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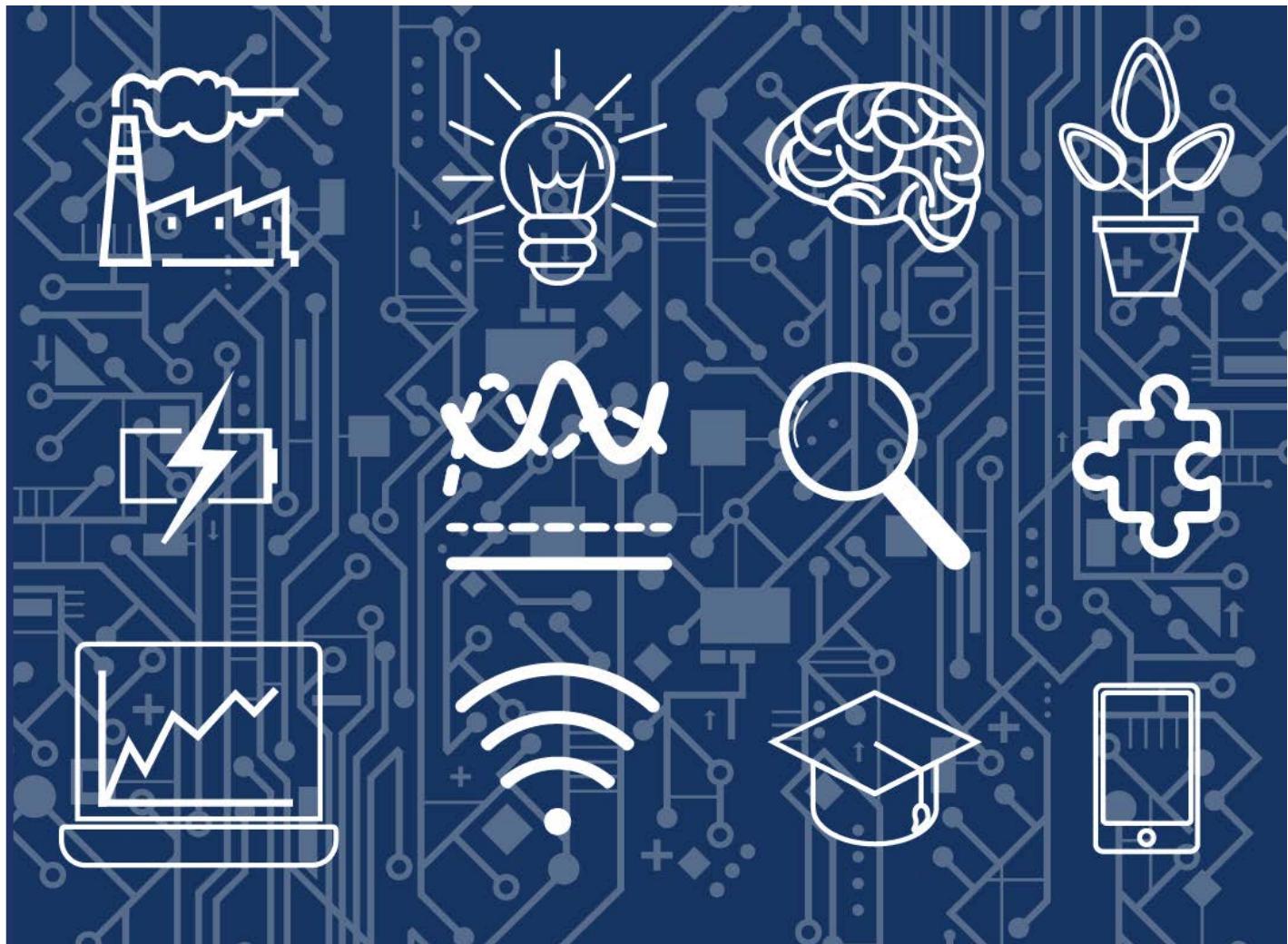


Creative Industries
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Music Creators' Earnings in the Digital Era

David Hesmondhalgh, Richard Osborne,
Hyojung Sun and Kenny Barr



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Funding, authorship and acknowledgements

In 2020, the UK Intellectual Property Office commissioned research on music creators' earnings, led by Dr Hyojung Sun at the University of Ulster and the Creative Industries Policy and Evidence Centre (PEC) as Principal Investigator (PI), with Professor David Hesmondhalgh (University of Leeds) and Dr Richard Osborne (Middlesex University) as Co-Investigators. As the scope of the project grew in size in response to increasing public and industry interest in this issue, further funding essential to the completion of the project was provided to the University of Leeds, with Hesmondhalgh as Principal Investigator, by Research England's Quality-Related Research Strategic Priorities Funding (QR SPF) from January to March 2021 and by the IPO from April to July 2021. These extra funds allowed for the purchase of Official Charts Company data, the commissioning of a survey of musicians, and the employment of a Research Fellow, Dr Kenny Barr, at the University of Leeds from January to June 2021. Support for some of the time of two of the researchers came from DigitT, the ESRC Digital Futures at Work Research Centre (Hesmondhalgh) and the AHRC Creative Industries Policy and Evidence Centre (Sun - full-time).

The three main researchers (Hesmondhalgh, Osborne and Sun) were equal partners in the research and so are listed alphabetically as authors. The research could not have been completed without the work of Kenny Barr as Research Fellow, who is therefore also listed as co-author. Chapter lead authors were as follows but all chapters should be considered as co-authored by all four members of the team: Chapter 1 – Barr and Hesmondhalgh; Chapters 2 and 4 - Osborne; Chapter 3 - Sun; Chapters 5 and 6 – Hesmondhalgh and Barr. Hesmondhalgh acted as editor. Professor Jake Ansell (University of Edinburgh) kindly provided further assistance with data analysis in Chapters 5 and 6. As part of the same research, we have also produced a separate report, *Music Creators' Earnings: Buyout Contracts in the UK Audio-visual Commissioning Sector*, with Kenny Barr as lead author, published in parallel with this report, and also available from the IPO website.

The survey in Chapter 5 was designed in collaboration with AudienceNet; our thanks to colleagues there and to Rob Poole at the Official Charts Company for the data discussed in Chapter 6. The Research Team would like to express our gratitude to Pauline Beck (IPO) for overseeing the research and to Pauline and to Jenny Goodwin (Ivors Academy) for their work in chairing meetings and co-ordinating communication between the Steering Group and the Research Team.

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Music Creators Earnings in the Digital Era

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Foreword



From your favourite rock and pop artists, to film and TV scores, to classical and ambient, music is often the backdrop to our lives. But how do artists earn money from their music? Before COVID-19 lockdowns, artists earned much of their income from live performances. But the pandemic changed that: artists could no longer rely on live performances to make a living and had to look at their other sources of income. This shift brought into sharp focus several issues around streaming, including the way in which artists are remunerated.

Not only has digital technology revolutionised the way we access music, it has also transformed how artists earn money from music. These changes have been rapid, meaning that there has been limited evidence and data that would show how money is made and distributed. This has in no small part led to a high profile and highly polarised public debate, with this lack of evidence and data contributing to misunderstandings and confusion.

Intellectual property (IP), especially copyright, trade marks and brands, provides creators with the tools to allow them to make money and protect their creativity. The Intellectual Property Office (IPO) has a role to play in understanding how those IP rights support the creative value chain. As such, the IPO has led the way by working in partnership with the UK music industry to commission this study to deliver robust and independent evidence. The following report is the most comprehensive piece of research on this topic, to date. I am confident that it will inform decision-makers nationally and internationally in supporting one of the UK's greatest exports – creativity.

I am grateful to everyone who has contributed to the report, whether in providing data, or in giving their time to discuss the many issues raised during the course of this research. Thank you in particular to Dr Hyojung Sun, Professor David Hesmondhalgh, Dr Richard Osborne, and Dr Kenny Barr for their tremendous work.

Tim Moss
Chief Executive and Accounting Officer

Glossary of key terms and abbreviations

This is not a comprehensive glossary. It mainly concerns terms used relatively frequently in the report and/or in debates about the music industries. Cross-references are indicated in bold.

A&R (Artists and Repertoire): This term refers to the division or representative in **record companies** that is responsible for finding new **artists** to sign and overseeing the artistic development of a recording artist. Its job involves ‘finding and signing talent, as well as finding songs, matching producers and artists, and generally overseeing projects’ (Passman, 2019: 307).

