Music streaming and its impact on composers and songwriters

Why we should fix streaming now.

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 European countries. With more than 60-member organisations across Europe, the Alliance speaks for the interests of music creators of art and classical music (contemporary), film and audiovisual music, as well as popular music. The main objective of the Alliance is to defend and promote the rights of authors of music at the national, European and international levels and improve social and economic development of music creation in Europe.

Long before the COVID-19 crisis, our Alliance and its members have denounced the extremely low level of remuneration coming from online exploitations - including streaming - and called for strong public policy actions and ambitious legislative initiatives to improve the situation of music authors and promote a sustainable future for music. While a faithful and timely implementation of the 2019 Copyright Directive is a key first step to bring more fairness and transparency, it will not remedy the fundamental flaws and market failures of the music streaming market for music creators, cultural diversity and European citizens alike.

That's why we call both policy makers and all stakeholders in the music sector to promote a fairer and more transparent ecosystem for music streaming, which could finally benefit music creators, who are at the origin of all musical creations.

To do so, there is no one single magic solution but rather several key changes required to improve the music market, restore the value of songs and compositions, evaluate and reform the current allocation of revenues per stream, and increase transparency (including for algorithms and playlists). As the COVID-19 is dramatically exacerbating the negative impact of music streaming on music creators, there is not time to lose to change the system if we want to build a sustainable future for music streaming.

But let's first look at some facts and figures and the double impact of the COVID-19 on composers and songwriters:

Facts and figures: a constantly growing streaming market for … the recorded music business

Music streaming has enjoyed constant and significant growth for well over a decade now. While the COVID-19 crisis has dramatically impacted the live music sector and music creators, music streaming continues to grow. According to the IFPI[1]:

- In 2019, music streaming revenue grew by 22.9%, and for the first time accounted for more than half (56.1%) of global recorded music revenue.
- The global recorded music market continued to grow by 7.4% in 2020, the sixth consecutive year of growth. "Growth was driven by streaming, especially by paid subscription streaming revenues, which increased by 18.5%".

[1] Global Music Report 2021, IFPI, https://www.ifpi.org/ifpi-issues-annual-global-music-report-2021/

- Revenues in Europe, the second-largest recorded music region in the world, grew by 3.5% as strong streaming growth of 20.7% offset declines in all other consumption formats.
- In Italy, the region's fifth largest market and one of the countries most affected by the COVID-19 pandemic, there was double-digit growth in streaming in general (29.5%), with revenue increases for both paid subscription (29.8%) and ad-supported (31.6%) services.

Long before the COVID-19 crisis, composers and songwriters (as well as performers) - who are in their vast majority freelancers facing precarious working conditions as well as low and unstable income - were not fairly remunerated from music streaming services. According to a survey of our members, 74% of music authors could not live from the income generated by their artistic profession in the beginning of 2020. Even for those authors making a full-time living from their artistic profession, streaming usually only contributes a nominal amount to their income.

The double impact of the COVID-19 crisis for composers and songwriters

This situation has only been exacerbated by the COVID-19 pandemic, which has a dramatic impact on our members and on many players in the cultural and creative sectors. The recent EY study "Rebuilding Europe - The cultural and creative economy before and after the COVID-19 crisis"[2], supported by our organisation, has shown that cultural and creative industries (as a whole) experienced losses of over 30% of their turnover for 2020 – a cumulated loss of €199 billion – with the music sector experiencing a 75% loss.

This study also reports a fall of around 35% in royalties - the most important source of income for composers and songwriters - collected by Collective Management Organisations (CMOs), whose revenues will be sharply reduced in 2021 and 2022.

As a result, many authors and are now looking for other jobs outside the cultural and creative sectors. In fact, music authors are now suffering twice because:

a) Exploitations of music where music authors usually get more decent revenues from CMOs (TV and radio, live and public performance) are the ones now facing major losses.

b) Streaming royalties for authors are still extremely low, with the lion's share of streaming revenues (approximately 55% of total streaming service revenues) flowing to the recording industry. In contrast, only 21% or EUR 2.1bn of CMOs' income (for all publishing repertoires except mechanical royalties paid directly to music publishers) comprised online sources in 2019, according to the CISAC Global Collections Report 2020. This percentage must then generally be shared between music authors and music publishers.

