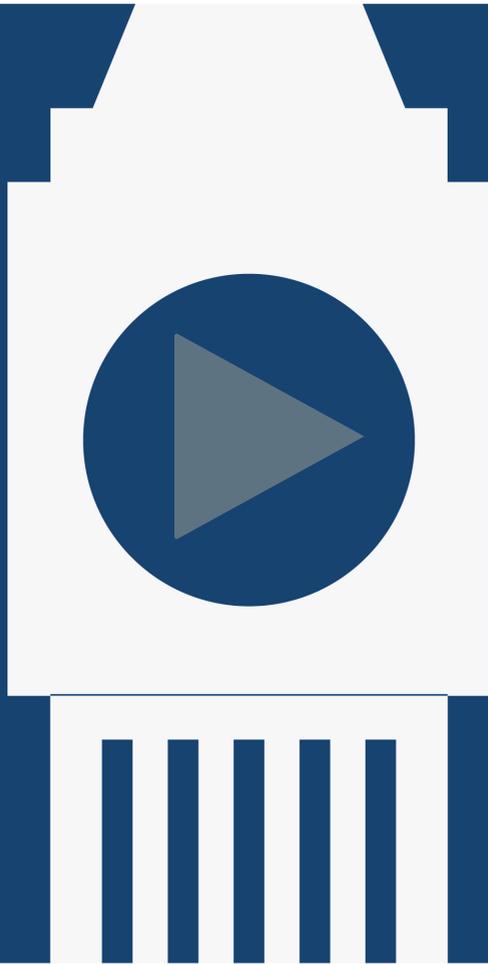


FAC & MMF WHITE PAPER: Economics Of Music Streaming



**DISSECTING THE
DIGITAL DOLLAR**

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THE ARTISTS' VOICE



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Access additional reports,
resources and guides on the
economics of streaming from
the MMF's 'Dissecting The
Digital Dollar' project at
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Executive Summary

In 2020, the Digital, Culture, Media & Sport Select Committee in the UK Parliament began a wide-reaching inquiry into the ‘economics of music streaming’, exploring how the digital music market works; how streaming revenues are shared out across the music community; and whether changes to music business practices and copyright legislation would help better ensure that British artists, songwriters, musicians and record producers are truly sharing in the benefits created by the digital music revolution.

The inquiry was prompted by Tom Gray’s #brokenrecord campaign – and the #fixstreaming campaign launched by the Ivors Academy and Musicians’ Union – which in turn built upon several years of campaigning and research by members of the Council Of Music Makers, including the Featured Artists Coalition, Music Managers Forum and Music Producers Guild, as well as Ivors and the MU.

MMF and FAC were among the music industry organisations that made submissions to and spoke as part of the inquiry. These contributions were informed by ‘Dissecting The Digital Dollar’, the MMF’s six year research programme that exists to help artists, songwriters and their managers to

navigate the often complex streaming music business, and to identify and understand the problems with the current business model, and to develop and promote practical solutions to those problems.

Following oral hearings involving a wide range of music industry participants – including artists and managers – as well as hundreds of written submissions, the Committee published their final report and a series of recommendations in July 2021.

This report can be downloaded from the select committee’s website, while the government is expected to respond to these recommendations in September 2021.

The aim of this white paper is to provide artists and managers with a condensed yet comprehensive overview of the key discussion points of the Committee’s work, and to outline the FAC and MMF’s shared positions on three key areas:

- Record contracts and artist royalties.
- Royalty chains and the black box.
- Platform licensing, transparency and streaming service advances.

MMF and FAC believe this is a once in a generation opportunity to deliver a fairer and more equitable music business and, although we favour industry-led changes, we believe government also has an important role to play to ensure that the momentum of the parliamentary inquiry is now maintained.

Our key positions are outlined below.

Record contracts and artist royalties

The music industry's role...

- Modern minimum digital royalty rates – at least 25% – to be applied to all artists.
- No analogue-era discounts or deductions to be applied to any streaming revenues.
- Labels to write off each artist's unrecouped balance after a set time, no later than 20 years.

The government's role...

- Undertake a review of legacy record contracts to address outmoded practices.
- Investigate legislative solutions to empower artists and songwriters to address the issues with outdated and unfair contracts, including a contract adjustment right in copyright law and a limit on the length of time a corporate entity can control a copyright.
- Work with the FAC, MMF and Musicians' Union to explore how an ER system on streams could work, considering solutions which mitigate the risks of implementing a new system for those artists who are on better, modern label or distribution deals, or releasing music through their own labels.