AIM (Association of Independent Music): A not-for-profit trade body representing the UK’s independent record labels.

Artists: A collective term which can be used to refer to **performers**, **composers** and **studio producers**, but is often used to refer only to **performers**. In the report, we have tried to make clear in which sense we are using the term, wherever it arises. ‘Artist’ (singular) can often refer to a group of performers or a solo performer. See also **featured artists** and **non-featured performers**.

Assign: in a copyright context, this terms refers to the transfer ownership of rights. see also **licence**.

BPI (British Phonographic Industry): A trade body of the British recorded music industry, representing the three major record labels and over 400 independent record companies.

Broadcast rights: A term used for earnings derived by **rights-holders** from television and radio broadcasting, though in fact under UK copyright law, broadcasting is addressed under the **communication to the public right** (CDPA 1988: s. 20(2))

Collecting societies - Also known as Collective Management Organisations (CMOs), the music industry collecting societies operate on behalf of a combination of rights holders including composers, lyricists and music publishers on the one hand and performers along with record-producers on the other, to monitor, license and monetise uses of all of their works and recordings. The key collecting societies in the UK context are the **PRS**, **MCPS** and **PPL**.

Collective licencing: A system by which, instead of individual **rights-holders** ‘negotiating licences’ for a particular use of their works, a collective agreement is made between all rights-holders and all users, usually on terms negotiated by a **collecting society**.

Communication to the public: This is one of the key **rights** or controls afforded by copyright law. It covers electronic transmission of copyright works, including musical compositions and sound recordings. This includes both the broadcasting and **making available** of copyright works.

Composer: In copyright law, composers and lyricists are distinguished. In the industry, the term **songwriters** is often used to refer to both composers and lyricists. In this report, we often use the formulation ‘composers/songwriters’ to try to minimise confusion. In our usage, this includes lyricists. Only in cases where lyricists are subject to particular or special discussion do we distinguish them from composers in the way that copyright law does. The term should not be confused with composers in the sense of classical music composers such as Beethoven, Mahler etc.

Copyright: One of the four main branches of intellectual property, the others being trademarks, designs and patents. It is best understood as a ‘bundle of rights’ (Frith and Marshall 2004: 6), meaning that only **rights-holders** are allowed to do certain things with works (recordings and compositions/songs).

DCMS (Digital, Culture, Media and Sport): A UK government department, and correspondingly, a House of Commons Select Committee that is set up to scrutinise this area of policy, consisting of Members of Parliament from various parts. The DCMS Select Committee held an Inquiry into the Economics of Music Streaming in 2020-21 and we use oral and written evidence presented to this Inquiry at various points in this report.

DSPs (Digital Service Providers): We use this term to refer to various digital services that provide music. At times we use an alternative term ‘music streaming platforms’ (MSPs) when the context refers to particular companies such as Spotify and Apple Music that specialise in music. Some commentators prefer the term ‘music streaming services’ for the latter.

ER (Equitable Remuneration): A statutory right that ensures performers are paid ‘equitably’ (i.e. fairly) from ‘certain specific exploitations of their recordings’, most commonly exploitation of **performing rights**, i.e. **public performance** and **communication to the public** rights (Cooke 2020: 42). Strictly speaking, therefore, it should properly be known as ‘performer equitable remuneration’. The aim is to guarantee a minimum payment that is not subject to recoupments, discounts or deductions specified in recording contracts. That amount is usually determined by ‘collective licensing’, rather than contract. In many countries 50%, but does not need to be ('equitable' does not mean 'equal'). It cannot be waived or assigned in a contract. Within UK law, performer ER is applied under certain conditions, notably when performer's music is played on the radio (see Chapters 2, 3 and 4). PPL collects radio payments and distributes them 50-50 between labels and performers.

FAC (Featured Artists Coalition): A UK trade body representing **featured artists**.

Featured artists: performers contracted to record companies whose name or band name the recordings are released under, but it can also refer to performers who have initiated their own recording projects.

IFPI (International Federation of Phonographic Industry): A global body for recorded music, representing the three major record companies, independent record companies and distributors.

Independent: Any record or publishing company that is not defined as a major. This ranges from micro enterprises to very large vertically and horizontally integrated corporations.

Ivors Academy: A trade body in the UK that works in the interest of British songwriters, previously known as the British Academy of Songwriters, Composers and Authors (BASCA) and rebranded as the Ivors Academy in 2019.

Label: A commonly used term for a **record company**.

License: in a copyright context this term refers to: a) the transfer of use of rights from the original author to a right-holder, but with a difference from assignment in that the author retains ownership of copyright; b) the permission granted to by a rights-holder to a licensee to use the copyright work.

Lyricists: The author of words for songs and **compositions**. See **composer** and **songwriter** for further comment.

Major: The term ‘major’ is usually used to refer to those companies that have substantially greater international market share than all other companies, and which are usually part of larger, multinational corporations. As of 2021, the music industry majors are Universal Music Group, Sony Music Entertainment and Warner Music Group. The **publishing** majors (Sony Music Publishing, Warner Chappell and Universal Music Publishing) are subsidiaries of these groups. See also **independent**.

Making available right: This is one of the acts restricted by copyright law. It restricts ‘the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them’ (CDPA 1988: s. 20(2)(b)). In the UK, this right addresses the distribution aspects of downloading and on-demand streaming and has therefore been the subject of considerable debate in recent years (see Chapters 2,3 and 4).

Manager (or artist manager): ‘[A] representative of a performer, songwriter, producer, mixer or remixer. The precise nature of the role will vary from artist to artist’ (Garnett et al., 2011: 27-163)

MCPS (Mechanical-Copyright Protection Society): A collecting society which collects royalties, mainly from DSPs, broadcasters and record companies, on behalf of songwriters, composers and publishers when their songs and compositions are reproduced, as CDs, DVDs, online or as digital downloads.

Mechanical right – ‘How publishers usually refer to their **reproduction right**, especially when exploited by labels’ [record companies] (Cooke 2020: 215), but also in other settings such as broadcasting. In the UK, the money derived from this right has usually been administered by the MCPS, but many right-holders now licence online services directly.

MMF (Music Managers Forum): A trade body that represents the interests of over 900 managers based in the UK.

MPA (Music Publishers Association): A trade body that represents the interests of UK music publishing as well as providing training and business services to music publishers. MPA owns and operates **MCPS**.

MU (Musicians’ Union): A trade body that represents musicians working in all sectors of the British music business.

Music creator: We use the term music creators in this report in order to recognise that the controversies that led the IPO to commission our research have tended to concern a particular set of musicians, many of whom are professional, or who are aspiring to be professional, and who are integrally involved in the creation of recordings or songs that are therefore eligible for protection under copyright law. The main categories of music creators are those involved in performing for recordings (see **performers**), those composing music and songs intended to be recorded (see **composers**), the authors of words for songs and compositions (see **lyricists**), and studio or record producers (see **producers**). As we explain in our Introduction, not all musicians can be considered ‘music creators’ in this sense.

Music distributor: Any entity that gets recorded music to consumers, but often used to refer specifically to specialist companies offering distribution services.

Music industries (plural): We use this term rather than the singular ‘music industry’, to convey the multiplicity of sectors involved in the business of music, including the music recording industry, the music publishing industry, the live music industry, and the musical instruments industry.

Neighbouring rights: Many civil law systems use this term to refer to recording rights (so-called because they ‘neighbour’ the rights of authors) but the term has come to be used in the industry to refer more loosely to the recording rights in public performance and communication to the public.

Non-featured performers: Performers who do not have exclusive contracts with record companies and are instead employed on a fee basis to work on recording projects. This includes **session musicians** and backing singers.

Performer: ‘A performer includes vocalists, musicians and conductors. Performers may either perform publicly or ‘live’ or perform for the purpose of their performances being recorded for further exploitation’ (Garnett et al., 2011: 27–154); see also **artist**. Performers fall into two main categories: **featured artists** and **non-featured performers** (also known as non-featured artists). See also **session musicians**.

