fundamental to how the sector operates and could have a role in any competition issues identified.

This also raises the question of whether the CMA's market study should consider within its scope a review of the UK Copyright Tribunal ("CT") to address the imbalance of power between CMOs and music streaming services and the one-sided nature of the CT.

The CT was established as an independent tribunal by the Copyright, Designs and Patents Act 1988. Its primary function is hearing and resolving UK commercial licensing disputes between copyright owners or CMOs and people who use copyright material in their business. Only the music user, i.e. the person or organisation seeking a copyright licence, can refer disputed matters to the CT.⁹

As such, it is open to streaming services, in negotiating the terms of licences with CMOs, to make a reference to the CT, or threaten to make a reference to the CT, when they are not willing to accept the terms being offered. CMOs, on the other hand, are unable to make references to the CT.

Proceedings before the CT are extremely resource intensive and the procedural burden falls considerably on the CMO. During negotiations with streaming services, CMOs consistently face threats that if concessions are not made, a reference will be made to the CT, which would result in a lengthy and costly contentious process. This imbalance disadvantages rightsholders versus the large music services.

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⁶https://assets.publishing.service.gov.uk/media/61f17285d3bf7f0546a99df2/Music_and_streaming_Statement_of_Scope_final.pdf, paragraph 61, page 21.

⁷ <https://www.statista.com/forecasts/1144088/youtube-users-in-the-world>.

⁸ <https://mediaresearch.com/reports/music-market-subscriber-shares-2021-growth-is-not-letting-up-yet>.

⁹ Unless the CT has already made a decision in a particular area, in which case both the CMO and the licensee may apply to the tribunal to change that decision.