Royalty chains and the black box

The music industry's role...

- Music publishers and collecting societies to publish transparent

information around royalty chains, providing greater details about the flow of songwriter revenues.

- A shift to full global licensing of song rights in streaming to create greater efficiencies.
- Collecting societies to proactively share song data.
- Services, societies and publishers to provide alerts to songwriters and managers when data conflicts arise.
- Ensure unallocated 'black box' revenues are used to fund educational, grassroots and data initiatives, and not distributed by market share.

The government's role...

- Put pressure on music publishers and collecting societies to publish royalty chains, adopt global licensing practices and develop alert systems for data conflicts; and investigate the impact of the streaming back box.
- Introduce new transparency obligations for publishers and societies into copyright law including in relation to royalty chains.

Platform licensing, transparency and streaming service advances

The music industry's role...

- Labels, publishers and societies should explain in clear terms to artists and songwriters the structure of every licensing deal they enter into.
- Revenues not directly linked to usage should be clearly explained, along with distribution methodologies.

■ Artist accountants should (subject to NDA) have sight of specific deal terms in order to properly audit their clients' royalties.

The government's role...

- Instigate a research project focussed on transparency obligations.
- These obligations should be codified into copyright law, taking article nineteen of the European Copyright Directive as a starting point.

Maintaining momentum

The government's role...

- The Department For Digital, Culture,

Media & Sport should coordinate a series of roundtable discussions on the economics of streaming and the workings of the music industry.

- This would mirror previous interventions, such as when the government brought together copyright owners and internet companies to discuss practical measures to combat online piracy.
- In addition to this, the MMF and FAC also supports the select committee's recommendation that the government refer a case to the Competition & Markets Authority to undertake a full market study into the economic impact of the major record companies' dominance in the music rights market.

Section One: Story so far

The COVID-19 pandemic had a major impact on the entire music community. The live business went into more or less complete shutdown in early 2020. Artists and songwriters were forced to find new ways to collaborate, create and interact with fans. And everyone across the music industry had to quickly adapt to new working practices; developing new ways of making, releasing, marketing and performing music.

However, from a revenues perspective, different strands of the industry felt the impact of the

pandemic to differing degrees. On the live side of the business, many revenue streams stopped completely. Some of the industry's copyright revenue streams also took a hit as a result of the pandemic, including sync, broadcast and public performance royalties. But, crucially, subscription streaming revenues were not affected at all, and instead continued to grow.

Streaming is now the biggest – and still the fastest growing – recorded music revenue stream. And as premium streaming in particular started to gain momentum in the mid-2010s, the revenues generated by the streaming services took the record industry back into growth after fifteen years of decline. Unaffected by the pandemic, this growth – of streaming and the wider record industry – continued throughout 2020 and 2021.

Clearly streaming has created – and continues to create – many opportunities for the wider music community.

However, as a result of established music industry conventions, streaming is a revenue stream where artists and songwriters commonly receive a minority share of the money generated. This is in no small part because industry practices and contractual terms designed in the era of selling physical discs have often been continued into the very different business of subscription streaming, even when those practices and terms don't make any sense, or don't work, in the streaming domain.

With streaming the one revenue stream that proved to be COVID proof, these practices and conventions unsurprisingly became a major talking point within the music community as the pandemic developed and extended. That motivated a number of campaigns to publicly call for those practices and conventions to be challenged and changed, including the Tom Gray-led #brokenrecord campaign, and the #fixstreaming campaign launched by The Ivors Academy and Musicians' Union (MU).

These built on many years of similar campaigning before the pandemic by various groups representing music-makers in the UK – especially those that make up the Council Of Music Makers, which includes the Featured Artists Coalition (FAC) and Music Managers Forum (MMF) as well Ivors, MU and the Music Producers Guild (MPG).

As the #brokenrecord and #fixstreaming campaigns gained momentum, the UK Parliament's Digital, Culture, Media & Sport Select Committee instigating an inquiry into the economics of music streaming. Through hundreds of written submissions and a series of oral hearings, MPs on the committee heard from people and organisations from across the entire music community.

The streaming music business is complex and there are a number of different distinct issues with the way the streaming business currently operates. The inquiry sought to navigate the complexities and consider the many different issues, ultimately publishing a lengthy report with multiple recommendations.

Members of the FAC and MMF had been debating the economics of streaming – and all the issues with the current business model – for many years prior to the pandemic and the parliamentary inquiry.