Performers' rights: Performers have not traditionally been expected to own the copyright in sound recordings, and so a separate category of rights has been developed, known as ‘rights in performances’ or ‘performers’ rights’. Performers are granted a number of moral and economic rights in respect of their recorded work. In the UK, in respect of the reproduction and **making available rights**, and others rights regarding distribution, rental and lending, it is not possible to exploit a performers’ work in recorded form without gaining their ‘consent’ (CDPA 1988: s. 180(1)). In respect of **public performance** and **communication to the public** rights (the latter including **broadcast rights**), it is not possible to exploit a performers’ work in recorded form without paying **equitable remuneration** (CDPA 1988: s. 182D(1)).

Performing rights: The music industries usually groups together the **public performance** and **communication to the public** rights and calls them ‘performing rights’ or ‘**neighbouring rights**’ (Cooke 2020: 17). We use the former term in this report.

PPL (Phonograph Performance Limited): A collecting society which administers the licensing of sound recordings in public places, broadcasting and some online uses on behalf of rights holders. It also collects and distributes **equitable remuneration** on behalf of featured artists and non-featured performers for these uses of music.

Producer: UK copyright law uses the term to refer to the ‘person’ (in fact, usually a firm) by whom the arrangements necessary for the making of the sound recording or film are undertaken’ (CDPA 1988: s. 178’). But in everyday industry usage, the term is often used for **studio producers**. To avoid confusion, we use the latter term throughout the report, unless referring to producers in this specific copyright law sense.

PRS (The Performing Right Society): A collecting society which collects royalties on behalf of songwriters, composers, and publishers when their songs and compositions are played or performed publicly. These are collected on the basis of licences paid for by hundreds of thousands of organisations across the UK in return for the right to play music publicly.

PRS for Music: An entity formed in 2009, bringing together two collecting societies (which had formed an ‘alliance’ from 1997 onwards): **PRS** and **MCPS** (both founded in 1914).

Public Performance Right: The right to perform a musical work in public, which generates a number of payments for copyright holders, usually administered in the UK by PRS and PPL.

Publisher: A music publisher or publishing company is one that owns and administers **publishing rights** (sometimes known as **song rights**).

Publishing: Music publishing is ‘the complex of activities carried out in order to exploit commercially the work of composers and songwriters’ (Shepherd et al. 2003: 595). It is based on **publishing rights** (sometimes known as **song rights**).

Publishing rights: Copyright in musical compositions, sometimes known as **song rights**. It is one of the two main forms of music copyright, the other being **recording rights**.

Record company: A company that issues recorded music to the public and which usually owns or licenses **recording rights**.

Recording rights: Copyright in sound recordings, also sometimes known as master rights and sometimes in law as sound recording copyright or phonographic rights. It is one of the two main forms of music copyright, the other being **publishing rights**. See **rights**.

Reproduction right: the right to copy a work, which is in fact just one of the bundle of rights or controls that holding a copyright allows.

Rights: In copyright law, this term refers to specific acts which only the copyright owner is entitled to undertake (or alternatively **licence** or assign to another party to undertake). In UK copyright law, these rights include the **reproduction right**, the distribution right, the rental right, the **public performance right**, the **communication to the public right** (and its subsets the **broadcast right** and the **making available right**), and the adaption right. In relation to the copyright subsisting in musical compositions these rights are known as the **publishing rights**. In relation to the copyright subsisting in sound recordings, these rights are known as the **recording rights**.

Rights-holders: in the music industries, any entity that owns or has been **assigned** or **licensed** one of the main **rights** in music. The main rights holders in the case of sound recordings will often be a **record company** or **label**, but is increasingly a featured performer. The main rights holders in the case of compositions or songs will usually be a **music publisher** or a **collecting society** but will sometimes be a composer/songwriter if they have retained their rights.

Session musicians: musicians who are usually ‘engaged for a specific performance or series of performances’ as part of a recording session and are usually rewarded by a fee. See **non-featured performers**.

Song rights: a term often used for copyright in compositions (covering music and lyrics). Also referred to as **publishing rights**, which is the term we use in this report.

Songwriters: see **composers** and **lyricists**.

Studio producer: Often known as a record producer, the studio producer ‘is responsible for bringing the creative product into tangible form (a recording)’, which means ‘being responsible for maximizing the creative process (finding and selecting songs, deciding on arrangements, getting the right vocal sound, etc)’ (Passman, 2019: 261–2). Traditionally, the primary roles of studio producers involved ‘technical aspects of music recordings but due to their more creative input into the recordings, producers, mixers and remixers are now recognised for their creative roles’ (Garnett et al., 2011: 27–161)

Synchronisation licensing, commonly abbreviated to **sync licensing**: Licensing payments made by film, television, advertising and games companies to rights-holders for the right to ‘synchronize’ recordings with images (film, television, advertising, videos, video games etc.).

UK Music: A British umbrella organisation that represents the collective interests of the music industries ranging from music creators to managers, labels, publishers and collecting societies.

Works: A term commonly used in copyright law and practice to refer to literary, musical, dramatic, and artistic creations. Sound recordings and performances are not usually referred to as ‘works’ in this legal sense, but often are in more casual industry usage.

Sources used for glossary:

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Introduction

0.1 Context, Research Questions and Methods

In recent years, hundreds of online sources, in mainstream and independent outlets, blogs and social media have debated issues concerning the earnings of musicians in ‘the digital era’.

As we show in this report, a particularly controversial issue has been the level of earnings that musicians can achieve in a new music system where audio streaming services such as Spotify and Apple Music, and video streaming services that provide access to music, most notably YouTube, are increasingly central. But as we also show, many contributions to public debate on these and other matters reveal important misunderstandings of the system by which musicians earn money from royalties for copyrighted works.

It is widely agreed, across the music industries as a whole, that there is a lack of publicly available evidence regarding these matters, and a lack of clarity surrounding the complex processes involved in music revenue streams. The overall aim of this research is to collate and provide objective evidence to facilitate constructive and informed debate about music creators’ earnings. In this, the Research Team were able to draw upon input and advice from an Industry Steering Group consisting of representatives of the following organisations: The Association for Independent Music (AIM), British Phonographic Industry Ltd. (BPI), The Featured Artists Coalition (FAC), The Ivors Academy, The Musicians’ Union (MU), The Music Publishers’ Association (MPA), and PRS for Music.¹

The following research questions were developed, in dialogue with the IPO and the Industry Steering Group, who also provided feedback on the first two drafts of the Report, prior to peer review.

- How have changes in the digital music marketplace impacted upon the earnings of music creators?
- How do different stakeholders understand current issues regarding music creators’ earnings?
- How is revenue from streaming distributed to music creators?
- How have the levels, distributions and patterns of earnings changed over time?
- How concentrated, or otherwise, is the distribution of earnings?

¹ Hasan Bakhshi of the AHRC Creative Industries Policy and Evidence Centre (PEC) also attended meetings as an observer.

In addressing these questions in what follows, we draw upon a number of methods and sources, including the following:

- 30 semi-structured interviews with stakeholders (most of whom chose to be anonymous).
- A set of four focus groups with 25 musicians from a range of musical occupations and genres².
- A survey of UK musicians commissioned from the market research company AudienceNet which received over 700 valid responses.
- Streaming data purchased from the Official Charts Company (OCC) covering the years 2014-2020.
- A set of anonymised music publishing and record contracts provided to us by the Musicians' Union covering the years 1991-2019.
- Anonymised sales and royalty information from a UK independent record company.
- Data provided by the Performing Rights Society (PRS) and Mechanical-Copyright Protection Society (MCPS) on royalties paid to musicians.
- Analysis of a vast range of publicly available sources from the last 50 years concerning the music industries.
- A literature review of international research on music creators' earnings and other related issues.

As we were undertaking the research underpinning this report, the controversies mentioned above only seemed to intensify. In particular, a number of highly visible public campaigns, in the UK and overseas, argued that the musical eco-system based around streaming needed to be reformed so that more musicians could earn more from recorded music. Partly in response to these campaigns and the media coverage that ensued, the UK House of Commons Digital, Media, Culture and Sport (DCMS) Select Committee launched an Inquiry in 2020 into The Economics of Music Streaming. The Inquiry ended in February 2021 and reported in July 2021.

The holding of this Inquiry was a fortunate development for the research team. It provided us with a vast range of views and information that would not otherwise have been publicly available – though absorbing the copious evidence and perspectives has been challenging. We draw on this evidence to a considerable degree in what follows. The Select Committee's Report was published on 15 July 2021, just as the final draft of our own report was submitted for peer review.

The publication of the DCMS Select Committee's report received widespread and prominent media coverage, in the UK and beyond. We make no attempt in the following pages to respond to that earlier report, but as should be obvious, we deal with closely related matters.