In addition, the slow implementation of the 2019 Copyright Directive and the growing use of buy-out contracts for audiovisual composers are further exacerbating these negative trends of diminishing income for music authors.

The current situation is not sustainable and must change. Let's now look at streaming from different angles and at several key changes required to promote a fairer and more transparent ecosystem.

[2] https://www.rebuilding-europe.eu/

1. **Looking at the broad digital music market picture: why limiting safe harbours on user-generated platforms should improve the music market.**

Today, online content-sharing service providers (such as YouTube) compete with fully licensed streaming services (such as Spotify) and are the worst services for the remuneration of music creators. This is due to safe harbour provisions, that have allowed them to circumvent fair remuneration for copyright protected content on their services for more than a decade now. We are a strong supporter of measures aimed at reducing the harmful impact of safe harbour provisions on music authors and other rightsholders, such as Article 17 of the Copyright Directive, and we encourage all countries beyond the EU to adopt such measures.

In the EU, an ambitious and timely implementation of Article 17 of the 2019 Copyright Directive can put an end to this situation if it remains faithful to its objectives. But this is still a distant promise today, as an overwhelming majority of EU Member States have still to implement the Directive, despite the fast approaching 7th June 2021 deadline. In addition, it is alarming to see proposals for new safe harbours and exceptions within the scope of Article 17. Such an interpretation runs against the very objective of Article 17 - a fairer online environment for creators – and deter fairer licensing deals between rightsholders and those platforms.

Ensuring that free online content sharing service providers must get a fair licence will help promote fairer competition between those platforms and subscription-based services, and level the playing field for all music streaming services. Indeed, the fact that subscription-based services have free tiers (with very low income for authors) and/or have not raised their monthly subscription price in years (in contrast with VOD services such as Netflix) is largely due to the competition from content sharing services.

With an adequate implementation of Article 17, CMOs should be able to negotiate better deals with online content sharing service providers to the benefit of music authors and promote a fairer level playing field for all streaming platforms. In the long term, paid subscription services with higher prices should become the norm if we want to promote a music ecosystem which can work for everyone. We therefore welcome the recent announcements by Spotify that it will increase its prices as a first step in the right direction, and we call on other music streaming services to follow this path. However, "growing the pie" would not improve the streaming market if there are no actions to share the pie in an equitable manner and restore the value of songs and compositions.

2. **Looking at how streaming works: why we must restore the value of authors' rights.**

Music streaming services must get a licence for both recording rights from record labels and authors rights (or publishing rights) from CMOs and/or music publishers.

In order to offer an alternative to piracy and to counter the decline of CD sales, streaming services started to develop in the 2000s with an economic model based on cheap or free subscriptions, and with a "CD-style model" for sharing income generated between music industry stakeholders, where the record labels gets the lion's share of the revenues. Such a repartition could be justified with physical products because of the production, distribution and marketing costs associated with CDs, but applying the same model to streaming does not make sense anymore, since streaming services have become much more than a mere substitution of CD sales. In the meantime, as streaming grew exponentially with this model, there was a devaluation of authors rights.

In today's streaming deals, the value going to the recording rights is still often 4 or 5 times higher than that going to the authors' rights (or publishing rights). As a result, music author's rights - in other words, the value attached to a song - has been undervalued. In 2020, a survey conducted in US, UK, Canada, Australia, France and Germany with more than six thousand participants concluded that 60[3]% of respondents consider that a good song is the most important factor when they decide what music to listen to. So why is the value attached to the song and the authors' remuneration so low?

This loss of value for the song is also often due to the fact that the music majors – who act as both record labels and music publishers - usually favour the recording rights to the detriment of author's rights (or publishing rights). This is because – as a result of industry conventions - they make more revenues out of recordings, where only a small share is usually paid to the performers, compared to publishing rights, where the publisher usually receives a minority share of income. Those conflicts of interests have a very detrimental impact on music authors and explain to a large extent their very low level of remuneration.