Those debates have been informed by the MMF's long-running and in-depth 'Dissecting The Digital Dollar' research project, and accompanying book. Working with music business consultancy CMU Insights, this project helps artists and managers better understand how streaming works, what the issues are, and how those issues might be addressed.

Based on those past debates – and a series of additional roundtable discussions in summer 2020 – the FAC and MMF made a joint submission to the parliamentary inquiry, outlining the specific issues with the streaming

business that are currently the most pressing for featured artists and music managers, and also proposing practical solutions. Most of those proposals were subsequently adopted as recommendations in the committee's report.

As the economics of streaming debate proceeds to the next phase, this white paper sets out the FAC and MMF's priorities: the greatest inequities and structural issues that stop artists and songwriters from truly benefiting in a fair way from the positive impact that the rise of streaming has had on the wider music business

It also outlines practical measures that the music industry must adopt to address these inequities and issues. And the measures that the UK government and Parliament should take to ensure that happens, and to empower artists and songwriters to address both today's challenges,

and those likely to arise as the digital music market continues to evolve.

If the music industry and the UK government now comes together with the common aim of building on the work of the committee, and to address the inequities and issues outlined in its report and this white paper, the FAC and MMF will wholeheartedly support those efforts in every possible way.

We are confident that, by doing so, the music community can create a fairer system for music-makers, which will better serve the whole of the music industry, in the UK and beyond.

The priority areas for artists and managers can be segmented into three key areas:

- Record contracts and artist royalties.
- Royalty chains and the black box.
- Platform licensing, transparency and streaming service advances.

Section Two: Record contracts and artist royalties

BACKGROUND

1. Streaming is a revenue share business

Streaming services allocate their revenues each month across the catalogue based on the percentage of overall listening accounted for by each track.

Once a track has been allocated a portion of the revenues, it is shared

with whichever record label or music distributor controls the recording rights, and whichever music publisher and/or collecting society controls the accompanying but separate song rights.

Although every licensing deal is different, 50-55% will usually go to the recording rights and 10-15% to the song rights. Which means the streaming service retains approximately 30-35%.

Labels and distributors then share any money they receive with the featured artists who appear on the track (those being the artists whose name the track was released under). Meanwhile publishers and societies share the monies they receive with the songwriters who wrote the song. The percentage which is shared with each artist and writer is entirely dependent on the deals they negotiated with each label, distributor or publisher, and each society's distribution rules.

Further reading: Section 6.4 of the 'Dissecting The Digital Dollar' book explains the process via which streaming payments are calculated each month in more detail.

2. Artists usually receive a minority share

Conventional record contacts will routinely pay artists a royalty rate of no more than 25%. Modern deals likely pay a royalty in the 20-25% bracket, while older deals will pay a lower rate. This means that, of the streaming monies received by the label, less than 25% will be paid to the artist.

A label will also be able to initially recoup any cash advance and, normally, some other costs incurred out of the artist's share. Some record contracts will also have extra complexities, including additional discounts and deductions applied before the artist's royalty is calculated, especially on international income.

However, new artists do now have more choices when picking a business partner to work with on their recorded music. Artists looking for a lower cash

investment, and/or with managers able to lead on marketing, can choose to work with distributors or label services companies on deals that will see the artist getting 50-80% of net revenue.

And, because of market pressure, some more conventional labels are now starting to work with artists on more favourable terms when signing new deals with artists too, especially where risks are reduced, usually as a result of the artist and manager investing more heavily themselves in making and marketing their recordings.

Further reading: The 'MMF Deals Guide' outlines the different deal options now available to artists when picking a business partner to work with around their recorded music.

3. Artists locked into older record deals are usually much worse off

Artists who signed record deals in the pre-streaming age face the biggest problems. These deals were negotiated on the assumption that the production and distribution of physical discs would be the primary way of generating revenue, and often contract terms designed for physical sales have been reinterpreted for streaming income.

These were also often 'life of copyright' deals, meaning the label still controls the music today, monetising the recordings and paying royalties to the artist. However, as noted, royalty rates on these older deals are generally lower – often much lower – than the 20-25% of

modern deals. Plus there are often additional deductions and discounts designed for physical sales which usually make no sense when applied to streams.

Artists locked into these deals may also still be paying off old advances and costs, sometimes because they were actively releasing new music in an era when labels – especially the bigger labels – were prone to overspend on things like recording costs or video costs, and then pass that expenditure onto their artists.

It's also worth noting that, because of the way traditional deals are structured, the label often goes into profit on a record release – in that it has covered all the costs it incurred – long before an artist has paid back any recoupable costs.