Our central aims were to understand the perspectives of different stakeholders in the music industries about the fundamental issues, and to locate as much evidence as possible, within the constraints of our budget and research time, that would cast light on debates about them.

² The Research Team is extremely grateful to members of the Steering Group for helping to arrange and conduct these focus groups, and for sharing the survey with contacts.

Why do we use the term ‘music creators’ rather than just ‘musicians’? The controversies that led the IPO to commission our research have tended to concern a particular set of musicians, those integrally involved in the creation of recordings or songs that are therefore eligible for protection under copyright law. The main categories of music creators are those involved in performing for recordings (commonly called ‘performers’ in the music industries), or composing music and songs intended to be recorded (usually called ‘songwriters’ and/or ‘composers’). We also pay attention to studio producers, sometimes called record producers. The Glossary provided at the beginning of this report summarises the way we have used these and other key terms and abbreviations.

In our view, all music creators are musicians.³ But not all musicians are music creators in the sense we are using the term here: some play music but do not fix their music in copyrightable form. And just as importantly, many music creators make money from sources other than via copyrighted music to which they have contributed: for example, from being paid to perform live music by promoters and venues, busking and music teaching, as well as from non-musical sources.

Even among those musicians who do make their performances and compositions available beyond live contexts, as part of recorded works (and who are therefore ‘music creators’ in the way we are using the term here) there is considerable variation in the degree to which musicians and music creators aspire to make a living, or significant earnings, out of their music. Some seem happy to receive occasional payment from recorded music – and few would deny that the new digital system makes that more possible than before.

Yet many people, it seems, aspire to make a living from music, but struggle to do so. This situation obviously predates the rise of streaming but in recent years, and partly in response to controversies about music streaming as a new system for distributing music, there seems to have been a growing sense among some commentators and among some musicians that musicians as a whole, including music creators, deserve to earn more money than they currently do.

Some music industry stakeholders express scepticism about such views. Some say that success is determined mainly by talent and hard work. Others, including some musicians, would emphasise the role of luck and/or a lack of access to the right resources to make it. Some would say that only fans and audiences decide success. Others claim that powerful intermediaries determine what music fans and audiences are exposed to, and on what terms. Music is an attractive pursuit for many people, and it is difficult to imagine a situation in which everyone who wanted to make a living from music would be able to do so. But some believe that, given what appears to be a large amount of money in the system, more musicians should benefit.

We offer no judgements in the following report about these and other related matters of efficiency, fairness, justice and equality. Nor do we offer solutions for perceived problems. We do however try to summarise conflicting viewpoints in order to better understand the concerns underlying the debates (in Chapters 1 and 3). There are no predictions or projections here. There is a sub-sector of industry analysis devoted to such tasks but we are not engaged in futurology.

Instead, to reiterate, our main objective is to provide evidence that might contribute to a more informed debate about matters of public concern concerning music creators’ earnings. This includes a comprehensive explanation and analysis (in Chapters 2 and 4) of how the complex system of music rights shapes music creators’ earnings. Our commissioners agreed with us that it was vital to map stakeholder understandings of this contested terrain via qualitative research (Chapter 3). We provide information and context about UK music creators and their earnings via a survey (Chapter 5). We also look at important evidence concerning concentrations of popularity, and examine how they in turn determine concentrations and levels of earnings (Chapter 6).

³ Admittedly, lyricists who only write lyrics, and who do not perform, write or produce music, represent a partial exception, but even they may well have a valid claim to be considered musicians, in that they need to understand how words work with music to create songs.

First, though, we present a summary of our findings about UK music creators' income, followed by recommendations for further research and an outline of the contents of the report. The inevitable limitations of methods and data in this complex and challenging area are reflected upon in each chapter.

0.2 Executive Summary of Main Findings

Chapters where evidence is provided to support the following findings are indicated in parentheses. We ask that the findings in this Executive Summary are considered in relation to the evidence and caveats provided in the Report as a whole. See the glossary provided above for key terms.

The growth of on-demand streaming and changes in music industry revenues

1. In a short time, on-demand streaming has grown rapidly to become a major source of revenue, in the UK and across much of the world, for UK rights-holders and music creators (Chapter 1).
2. On-demand streaming now provides the main source of revenue for recorded music in the UK, but the market for recorded music has not returned to pre-digital levels. In 2019, the combined UK revenues from on-demand streaming, downloading, physical sales, synchronization licensing, and public performance and broadcast rights were worth approximately £1.69 billion. Adjusted for inflation, UK revenues from sales of 'physical' music artefacts (CDs, cassettes, vinyl) in 2000 were £1,171m but this was £1.99 billion at 2019 prices (Chapter 4).
3. Increases in earnings from other rights (notably broadcast, public performance and synchronization licensing) have not compensated for the diminution in revenues from recorded music in the UK or globally (Chapter 4).
4. Whereas streaming is now by far the biggest source of UK recorded music revenue for recording rights holders (58% in 2020 and growing), the sources of recorded music revenue for UK music publishing rights holders⁴ are more evenly spread, with streaming, broadcasting and public performance rights generating roughly equal amounts (30, 30 and 28% respectively in 2019, though the percentage of streaming looks certain to increase) (Chapters 1 and 4).
5. By contrast with the situation in the early 2000s, it seems likely that revenues from recorded music will continue to grow in the next few years.

Differing views

6. Many rights-holders in the music recording and music publishing industries take the view that they ought to be receiving greater amounts from music streaming platforms, especially from those streaming platforms that benefit from 'safe harbour' provisions in copyright law. Digital service providers⁵ (DSPs) argue in response that they represent an extremely important source of revenues for rights-holders (and therefore for music creators).
7. There is considerable controversy about music creators' earnings. There is a sense among some music creators, confirmed by our focus groups, that they should be receiving greater rewards from the system, especially now that rights-holder revenues are increasing. A number of recent campaigns claim that the proportion of revenues being paid to music creators should increase. Many music creators believe that the rise

⁴ In the music industries, 'music publishing rights holders' refers not to sheet music publishing, but to entities that own and control song copyrights – i.e. the rights associated with the creation of a song or composition, rather than the recording of it, which is a separate set of rights; see Glossary.

⁵ This is the general term many commentators prefer, and which we use throughout the report, to cover the various 'music streaming services', 'audio streaming platforms', 'video sharing platforms' and social media platforms that make music available to audiences. See Glossary for definition, and Chapter 4.1 for more detail.

of on-demand music streaming has caused their situation to worsen, not improve. These critical views of music streaming are shared by many online and media commentators and some industry stakeholders (Chapters 1 and 3).

8. Some music creators and industry stakeholders attribute the perceived problems of music creators to rights-holders rather than streaming platforms, pointing out that such platforms do not pay music creators directly, instead they pay recording and publishing rights-holders who then pay music creators according to contractual terms (Chapters 1, 2 and 3).
9. Confusion and misunderstanding characterise much of the public debate about the matters in the preceding three points, partly because of the very complex way in which the music industries operate, including complexities surrounding recording, publishing and other rights (Chapters 1, 2 and 3).
10. Many stakeholders express concern about how revenues from streaming are currently distributed, particularly the approximately 52 per cent of total streaming revenues (after VAT) that currently goes to recording rights-holders. The music recording sector argues in response that the current share is justified because of its high level of spending on A&R and marketing, and the economic risks involved in signing new artists (Chapter 3).

Effects on music creators and rights-holders in the new digital musical system

11. The new music system centred on streaming now makes it possible for vast numbers of music creators to make their work available to national and international audiences, and to gain income from their recordings and compositions in a way that was not possible before the advent of music streaming. Our survey found that just over half (52%) of musicians usually self-release their recordings. 18% go through record companies for releases while 23% report a mix of the two (Chapters 4, 5 and 6).
12. This means that, compared with the 'pre-digital era',⁶ more and more rights holders and music creators are now competing for the diminished (though recently growing) revenue indicated above in points 2 and 3.
13. In order to achieve a sustainable income from music in this highly competitive and 'over-supplied' labour market, many music creators face considerable challenges, and increasingly feel compelled to spend significant time, energy and resources on marketing and promotion and other activities that are not 'directly' musical (Chapters 1, 3 and 5).
14. Revenues for on-demand streaming, physical sales, downloading, and from sync, public performance and broadcast rights have risen since the onset of music streaming as we know it in 2008, but this increase has had different effects on music creators and rights holders in the recording and publishing sectors (all findings from points 14 to 23 are substantiated in Chapter 4, unless stated otherwise).
15. Based on the average royalty rates outlined in this report, the earnings that featured artists, non-featured performers and studio producers have made from recording rights revenues have remained relatively stable. They amounted to £220m in 2008 (£296m in 2019 terms), reached a low point in 2012 of approximately £200m (£238m in 2019 terms) and in 2019, was £300m – back to 2008 levels.

