[GB] Parliament investigates the economics of music streaming

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Lockdowns and strict social distancing measures implemented to curb the spread of coronavirus (COVID-19) meant that 2020 was a difficult year for Europe's live music and events industry. Thankfully, many artists were able to create studio-quality recordings from their residences and upload them to the ever-growing number of online music and audiovisual platforms. As such, some singers, composers and other musicians were able to be as productive as ever. Venues may be closed, and tours may be cancelled, but - and perhaps accordingly - the music streaming industry enjoyed a phenomenal year of growth.

As this dynamic sector continues to expand, it is increasingly important for media and entertainment lawyers, as well as those specialising in technology agreements, to be mindful of the myriad of contractual and regulatory issues related to music streaming. To put this into an economic context, in 2020 the music streaming industry was worth over EUR 5 billion. Analysts project that the industry will be worth closer to EUR 5.6 billion by the end of 2021, notwithstanding a gradual return to "normal" after populations receive the COVID-19 vaccine.

Members of Parliament (MPs) in the United Kingdom are now examining the current business models, and considering how existing contracts and laws impact artists, record labels, streaming platforms, and consumers. Announced in October 2020, the inquiry is entitled the *Economics of music streaming* and is led by MPs on the Digital, Culture, Media and Sport (DCMS) Committee. Using Spotify's publicly available figures as a typical example, a music streaming platform will generally take a certain percentage of the subscription fees it receives as profit, before delivering the remaining fees to rightsholders, which are split according to the number of streams. In Spotify's case, the company retains 30% before delivering up the other 70% to the rightsholders.

The rightsholders are typically the record labels, publishers, and distributors, who then pay the artist based on their individual contracts. However, as the DCMS Committee explained, artists may receive as little as 13% of such income, with the rest remaining with the rightsholder. In the press statement announcing the inquiry, Committee Chair Julian Knight MP said: “while streaming is a growing and important part of the music industry contributing billions to global wealth, its

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success cannot come at the expense of talented and lesser-known artists."

In November, the inquiry heard from Radiohead guitarist Ed O'Brein, Elbow frontman Guy Garvey, and soloists Nile Rodgers, Fiona Bevan and Soweto Kinch, amongst others. Tom Gray, a musician and founder of the #BrokenRecord campaign, also spoke. #BrokenRecord advocates for better streaming royalties for artists, and recently published the results of a survey in which it found 77% of respondents believe artists are not paid enough.

There are many stakeholders in this ecosystem, each with their own views as to how revenue should be collected and distributed. It remains to be seen just how performers could receive more royalties in practice, and whether or not the solution will be found by way of private contractual negotiations, or whether a more robust regulatory regime is appropriate. Interestingly, the DCMS will look to its European neighbours for inspiration, and has cited in a report that it would examine "a model operated by the Spanish Government to implement a form of 'equitable remuneration' for streaming that protects artists' income."

In addition to exploring the relative merits of various business models, the inquiry will also consider whether the government should introduce new laws on intellectual property rights. For example, those which could seek to protect the industry from piracy in the wake of steps taken by the European Union on copyright. During oral hearings, MP Alexandra Davies-Jones questioned the extent to which social media platforms have had an impact on artists' revenue streams. She noted the argument that sharing an artist's music for free via social media gives artists exposure, which could potentially outweigh the negative effects of safe harbor rules on copyright.

Several artists who spoke to the Committee were not so sure of this argument. Singer-songwriter Fiona Bevan remarked that musicians "cannot pay the rent with exposure." Jazz alto saxophonist and rapper Soweto Kinch also pointed out that the algorithms employed by certain platforms such as Instagram may hinder lesser-known artists from obtaining good levels of exposure in the first place.

Following its review of written and oral evidence, the Committee will make recommendations to parliament. Although the specifics of the recommendations are yet unknown, the hearings and public reports published to date contain several interesting suggestions. One such idea being considered is imposing a legal obligation upon streaming services to be more transparent with artists. For example, the platforms may be obliged to post verified statistics and income trackers onto "artist dashboards", which could show musicians exactly how much they are owed. At present, a majority of data used to calculate royalties payable are unauditable, due, in part, to the confidentiality arrangements in place between streaming platforms and the publishers and labels.

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In light of the legal and practical complexities, it appears that MPs are starting to appreciate how the lack of transparency and information in this dynamic sector impacts the creative economy more generally. Obviously, the task before the DCMS Committee is a considerable one indeed, with a multitude of diverse stakeholders: consumers, artists, performers, record labels, social media companies, and music technology platforms each have an important role to play.

United Kingdom Parliamentary Committees, Digital, Culture, Media and Sport Committee, Economics of music streaming

https://committees.parliament.uk/work/646/economics-of-music-streaming/

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