The ways in which record labels apply the terms of legacy contracts to streaming income – including royalty

rates, deductions and discounts – does vary across the industry. However, many labels have directly applied at least some of those physical era terms to streaming income, so to advantage the label over the artist.

Some artists have gone legal over the interpretation of legacy contracts in the digital age – initially in relation to download income and more recently regarding streaming revenue. In the UK there is currently a high profile case progressing through the courts between Kieran Hebden (aka Four Tet) and his former record label Domino Records regarding this issue. However, most artists can't afford such legal action¹.

Further reading: The recent report 'Performer Payments From Streaming' from CMU Insights, commissioned by the PayPerformers campaign, explains the issues with record deals, and especially legacy record deals, in more detail.

SHARING THE DIGITAL PIE

- Under the current system, 50-55% of total streaming revenues are usually allocated to recordings while 10-15% are allocated to songs.
- On conventional modern record deals an artist will usually get a 20-25% share of any money paid through on their recordings.
- On conventional modern publishing deals, a songwriter will usually get a 70-80% share of any money paid through on their songs.
- This means that of the total 'digital pie', artists and songwriters often earn a similar share in the region of 10-14% (subject to recoupment).
- The featured artist would usually share their recording royalties with any studio producer and guest artist. And if the featured artist is a band, they share it between the band members.
- Where a song is co-written – which many songs are – the songwriters share the song royalty between the different co-writers.

¹: "Four Tet and Domino in court over sales v licence digital royalties dispute", from CMU Daily on 9 Aug 2021, completemusicupdate.com/fourtetvdomino

4. The recordings covered by those older deals are more valuable than ever

Many artists locked into these unfavourable old deals have seen their catalogue recordings revitalised in the streaming age. That is because the shift to digital in general – and the move to streaming in particular – has removed both logistical and transactional barriers when it comes to monetising catalogue.

This makes the record industry's catalogue more valuable than ever. However, the artists who made those historical recordings are often paid much lower royalties, meaning that labels not artists are benefiting from this increased value in catalogue.

SOLUTIONS

The music industry's role

The FAC and MMF call for a number of simple policies to be adopted by labels across the record industry that would immediately address many of these issues, especially in relation to old deals.

These include a commitment to:

- Apply a modern and published minimum digital royalty rate – at least 25% – to artists on all recordings, so that legacy artists are paid the same minimum rate on old recordings as most new artists are on newer recordings.
- Ensure that no discounts or deductions – most of which related to physical releases and are not applicable to streaming – are ever applied to any streaming income,

including international income.

- Commit to write off any unrecouped balances that an artist is still paying off after a reasonable period of time, no more than 20 years.

Some independent labels such as Beggars have already introduced some or all of these measures, demonstrating that they can be achieved without affecting the commercial viability of a record company.

Meanwhile, during the inquiry, Sony Music made a new commitment to pay through royalties to artists on pre-2000 deals who are still paying off unrecouped balances. Sony should commit to implementing this policy on a rolling basis and other record companies must follow suit.

Government's role

In addition to putting pressure onto the record industry to adopt these best practice measures, government also has a role to play. First, in identifying specific inequities in legacy record contracts. Second, in empowering artists to demand and achieve fair treatment by their business partners, both in terms of the streaming market today, but also any future developments as the digital music market continues to evolve.

This includes:

- Undertaking a government-led review of legacy contracts looking for and addressing common contract terms that are no longer appropriate in the digital era, or which were the result of institutionalised prejudice and discrimination in the record industry.

■ Introducing a contract adjustment right into copyright law which provides a simple way for artists at all levels to renegotiate long-term record contracts after a period of time, incorporating current market trends and modern industry practices.

■ Limit, by law, the length of time that a corporate partner can legally control the copyright in a recording, eg to 20 years. This would allow artists to negotiate new deals in the future – possibly with new business partners – that acknowledge current market trends and modern industry practices.

The select committee made the following recommendations in this domain:

“We urge Universal and Warner to look again at the issue of unrecouped balances with a view to enabling more of their legacy artists to receive payments when their music is streamed”.

“We recommend that the government concurrently expand creator rights by introducing a right to recapture works and a right to contract adjustment where an artist’s royalties are disproportionately low compared to the success of their music into the Copyright, Designs and Patents Act 1988. These rights already exist elsewhere, such as in the United States, Germany and the Netherlands, and would give creators greater leverage when negotiating contracts with music companies”.