⁶ Many observers would date the start of the 'digital era' in music from around 2000, roughly the era of peak recorded-music revenues, when peer-to-peer 'file sharing' sites first began to be widely used. Some speak of a 'CD era', when CDs provided the bulk of music industry revenues, running from roughly 1985 to 2005 (i.e. somewhat overlapping with the onset of the 'digital era'). 'Legal' music streaming platforms as a particular manifestation of digitalisation of music can be dated from around 2008.

16. In the same period, the remainder that went to record companies from recording rights revenues declined by 19%, from inflation-adjusted figures of approximately £950m in 2008 to approximately £765m in 2019.
17. Based on the average royalty rates and calculations outlined in this report, the earnings that composers and lyricists gained from music publishing rights increased somewhat by 11% between 2008 and 2019 from £265m in 2008 (£356m in 2019 terms), to £395m (an 11% increase on the inflation-adjusted 2008 figure), after reaching a low point in 2010.
18. In the same period, the remainder that went to music publishers from publishing rights revenues increased by 8%, from inflation-adjusted figures of approximately £125m in 2008 to £135m in 2019.
19. Revenues for physical sales, downloading and on-demand streaming in 2019 are lower than those for physical sales in 2000, but this had different effects on music creators and rights holders in the recording and publishing sectors (see points 20 and 21).
20. Based on the average royalty rates outlined in this report, the revenue that featured artists and studio producers receive has declined markedly. In 2000, they gained approximately £205m from physical sales (£348m in 2019 terms). In 2019, their revenue from physical sales, downloading and on-demand streaming equalled the same pre-inflation adjusted figure of 2000: £205m, representing a 41% decline in revenue in real terms. In the same period, record company revenues for these sources declined from inflation-adjusted figures of approximately £1,360m in 2000 to approximately £670m in 2019 (a 51% decline).
21. Based on the average royalty rates and calculations outlined in this report, the revenue that composers and lyricists receive has declined, from physical sales amounted to £110m in 2000 (£187m in 2019 terms) to £150m from physical sales, downloading and on-demand streaming in 2019, a 20% decline on the inflation-adjusted 2000 figure. In the same period, music publisher revenues for these sources declined from inflation-adjusted figures of approximately £60m in 2000 to approximately £50m in 2019 (a 17% decline).
22. Any change in the recording rights' division of revenue and the revenue retained by record companies needs to be set against costs and risks:
 - There is evidence that the record companies' associated costs of manufacture and physical distribution have declined and that this decline has not been matched by any new cost associated with digital distribution.
 - As a proportion of revenue, record company A&R costs have shown some increase in recent years, while the costs of marketing have fluctuated. There is less evidence that either of these costs have increased markedly since the pre-digital era.
 - There is evidence in previous research that music creators are providing or sourcing more of the up-front financing for their careers, and that there is an increasing tendency for featured artists to become reasonably established before they are contracted by a record company (Chapter 1).

23. Total revenue figures for music creators need to be set against what is happening at an individual level:

- Royalties for top hit songs are being shared among an increasing number of composers and lyricists per work; in contrast, the revenues for top hit recordings are being shared among a declining number of featured artists per recording.
- Featured artists have more capacity than composers and lyricists to gain higher royalty rates as they are starting from a lower average rate. However, they might not be able to do so if they are tied to an older 'legacy' contract.
- Studio producers' royalties are generally tied to overall rights-holder revenues and will therefore rise and fall along with the market.
- Non-featured performers revenues from PPL are tied to the fortunes of public performance and broadcasting and are therefore liable to decline if on-demand streaming replaces radio as a medium of choice.
- The revenue that non-featured performers are gaining from session fees warrants separate research.
- All creators are affected by the fact that the total number of recordings and works has increased considerably, as has the number of 'active' recordings and works, given the increased popularity and availability of back catalogue occasioned by streaming.

24. We calculate, based on published UK trade revenues, that average per-stream rates for the years 2012-2019 have fallen, but revenues have risen. The average per-stream revenue is stable at around £0.011 (just over a penny). Around £0.006 (just over half a penny) per stream goes to recording rights-holders, and around £0.002 (around a fifth of a penny) per stream goes to music publishing rights-holders, with around £0.004 retained by the DSPs (Chapter 4).

25. This would equate to around £6,000 per million streams going to recording rights-holders, but industry sources estimate the figure to be between £4,000 and £5,000 and one musician's account we examined suggest something more like £3,500. How much of this money goes to artists/creators would depend on their contracts with labels and/or distributors (Chapter 6).

Music creators' earnings in general (from streaming and from all other sources)

26. Our survey provides evidence that revenues from recorded music (including streaming, downloads and physical sales) constitute only a small proportion of UK music creators' earnings. It also confirms previous findings that many musicians combine musical work with other forms of work. Live music and teaching are the main ways in which music creators make a living from music. Of those musicians for whom music was their only source of income, 67% spent all of their working time on music (Chapter 5).
27. More than a third of musicians (37%) reported earnings of £5,000 or less from music in 2019 and nearly half (47%) earned less than £10,000. 62% earned £20,000 or less from music in 2019. Of musicians whose income is entirely based on music, 43% reported earnings of £20,000 or less, and 64% reported £30,000 or less. Female music creators earn less than male music creators. Median reported income for women in 2019 was £13,057, whereas for men it was £20,160 (Chapter 5).
28. Of those musicians who were earning money from music before 2015, 40% said their overall income had increased since that time, 32% that it had decreased and 28% that it had stayed the same. 17% said their income had decreased significantly, while 15% said it had increased significantly (Chapter 5).⁷
29. Median reported income for those currently signed to major record companies (£51,816 in 2019) is considerably higher than for all other groups of artists, with those previously signed to major record companies next (£25,500). Median reported income for those signed to independent record companies is £20,250 and for self-releasing artists it is £12,944 (Chapter 5).
30. The above findings need to be placed in historical context. There is no evidence that there was ever a time when recorded music was the basis of substantial income for large numbers of musicians, even when total revenues were higher, in the 1990s (Chapter 1).

⁷ We made clear that the question related to income up to 2019, so that the effects of the pandemic in 2020 did not affect results. Respondents were not asked to adjust earnings for inflation.

Concentrations of popularity and earnings

Findings in this section are all derived from Chapter 6.

31. A relatively stable pattern of concentration of streaming popularity has been established. Based on a sample of data concerning each October from 2014 to 2020, the top 0.1% most popular tracks achieved more than 40 per cent of all streams in all years and the top 0.4 per cent of tracks accounted for more than 65% of all streams from 2016 onwards. The top 1 per cent of tracks account for between 75 and 80% and the top 10 per cent for between 95 and 97%, in all years from 2016 to 2020.
32. The top 1% of artists have consistently gained 63-65% of all streams over the years for which data is available. The top 1% of artists account for 78-80% of streams, and the top 10 per cent for 98 per cent. The top 0.1% tier of artists achieve between 39% and 43% of all streams in all years, but there has been a modest decline since 2016.
33. On the basis of the average per-stream rates we have calculated, we suggest that a sustained achievement of around one million UK streams per month may be some kind of guide to a minimum threshold for making a sustainable living out of music, at least in cases where UK streams are complemented by non-UK streams and other sources of income. For solo performers and songwriters and for those with significant access to other revenue streams, that minimum threshold figure will be lower.
34. The number of artists achieving one million UK streams or more in October 2020 was 1723. We estimate that this 1723 UK figure may translate into around 720 UK artists achieving this level of success in 2020, but the number of variables makes this only a very rough guide.⁸
35. Catalogue music (i.e. music more than 12 months old) has become increasingly significant across all tiers of popularity. In 2015 the shares of new and catalogue music in the top 0.1% tier of popularity were more or less equal (i.e. close to a 1:1 ratio). The relative share of new music to catalogue music has declined particularly sharply since 2018, so that this ratio is now around 0.45:1 (i.e. new music now accounts for less than one half of the streams achieved by catalogue tracks). There has also been a significant narrowing in the range of ratios across all four tiers of popularity. All this may mean that as streaming has developed, newer artists creating new music may be doing less well, relative to older tracks and the artists who created them.
36. The top 0.1% tier of tracks by popularity contain nine times as many tracks that are owned by major record companies as those owned by non-majors. At the top ten per cent level, the ratio is closer to 1:3. There has been no significant change over the period 2014-2020 in the proportion of the most popular output owned by majors.