Both CMOs and policy makers should prevent those conflicts of interest and mitigate the negative effects of ever-increasing concentration in the music rights sector – where the three music majors use their market power to get preferential treatment and dictate the rules of the game. Policy makers and competition authorities should carefully look at the impact of the majors on the music streaming market.

More generally, it will be paramount for CMOs to renegotiate licence contracts to take into account the increased use of their members' works on music streaming platforms. The share for publishing rights in licensing deals must continue to grow in order to reflect the real value of the song and the steady growth of streaming services.

3. Looking at the value of a stream and at the distribution of revenues per stream

Looking at the different criteria for the value of a stream and the allocation of revenues to right holders per stream, many discretionary choices made by dominant players have now became the norm for almost all streaming services, with a strong impact on both music creators and cultural diversity. While we acknowledge the fact that there is no single nor easy solution to rebalance the current system, we call on policy makers and music stakeholders to evaluate it and put in place alternative solutions. More in detail, we must look at this (non-exhaustive) list of issues:

- The User-centric debate:

With the current pro-rata model for royalty distribution employed by almost all music streaming services, revenues are allocated according to each track's share of total streams, by subscription type and country, in any one month. In other words, the total revenues are distributed to the rightsholders by monthly market share. This model obviously overvalues the tracks listened to by intensive streaming listeners and thus undervalues the tracks listened to by average streaming listeners. A recent French study shows that today 30% of intensive streaming listeners generate 70% of total streams and therefore dictate where 70% of the money goes. This model has also clearly favoured manipulation and fake streams.

Another way of revenue distribution is the so-called user-centric payment system (UCPS), which consists of distributing the revenues of each subscription separately according to each user's actual listening behaviour: ie the user's subscription is distributed only to the rightsholders of the tracks he or she listens to. While there have been several studies, some highlighting and some disputing the impact and shifts of revenues between genres that would result from adopting UCPS, for the composer and songwriter community it represents a fairer, more transparent, and direct fan-to-creators payment system.

[3] Rebalancing the Song Economy, Midia Research, April 2021, https://www.midiaresearch.com/reports/rebalancing-the-song-economy

Another advantage of UCPS is the fact that it would decrease fake or fraudulent streams. The generation of a large number of streams by auto-generated streaming dilutes the image of what consumers are actually listening to. In the current system these fraudulent streams also end up with a big part of the revenue, since they represent a large piece of the total-generated streams. With UCPS they would only be entitled to the income that was paid by those accounts that generate the automated streams. This would ensure that less money goes to 'streaming-farms' and other fraudulent stream-generating businesses, and more revenues would end up where it belongs: with the actual artists and songwriters that are being listened to.

One argument against the switch to UCPS is the costs of changing the system within Digital Service Providers (DSPs) as well as with labels and CMOs. Although we acknowledge the cost factor, this does not change the fact that streaming has started off on the wrong foot and must be corrected. Having the income divided on a basis of connecting the subscription fee of a listener to the actual music he or she is listening to should be the modus operandi.

- The 30 seconds threshold:

Today a stream is counted as such only if a subscriber has listened to a track for at least 30 seconds, regardless of the duration of the track. This means that songwriters have to come to the point way sooner, for example shortening intros from 20 seconds to 5 seconds, hitting the first chorus within the first minute, etc, to ensure people listen beyond 30 seconds. This can ultimately lead to a white washing of current chart music. All-time favourite hits like Bohemian Rhapsody would have never been created in a system that follows this songwriting logic. It also clearly disadvantages certain music genres where works are usually considerably longer than the classic pop song, like classical music, jazz music, etc. We therefore suggest changing this stream count mechanism for something that will not disadvantage longer songs/tracks and give certain genres the opportunity to participate in the value generated on DSPs.

- "Lean-forward" and "lean back" rates:

Another way to shift value within streaming is to distinguish between the choices that listeners make[4]. Are they actively choosing a track or are they listening to a track suggested by an algorithm or included in a playlist? If they search for the song, this could be categorized as a "lean-forward" play. However, if a user listens to a curated playlist where he or she assumes a passive listening behaviour, such an action would be considered as a "lean-back" play. These differences in active and passive behaviour should be acknowledged and treated differently.