“We suggest that the right to recapture should occur after a period of twenty years, which is longer than the periods where many labels write off bad debt but short enough to

occur within an artist’s career. This would create a more dynamic market for rights and allow successful artists to go to the market to negotiate better terms for their rights”.

“The right to contract readjustment should similarly be implemented as soon as practically possible to ensure that rights for UK creators do not fall behind rights for European creators”.

Paying performer equitable remuneration (ER) on streams

Given that the industry at large has so far been unwilling to adopt these best practices, some within the industry have proposed the implementation of performer equitable remuneration on streaming as another possible solution.

Whenever sound recordings are broadcast or played in public, artists have a statutory right to payment, even when they do not own the copyright in those recordings and regardless of any contracts that they may have signed with copyright owners.

This principle does not currently apply to streams. If it did, artists would directly receive a share of the monies generated by the streaming of recordings on which they perform. Part of this direct payment would also go to session musicians, who do not normally receive any ongoing royalty payments from the sale of physical discs or from digital income.

This income would not be subject to recoupment or any discounts or

deductions set out in a record contract, and would be collected and distributed by a performers' collecting society – this is PPL in the UK. Quite how this would work – and what impact it would have on a featured artist's royalties under contract – isn't clear.

There are both pros and cons to the ER approach, and there are a number of questions that would need to be answered in order to assess how effective a solution ER would really be:

- The law does not specifically state what share of broadcast and public performance monies from recordings should be paid to performers, although by industry agreement it is 50%. With regards to streaming, however, no clear proposal has yet been made as to how ER would work and what share performers would receive. In the small number of countries where ER is already paid on streams, a much lower share applies, usually a single figure percent of total streaming income.

- There is also the issue of how efficient the collection and distribution of this money would be, especially if foreign societies administered ER income in other territories (as they do for broadcast and public performance). There is a risk that some of the issues that currently apply to song royalties – explained in section three – could be transferred over to recording royalties.

While artists on unfavourable record deals may benefit from this system, new artists who have partnered with their managers and distributors or label services companies on their recorded music might actually be worse off if an ER system created

new administrative costs and the risk of lost income as a result of inefficiencies in other markets.

Despite these issues, some established artists and managers support the introduction of ER on streams as a way to circumvent some of the appalling industry practices which have persisted. It was also supported by multiple submissions to the select committee and in their final report MPs recommended that ER should be paid on streaming income.

The select committee made this recommendation in this domain...

“We recommend that the government legislate so that performers enjoy the right to equitable remuneration for streaming income. Amending the Copyright, Design And Patents Act 1988 so that the making available right does not preclude the right to equitable remuneration, using the precedent set by the co-existence of the rental right and right to equitable remuneration in UK law, would be an effective solution”.

Given the potential issues outlined above, FAC and MMF recommends that rigorous research be commissioned to consider what form ER on streams might take; what costs would be involved; and what impact it would have on new artists, especially those who have chosen to go the distributor or label services route.

Further reading: Section 7.2 of the ‘Dissecting The Digital Dollar’ book considers various different ways that ER on streaming might work in more detail.

Section Three: Royalty chains and the black box

BACKGROUND

1. Many songwriters are yet to see the benefit of streaming

Many managers and songwriters report that writers are yet to see the benefit of streaming, even though publishing deals are much more generous to writers than record deals are to artists.

This is partly because of how streaming monies are shared out between the song rights and the recording rights, with 10-15% of streaming revenues going to songwriters and publishers, compared to 50-55% to labels and artists.

However, even with that system, the percentage share allocated to songs on a stream is still double that which was allocated on the sale of a physical disc. So why are so many songwriters yet to see the benefit of streaming?

Further reading: Section 7.1b of the 'Dissecting The Digital Dollar' book explains the split of income between recording rights and song rights, and outlines the arguments for and against the current approach.

2. Songwriter royalties often flow down complicated and inefficient royalty chains

The licensing of song rights and the

processing of song royalties is much more complicated than the licensing of recording rights and the processing of recording royalties. There are various reasons for this, outlined in the 'MMF Song Royalties Guide'.

These complexities mean that song royalties flow from the streaming services to songwriters down multiple 'royalty chains'. Different chains will apply for different services and different countries, and multiple chains can even apply to a single stream of a single song. And songwriters are generally not told what royalty chains are being employed when.

This is important because, as the money flows through the system, there will be delays and deductions at every link in the chain which significantly impact songwriter's income.

Further reading: The MMF 'Song Royalties Guide' explains in more detail why complex royalty chains are involved in the processing of song royalties.