⁸ In line with industry practice, we use the term 'artists' to refer to both solo musicians and groups of musicians. So 720 UK 'artists' will consist of a considerably larger number of actual musicians.

0.3 Research Gaps and Avenues for Further Research

- As pointed out above, it is difficult to compare the number of musicians who can earn a living from recorded music in the streaming era with the ‘download’ and ‘CD’ eras, because of the difficulties in accessing comparable data from those earlier periods. Further research might seek to gain access to historical data on sales, prices and royalty rates, and thereby make more systematic historical comparisons than has been possible here (see Chapter 6, which discusses some of the difficulties of comparison).
- A major factor in earnings of UK music creators is the earnings generated by recording and publishing rights from streaming and other rights (e.g. broadcasting, public performance and sync rights) in overseas markets, but we had access only to significant data from the UK. Further research might seek to investigate overseas earnings by UK music creators, by gaining access to international revenue data (Chapter 6).
- It is difficult to gain access to information about how recommendation algorithms work, because of commercial confidentiality. Future research might investigate whether adjustments to recommendation algorithms and other music streaming practices might help to distribute income further down ‘the long tail’ – and whether there is evidence that some streaming services have already been adjusting their practices in this and related ways (Chapter 6).
- Further research might investigate the degree to which the advantages gained by musicians signed to larger rights holders can be understood as a result of the levels of investment that these companies are able to make in the careers of music creators (Chapter 4).
- Further research might examine the degree to which reduced costs of manufacture and distribution on the part of the recording sector have been offset by a matching increase in other costs, including marketing and A&R, and by risks associated with signing new artists. It might relatedly examine changes in artist advances (Chapters 3 and 4).
- Future research might also build upon the analysis developed here to investigate a variety of industry proposals aimed at improving the circumstances of music creators via redistribution of revenues. These might include mapping the consequences and practical challenges concerning implementation of the following measures:⁹
 - a shift to ‘user-centric’, ‘the artist growth model’, and other methods of streaming service payment to rights-holders and music creators, instead of the current ‘pro-rata’ system. (see Chapter 3)
 - applying ‘equitable remuneration’ (ER) to the ‘making available’ right and/or whether streaming should be classified under the broadcast right instead (thus gaining ER via that route) (Chapters 3 and 4).
 - revision of contracts.

⁹ Measures to increase overall revenue for UK rights-holders, such as efforts to curb illegal file-sharing and to increase exports, are relatively uncontroversial; controversy tends to concern redistributive measures.

- Future research might also aim to conduct surveys of UK musicians as a whole, along the lines of our survey, reported in chapter 5, but repeated regularly in order to track changes of time.
- Further research might also investigate the relationship between the earnings of UK music creators from streams in the UK and from overseas markets, building on the suggestions and discussion in Chapter 6.

0.4 Structure of the Report

In Chapter 1, on the basis of our literature review, we identify and discuss existing evidence on musicians' earnings and conditions of work.

- We outline controversies, and some of the misunderstandings and evidence gaps apparent in recent commentary on musicians' earnings, especially the issue of payments from recorded music in an era when streaming services are increasingly important.
- We examine evidence suggesting that there is more revenue coming into the recorded and publishing industries than for many years and that the number of active music creators has increased greatly in recent years.
- We show there is little robust evidence about what music creators actually earn in this evolving situation, and argue that surveys are the 'least worst' method available for gaining a broad picture of such earnings.
- We assess the main publicly-available survey data, explaining its contributions and limitations.
- We address the issue of how revenue might be concentrated or not among the most successful music creators, and explain the distinctive ways in which popularity determines earnings in the cultural and music industries, explaining and justifying our focus on patterns of concentration in later chapters.
- We discuss the lack of publicly available research and information about the important issue of contracts between music creators and rights-holders.

In Chapter 2, we summarise the main factors that affect music creators' earnings from recorded music. This provides essential background to understand the debates about streaming - and may also serve to correct some of the misunderstandings apparent in the public debate discussed in Chapter 1.

- We explain the music creator's role and the ways in which sound recordings generate revenue for rights-holders and music creators, including the rights embodied in copyright law, who owns rights and who oversees their use.
- We then explain how revenue is distributed and analyse the opportunities and constraints afforded by the revenue stream, issues that are at the heart of debates about music creators' earnings in the digital era.
- We also address various complexities surrounding revenues.

In Chapter 3, we summarise the diverse range of views and perceptions, amongst different stakeholders, of the issues surrounding music creators' earnings in the digital era. We provide indications of the evidence that stakeholders draw upon to justify their opinions and highlight some of the most contested areas of debate and discussion by comparing views and perspectives, focusing on

- the overall changes in the music industries that have been brought about by music streaming.
- the split in revenues between DSPs and rights-holders.
- the amount going to rights-holders, and the split between recording and publishing rights.
- the proportion of revenues going to music creators.

We also provide some detail on competing perspectives on the range of 'deals' available to music creators in the new musical system centred on streaming, and the increasing availability of distribution deals, including 'DIY' arrangements. We discuss competing overall views of the fundamental issue of music creators' earnings. Finally, we discuss some significant proposed solutions to some of the problems identified regarding music creators' earnings, and different views about these proposed solutions.

Chapter 4 examines existing data on revenues for on-demand streaming, and contextualises it in relation to music creators' other revenue streams. It aims, where possible, to provide data in relation to these revenues, as well as to indicate where there is currently a lack of information. It guides the reader through a series of stages, including the collection of revenue by music streaming services, the division of revenue between streaming services and rights holders and administrators, the division of revenue between rights holders and administrators, on the one hand, and music creators on the other, and the division of music creators' revenues among music creators themselves. It does all this by drawing upon data on costs and profits (including data supplied by a UK independent record company), anonymised contracts supplied by the Musicians Union, plus data on song-writing credits from PRS and MCPS.

Chapter 5 places the findings about revenue streams from recorded music, addressed in Chapter 4, in the wider context of what music creators earn, using a survey that we commissioned from the market research company, AudienceNet, which gained over 700 valid responses. It analyses the earnings reported by musicians from a number of sources. We also provide information about the relationship of earnings to gender, ethnicity and education.

Chapter 6 discusses factors that cast light on some key issues that influence music creators' income, including the concentration of popularity among the most successful tracks and artists, based on data that we purchased from the Official Charts Company, outlining all streams in a sample 'month' corresponding more or less to October in each of the years from 2014 to 2020. Using calculations from Chapter 4, we discuss the potential earnings of performers at certain key thresholds of popularity. We also draw on some PRS and MCPS data about the overall earnings of songwriters and composers.

Chapter 1

What Do We Know About Music Creators' Earnings in the Digital Age?

Introduction

This chapter provides a survey of relevant existing research and information regarding music creators' earnings in the digital age. We begin by briefly examining, in Section 1.1, an important context for what music creators earn from recorded music (including the songs that underlie it): the crisis and partial recovery of the music industries since the turn of the century, and the role of streaming in that recovery. In Section 1.2, we then outline recent controversies about music creators' earnings, and the particular emphasis on streaming in many of the ensuing debates. We also point to some of the misunderstandings and evidence gaps apparent in commentary on this issue. In Section 1.3, we argue that there is a lack of robust information about how many musicians operate in particular music markets. It seems clear that the number of music creators making their work available has increased greatly in recent years as a result of digitalisation and the internet, but we argue that there is very little evidence about what music creators actually earn in this evolving situation. Surveys may be the 'least worst' method available for gaining a broad picture of earnings and in Section 1.4, we assess the main publicly-available survey data, explaining its contributions and limitations, and laying the ground for discussion of our own survey in Chapter 5. In Section 1.5, we address the issue of how revenue might be concentrated or not among the most successful music creators, and explain the distinctive ways in which popularity determines earnings in the cultural and music industries, explaining and justifying our focus on patterns of concentration in Chapter 6. In Section 1.6, we briefly discuss the lack of publicly available research and information about the important issue of contracts between music creators and rights-holders.