- Build different values and subscription tiers depending on the listening behaviour (metered access)[5]:

Different listening behaviour should result in different pricing. Super-users who listen to a lot of music could be in a different pricing tier than casual listeners. The logic behind this is that music has become a utility and should be priced accordingly.

- Artist Growth Model[6] :

A revenue model could be conceived that helps emerging and niche artists to achieve a sustainable income faster and thus support cultural diversity. For example, the first number of

[4] ibid.
[5] Ibid.
[6] It's Time to Challenge the Flow, How to make the most of the real opportunities of streaming, Impala, March 2021

streams could be valued more and after a certain number the revenue would fall into a lower tier or rate system.

All those changes must be looked at with a holistic approach and they can only be part of a broader plan to evaluate streaming and reform it. Licensors and licensees, including CMOs, should put them in place in order to make a difference and enable music creators to benefit from the music streaming market. In doing so, it will also be key to increase transparency and improve music data:

4. Looking at the distribution of revenues: why transparency should be king.

The value chain for authors' rights is particularly complex, with revenues initially flowing from a streaming service to the author via publishers (and possibly sub-publisher) and/or a CMO and their royalty processing hubs. Along the value chain, revenues diminish due to the deductions that each entity in the chain receives for their services. More transparency is needed about these deductions especially when sub-publishers are involved or when CMOs use the services from other CMOs abroad. Our members often have difficulties getting clear and transparent information about their royalties and the deductions that have been made, in particular beyond their home countries.

In the EU, a faithful implementation of Article 19 of the Copyright Directive (transparency obligation) has the potential to improve this situation. If properly implemented and applied along the value chain to both licensees and sub-licensees, it can provide authors with more transparency about how their works have generated income, and any issues with a complex value chain. Furthermore, it should also provide more transparency about the deals that streaming services made with their contractual counterparts – eg publishers or CMOs - to ensure music authors can better understand the income generated from streaming. Non-disclosure agreements should never be used as an excuse preventing authors to get transparent information, as clearly stated in Article 19 of the Copyright Directive. Without adequate transparency, authors are not able to assess whether they get an appropriate and proportionate remuneration for the uses of their works, or whether data issues are delaying or blocking payment.

Music data must also improve, with the use of appropriate industry standards, such as ISWC, to ensure that songwriters duly receive their remuneration.

Transparency is also a key element for promoting cultural diversity, a fundamental value of the EU. The use of algorithms and playlists by streaming services has a strong effect on what subscribers listen to and on cultural diversity. However, little is known about their functioning and they can operate today without any regulation in a legal vacuum, despite practices of stream manipulations and preferential treatment.

As the recent proposals from the European Commission on the Digital Services Act and the Digital Market Act fail to include music streaming services in their scopes, music streaming services remain the only form of "media" to which no rules apply, although they are now the main avenue for listening to music. Given their importance in the music market, algorithms should help promote diversity and pluralism and should not be merely dependent on the commercial choices of private operators.

While the EU has adopted legislative measures to promote cultural diversity and European works in the audiovisual sector with the AVMS Directive, it should also engage on similar measures for the music sector. Policy makers should have their say on how music streaming impacts cultural diversity and the whole music ecosystem.

The way forward

It is more obvious than ever that music creators cannot make a living from streaming. The COVID-19 crisis has only made things worse, and the growth of streaming is expected to continue in the future, making it ever more important to address these issues. In order to improve the situation, part of the solution is a faithful and timely implementation of the Copyright Directive by EU Member States. However, while the Directive can improve growing the pie of the music market and improve transparency, it won't solve all the issues related to music streaming.

That is why we also need to strengthen the value of songs, evaluate and reform the per stream revenues model and put transparency at the cornerstone of those discussions. None of those issues can be looked at in isolation: policy makers and music stakeholders must adopt a holistic approach in this key debate about nothing else than the future of music. There is no time to lose.

ECSA (European Composer and Songwriter Alliance)

The European Composer and Songwriter Alliance (ECSA) represents over 30,000 professional composers and songwriters in 27 European countries. With 57-member organisations across Europe, the Alliance speaks for the interests of music creators of art & classical music (contemporary), film & audiovisual music, as well as popular music. Web: www.composeralliance.org / EU Transparency Register ID: 71423433087-91