3. Songs also need to be matched to recordings before any payments can be made

On the recordings side, a label or distributor provides each track to each streaming service, complete with some meta-data about the recording, including the unique code used to

identify it, the International Standard Recording Code (ISRC). The service then assumes that the label or distributor controls the recording rights in the track and needs to be paid whenever it is streamed.

However, the label or distributor does not grant a licence for the accompanying but separate song rights. Nor does it tell the streaming service who controls the copyright in the song, or what the specific song is (using the unique identifier for songs, the International Standard Works Code or ISWC). Even if it did provide an ISWC, the service wouldn't know who owned the copyright, as there is no global publicly accessible database that has that information.

Song copyrights are also often co-owned by multiple entities, because collaboration is common in the songwriting process, and are frequently controlled by different entities in different countries because of traditional music publishing conventions.

This means that whoever is the first link in any one royalty chain for any one song in any one country must claim the royalties to begin with, by taking a report from each service of what recordings have been streamed (identified by each track's ISRC) and identifying what songs have been streamed (within those recordings), and whether they control the rights in those songs.

Because of the aforementioned territorial nature of traditional music publishing, it's common for different entities to be that first link in the

chain in different countries, and the songwriter often is not even aware who is performing this vital task.

Further reading: The 'MMF Song Royalties Guide' explains in more detail the issues around data and how they impact on songwriter payments.

4. These complexities result in lower, late and lost payments to songwriters

All these complexities increase the costs of processing song royalties, costs which are then in part incurred by the songwriters.

It also means that money is being deducted and delayed – sometimes multiple times – between the streaming service and the songwriter.

Also, if the first link in the chain fails to identify that a song has been streamed, then no royalties will flow. If multiple entities claim to represent the same song – or if between then they claim to own more than 100% of one song – then all payments are halted.

We estimate that around 20-50% of songwriter payments from streaming services are affected by these various issues, ie royalties are never claimed, lost to deductions, or delayed, possibly for years, because of data disputes and other inefficiencies.

5. A portion of song royalties end up in the black box

These complexities also mean that a significant portion of the money paid by streaming services every month

cannot be accurately matched to the correct songs and/or the right copyright owners.

This unallocated money ends up in a pot, often referred to as the streaming black box.

Although the size of the black box is not known, it is significant. ICE, the digital licensing hub co-owned by UK collecting society PRS, estimates over €100 million for Europe alone was unmatched in 2019. Meanwhile The Ivors Academy estimates that at least £500 million ends up in the global black box each year.

And in terms of solid data, a new collecting society launched in USA to represent the mechanical rights in songs confirmed it had received \$425 million from the streaming services relating to songs that had been streamed over the last decade, where the service could not identify the song or the copyright owner.

What happens to unallocated monies varies from country to country, but it is often distributed to rights-holders across the industry based on market share, benefiting big corporate rights owners and superstar songwriters.

This takes place despite the fact that big corporations and superstars will have the appropriate systems in place – or should do – to ensure they have accurately claimed the royalties they are due.

It cannot be fair or justifiable that this long-tail of royalties, which are almost certainly not for the use of high earning works, are nevertheless

redistributed to those already successful publishers and songwriters.

Further reading: The recent Ivors Academy study 'Estimating The Size Of The Global Song Streaming Data Gap' discusses the streaming black box in more detail.

SOLUTIONS

The music industry's role

The FAC and MMF call for a number of policies to be adopted across the music publishing sector that would immediately address or at least begin to tackle many of these issues.

These include:

- All music publishers and collecting societies must publish royalty chain information for all services in all countries, explaining what delays and deductions occur at each link of the chain, so that it is clear how much money is flowing through the system and how much is leaking out in administrative payments.
- Publishers and societies must seek to do truly global licensing deals – which are not currently the norm. This would mean that the royalty chains are the same for each service on a global basis.
- This reduces the number of chains and the number of links in the chains, and means songwriters are no longer reliant on distant and sometimes unknown entities to claim their royalties in the first place.
- Collecting societies must routinely share data they hold relating to what songs are contained in what recordings, and who controls each song in each country.

- Streaming services, collecting societies and music publishers must put systems in place to immediately alert songwriters and their managers to any data conflicts in the system which could result in payments being halted.

- Royalties that cannot be accurately allocated to specific songs should be used to fund data, educational and grassroots initiatives, rather than rewarding corporates and superstars who have already claimed, or should have claimed, all their royalties, thus motivating those corporates and superstars to tolerate a perverse and broken system.