1.1 Revenues from music copyrights in the 21st century: crisis and partial recovery

The evidence clearly shows a considerable increase in the amount of revenue coming into the music industries since 2015, as a result of the rise of streaming. Figure 1, published by international recording industry federation IFPI (2021), visualises the vital role streaming has played in returning the global recording industry to growth. Similarly, in the UK, BPI reports over the years portray a similar pattern of decline and partial recovery since the turn of the century. UK recorded music revenues returned to over a billion pounds in 2018, with further growth in the years since, and the expansion has clearly been driven by streaming, which rose from a 3.9 per cent share in 2011, to 20.6 per cent in 2015, to 66.0 per cent in 2020.

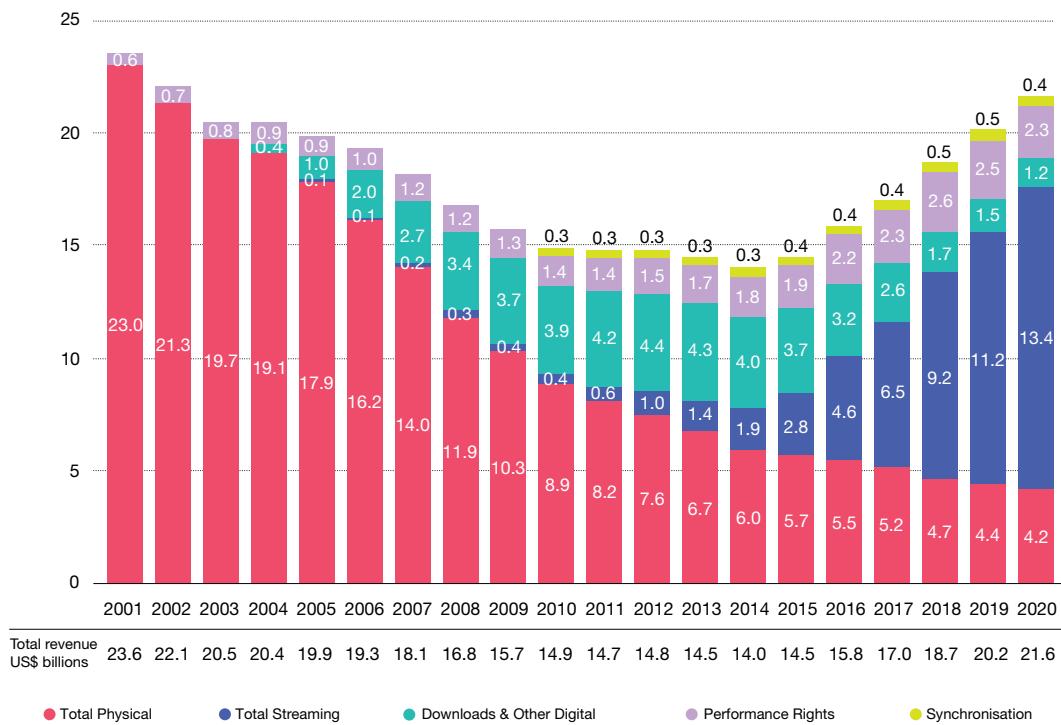


Figure 1.1: Global recorded music industry revenues 2001-2020 (US\$ billions) (IFPI 2021: 11)

Importantly, however, in spite of sustained growth from 2015, overall revenue has not exceeded that of the ‘peak CD’ year of 2001. So when adjusted for inflation, the IFPI figures reflect a quite different trend over time: **recording industry revenues are considerably lower than those of the start of the 21st Century.**¹⁰ This has significant implications for debates about music creators’ earnings. Not only is there diminished overall revenue, there are also, as we explore in the next section, more and more music creators competing for shares of this smaller pie.

¹⁰ For consistency, the same approach for calculating inflation adjusted figures employed in Chapter 4 section 4.3.2 has been applied to the IFPI data.

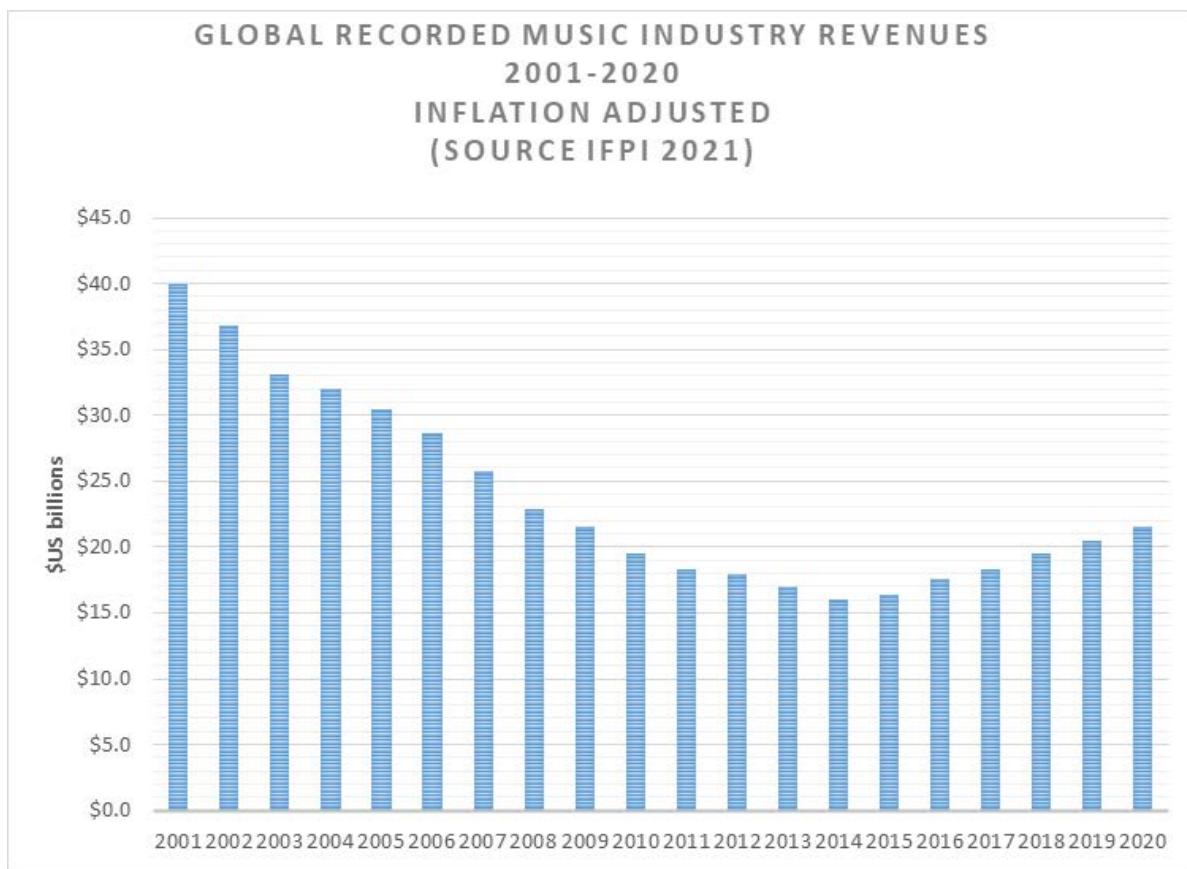


Figure 1.2: Global recorded music industry revenues 2001-2020 inflation adjusted (US\$ Billions) (IFPI 2021: 11)

Unfortunately, directly comparable data is not available for the global music publishing industry (which deals with various rights associated with the ownership of underlying compositions, as explained in Chapter 2). But global collections by the collection society members of the international organisation CISAC provide some measure. These grew from 8.26 billion euros in 2015 to 10.10 billion euros in 2019. Other revenues collected by music publishers, not through the collecting society system, add a further couple of billion euros or so.¹¹ Former Spotify Chief Economist Will Page identifies a ‘hare and tortoise’ pattern when comparing global recording revenue with publishing: while recording revenues went from boom to bust from the late 1990s to 2012 or so, and then partially recovered, publishing revenue ‘never really stopped growing – albeit at more modest rates’ (Page 2021a).