Government's role

To ensure this happens, government and Parliament have an important role too.

- The government should put pressure onto music publishers and collecting societies to adopt full transparency around royalty chains, to pursue global licensing deals, and to develop alert systems for data conflicts.

- The government should introduce new transparency obligations for music publishers and collecting societies into copyright law, including in relation to royalty chains.

- The government should – as a matter of urgency – investigate the impact of the streaming back box and work to bring to an end market share distributions of this money.

The select committee made the following recommendations in this domain...

“The government should require all publishers and collecting societies to publish royalty chain information to provide transparency to creators about how much money is flowing through the system and where problems are arising. This should be done periodically, and in a way that is practical and useful to other stakeholders, including other collecting societies and publishers”.

“It should also require publishers and collecting societies to put in place efficient, practical alert systems to inform creators and representatives about data conflicts ... the government should leverage the size of the UK market to explore how global licensing deals could be made possible by policymakers around the world, including in trade deals, which would support creators both domestically and abroad”.

“It should work with industry to end the practice of distributing black boxes pro rata and, instead, place obligations on collecting societies that mean that this revenue is reinvested in the industry, such as to support creative talent and or develop solutions to revenue distribution issues. The government should concurrently commission an exploratory audit of black boxes to achieve greater clarity as to what is genuinely impossible to allocate and what is mis- or un-allocated due to a lack of will”.

Section Four: Platform licensing, transparency and streaming service advances

BACKGROUND

1. Streaming services do deals with labels, distributors, publishers and societies

Streaming services negotiate deals with record labels, music distributors, music publishers and collecting societies. Artists and songwriters do not have direct licensing relationships with most streaming services and are not paid directly by the platforms.

This is partly because labels, publishers and collecting societies traditionally own the copyright in the recordings and songs that the services seek to exploit.

However, even where artists and songwriters retain copyright ownership – which is now much more common – they still need to work with business partners when it comes to streaming.

This is because streaming services want to do as few licensing deals as possible, so prefer, and often insist on, dealing with companies or organisations that represent large catalogues of rights.

This means artists and songwriters are not directly involved in the licensing deals agreed between the streaming services and the music industry.

2. Streaming deals are shrouded in secrecy

The complex deals negotiated between the streaming services and the music industry are shrouded in secrecy as a result of non-disclosure agreements (NDAs).

Although all the deals done with any one streaming service will follow a similar template, the specifics of each deal are unique, and artists and songwriters are not able to find out the specific details.

This means that when artists and songwriters are deciding which labels, distributors, publishers and societies to work with, they are unable to compare the pros and cons of the different deals those companies and organisations have done with each streaming service.

Meanwhile artists, songwriters and their advisors are unable to properly audit the digital royalties they receive from the business partners they work with. An artist's accountant will usually hit an NDA while attempting to undertake a full-scale audit.

Although the music industry has talked a lot about addressing its transparency issues – and some labels and publishers have made some improvements – if anything the streaming market has become less transparent as it has diversified.

Further reading: The ‘MMF Transparency Guide’ identifies the 20 pieces of data and deal information artists and managers need to understand their streaming businesses, and outlines the issues artists and managers have in accessing some of that information.

3. There are big transparency issues around advances

When streaming services negotiate new licensing deals they usually pay multi-million pound advances to the labels and publishers.

These advances are usually recoupable but not returnable. That means subsequent streams and the payments that would have been due to labels and publishers are reported and deducted from their balance. Additional payments begin once the advance has been exceeded, or recouped.

However, it sometimes turns out that the advance received from a streaming platform exceeded what was actually subsequently due meaning the label or publisher makes a profit. That profit is confusingly referred to as ‘digital breakage’ in the music industry.

There have been issues over the years regarding what happens to breakage monies. Even where labels and publishers have committed to share that income with their artists, it is often not entirely clear how that money is being allocated and distributed.

Further reading: Section 7.3 of the ‘Dissecting The Digital Dollar’ book explains the issues around advances and breakage in more detail.

4. There are even bigger transparency issues around lump sum payments

The major licensing deals that have been agreed in recent years with social media services that utilise music – including Facebook, Instagram, Snapchat, TikTok and Triller – pose another set of transparency issues for artists and songwriters.

With some social media services that are still working out how they plan to actually use music, and monetise that usage, the advance may be a one-off lump sum payment covering a set period of time. No additional payments are made during that time period and what music has actually been streamed may not even be reported.

There is often little transparency about how this money is being shared with artists – and with each new service that is licensed, artists and their managers are often forced to undertake a new round of investigative work to understand the details of how each deal is structured and revenues are to be shared.

SOLUTIONS

The music industry’s role

The FAC and MMF call for a number of policies to be adopted across the wider music industry that would immediately address many of these issues:

■ Labels, publishers and societies should, as a matter of course, explain in clear terms to artists and writers the structure of every deal they enter into with a streaming service which directly impacts its business relationship with each artist or writer.

■ Where you have monies not directly linked to specific usage of music, labels, publishers and societies should clearly publish the methodology they use to distribute that money, and communicate how those payments will be reported.

■ An artist's accountant should, on request and subject to NDA, have sight of specific deal terms where that information is required to properly audit an artist's royalties.

Government's role

The government has an important role to play here too.

■ It should codify the transparency obligations outlined above into copyright law, taking article nineteen of the 2019 European Copyright Directive – which provides artists and songwriters with a new transparency right – as a starting point.

■ It should also instigate a research project about the specific

transparency obligations that would overcome the issues outlined in this white paper, and also how they would work in practice.

■ It is important to note that article nineteen was very much a compromise and does not address all the issues. It also does not cover collecting societies where major transparency issues persist, including with tracking digital royalties.

The select committee made the following recommendations in this domain...

“The government should introduce a right for performers (or their representatives) to have sight of the terms of deals where their works are licensed, on request and subject to non-disclosure”.

“There should also be notification requirements, requiring relevant parties to provide clear information and guidance to creators about the terms and structures of every deal where creators' works are licensed, sold or otherwise made available, and the means and methods by which monies that are being distributed to them are calculated, reported and transferred”.

Section Five:

Maintaining momentum

DCMS should convene a series of economics of streaming roundtables

To ensure that the music industry rises to the challenges set out in this white paper – and to help the government to fulfil its vital role – the Department For Digital, Culture, Media And Sport should coordinate a series of roundtable discussions on the economics of streaming and the workings of the music industry.

This will ensure that the momentum initiated by the select committee is maintained. These roundtables can agree targets within the music industry, advise on government research and legislative reform, and input into the planned review of copyright law in the UK.

DCMS has successfully intervened in this way in the past – for example

in facilitating discussions between copyright owners – including the music industry – and internet companies and search engines on the responsibilities of the latter to combat online piracy.

In addition to this, the MMF and FAC also supports the select committee’s recommendation that the government refer a case to the Competition & Markets Authority to undertake a full study into the economic impact of the major record companies’ dominance in the music rights market.

These activities will guarantee that what has been started in Parliament can be continued in a way that helps to ensure that the British music industry is the best in the world, where artists, songwriters and their business partners are best positioned to succeed in the current and future streaming market.

This is a white paper on the UK Parliament's 'economics of music streaming' inquiry and report from the Featured Artists Coalition and Music Managers Forum.



ABOUT THE FEATURED ARTISTS COALITION | thefac.org

The Featured Artists Coalition is the UK trade body representing the specific rights and interests of music artists. A not-for-profit organisation, serving a diverse, global membership of creators at all stages of their careers, the FAC is formed by artists, for artists, and we place this ethos at the centre of all we do. We are an inclusive community that advocates, educates, collaborates and researches on behalf of artists, coming together to provide a strong, collective voice within the industry and to governments domestically and abroad.

The FAC was founded in 2009 by a group of artists including Billy Bragg, Robbie Williams, Annie Lennox and Pink Floyd's Nick Mason. Today the FAC continues to serve a diverse membership of over 4000 creators, driven by a board of directors and an army of ambassadors including Imogen Heap, Howard Jones, Jack Savoretti, Aluna, Loyle Carner, Skin (Skunk Anansie), Ghostpoet, Johnny Marr, David Rowntree (Blur), Paloma Faith and Katie Melua.



ABOUT THE MUSIC MANAGERS FORUM | themmf.net

MMF UK is the world's largest professional community of music managers. Since its inception in 1992, the MMF has worked to educate, inform and represent UK managers as well as offering a network through which managers can share experiences, opportunities and information.

The MMF membership stands at over 1200 managers based in the UK and all around the world. The MMF aims to support managers' continuous professional development within an evolving music industry, create and highlight opportunities to develop and grow artist businesses, and provide a collective voice and leadership to affect change for a transparent and fairer music industry for artists and their fans.

**DISSECTING THE
DIGITAL DOLLAR**

themmf.net/digitaldollar