The combined effect in recent years, according to Page, has been a significant increase in the rise of the global value of music copyrights. Page estimates this global value to be US\$ 31.6 billion in 2019, of which 62% went to recording rights-holders and artists, and 38% to publishers and composers-songwriters. Furthermore, Page reckons that streaming accounted for 47% of the overall figure in 2019 (compared with 14% in 2014). He estimates that this ratio was 55-45 recording-publishing in 2014. While this indicates a strong move towards recording rights holders, it should be noted that this was the low point of the recording industry’s digital crisis fortunes. While Page does not provide historical estimates, it is likely that the ratio was closer to a 62-38 recording-publishing split when recording was at its peak in the early century. Chapter 4 of this Report similarly suggests that, in the UK at least, publishing revenues have risen gradually, rather than following the pronounced decline and partial recovery apparent in the inflation-adjusted figures for recording industry revenues reported above.

¹¹ These collections will undoubtedly have diminished in 2020 as a result of the pandemic’s effects on the use of songs in live and background music, and in broadcasting, but should recover once the pandemic is over.

We can say then that there are two main factors that need to be taken into account when considering music creators' earnings: the size of the 'pie' (the metaphor used mysteriously often for overall revenues for music) and how it is divided. The size of the pie diminished significantly in the early 2000s as a result of music piracy, in particular illegal downloading of music and this continues to be of concern to many rights-holders and music creators (Weber 2004, Griffin 2021). Another determinant of the size of the pie in any individual country is the amount of music being 'exported', i.e. consumed overseas. The UK is one of the world's few net exporters of music (BPI 2021c: 4) and the UK government and the UK music industries, especially the BPI and UK Music, are actively involved in promoting exports of UK music (UK Trade and Investment 2014, BPI 2021b, UK Music 2021). The desirability of growing the pie in these ways is an aspect of the music streaming debate where there is a high degree of consensus among industry stakeholders. A more contentious issue is how the expanding pie is divided among various stakeholders, including music creators, and consequently it is this issue that is our main focus in this report.

1.2 Controversies about music creators' earnings in the age of streaming

Not only has music streaming become vital to the generation of revenue for rights-holders and music creators, it has become the most important way in which music is distributed and consumed. From early on in the emergence of streaming, there was a great deal of media coverage that was very critical of music streaming platforms, especially with regard to their effects on the earnings of music creators. A story about Lady Gaga supposedly earning around £100 from one million Spotify streams in 2010 (Leach 2010) circulated widely. Complaints by other major artists such as Thom Yorke and Taylor Swift amplified concerns. Mainstream journalism, music blogs and social media (Lindvall 2009, Leach 2010, Ingham 2013, Dredge 2018, Luckerson 2019) have devoted considerable attention to the question of whether musicians are paid fairly in the new musical system now dominated by streaming.

A widespread feature has been discussion of the relative 'per-stream rates' paid by digital service providers (DSPs) to rights-holders and music creators. As a number of commentators have suggested, however (e.g. Pastukhov 2019, Cooke 2020, Hesmondhalgh 2020) music streaming platforms do not in fact pay a per-stream rate: the per-stream rate is a retrospective calculation made by certain commentators, based on dividing the number of plays achieved by a track or artist, by income received. Moreover, given the current system, per-stream rates will tend to come down as more and more streams occur, even if overall payments increase – at least up to a certain rate of increase (see Chapter 4). The focus on 'per-stream rates' is a symptom of generally poor levels of understanding of how remuneration actually works in the music industries, in the media, among commentators, and in the general public. This is perhaps understandable given the complexity of the music industries and of the copyright systems that underpin them.

Academic research has cast very little light on these controversies so far. While digitalisation has been a major theme in academic research on the music industries since the late 1990s, 'legal', as opposed to 'pirate', music streaming hardly featured in published research on music before 2015, apart from brief references to Spotify in book-length accounts of the digitalisation of music published close to that date (e.g. Anderson 2014, Leyshon 2014, Ardit 2015). The situation changed from around 2015, with the emergence of more and more research that recognised the growing centrality of streaming. Serious analytical attention has been paid to the everyday working conditions of musicians in the new musical system (e.g. Haynes and Marshall 2018, Baym 2018). There has been increasing recognition that practices such as streaming are now part of ordinary experience, whether for producers or users, rather than a matter of business disruption (cf. Prior 2015 on music and 'the normal internet'). There has also been considerable focus on how the streaming platforms as embodiments of the increasing power of the tech industry in the realm of culture, and how data analysis and algorithmic recommendation might be reshaping

cultural production and consumption (e.g. Prey 2016, 2018, Prey et al. 2020). In contrast with earlier research on digitalisation, there is now a tendency in much research on music streaming to see the new musical system in rather pessimistic terms (Drott 2018, Eriksson et al. 2018, Negus 2019, Meier and Manzerolle 2019, Scherzinger 2019). Many of these critical contributions make passing mention of more general controversies about music creators' earnings, and some contributions have echoed concerns of music creators and representatives reported in the media. Some have indicated some of the misunderstandings and simplifications prevalent in public debate about music creators' earnings (e.g. Marshall 2015, Hesmondhalgh 2020). ***Yet very few of these contributions analyse the music industries in such a way that cast light on what music creators actually earn, and how they come to get the amounts that they do.*** We refer to some of the main exceptions, in academic and non-academic research, below. But we hope that this report goes some way to filling this important gap.

This strange research neglect of such a widely-debated topic has contributed to a notable lack of concrete evidence to inform public debate. There is certainly no lack of data concerning the contemporary music industries, including streaming. Reports by streaming services, collecting societies and music industries trade organisations provide valuable sector-level information (UK Music 2020a, PRS for Music 2020, BPI 2021a, Spotify 2021). There is a lively sector of industry analysis, from outlets such as Music Business Worldwide, Complete Music Update, Music Ally and MiDIA, to name only some UK-based sources. The annual reports of major music companies are also useful sources concerning financial aspects of streaming at the level of individual firms. As a publicly listed company, for example, Warner Music Group is required to provide detailed annual reporting accounts (WMG 2020). As we shall see, firms such as AWAL (formerly part of the independent rights management company Kobalt, now part of Sony) have been keen to report the growing number of creators using their services, including some high earners – though they provide little information about the performance of artists with more modest commercial appeal (AWAL 2020). The information and analysis provided by these sources provide insights into the role of music streaming in the recovery of music-industry revenues, as well as the relative value of streaming within the recording and music publishing sectors. ***But they tend to tell us very little about what this means for the ability of music creators to make a living from streaming, and from all the different sources of musical income available to them.***

The income received by music creators is dependent on a large number of factors, which are rarely mentioned or explained well in media coverage, and even academic accounts have only very rarely provided full and coherent explanations of music industry royalty and payment systems. One exception is Sinnreich (2016)'s outline of how the 'pie' of US music revenues is divided among different organisations, at different stages of the process of distributing royalties, with reference to the US situation. (Unfortunately, Sinnreich failed to call his chapter 'American pie'.) In a nutshell, DSPs pay rights-holders according to licensing agreements, and those rights-holders pay music creators according to contracts between them. However, there is considerable variation and complexity in the system. There have been admirable, non-academic efforts to explain, define and categorise the potentially bewildering sets of rights and organisations that lie beneath current practice, notably Chris Cooke's *Dissecting the Digital Dollar*, produced in collaboration with the Music Managers' Forum (Cooke 2020). However, that book and other academic and non-academic research on factors determining earnings do not focus much at all on how the current system shapes what music creators actually earn.

For this reason, Chapter 2 provides what we believe is the most detailed account yet published of how the system works in any particular country, *in terms of its implications for music creators' earnings*. Then, following an account of stakeholders' perspectives on these issues in Chapter 3, Chapter 4 presents the data we have uncovered on developments over the last 20 to 30 years and what this tells us about how revenues are divided.

1.3 What do we know about music creators? How many are there, and what do they earn?

Owing to the global nature of music earnings, the various currency translation and royalty payments applied, and because there is no global comprehensive database of rights-holders, works, and recordings, it is impossible to calculate average (mean) or typical (median) earnings with any accuracy. Even an estimate would require a very complex methodology. Understanding the earnings of an average rights-holder would require a careful disaggregation of volume, price, exchange rate, and distribution changes, and international data harmonisation. Estimating average or typical income requires advanced empirical sampling or surveying methods. The Digital Music Observatory (previously CEEMID) has worked on developing such methods, with the support of the state51 music group. We commissioned a report from the Digital Music Observatory on the earnings of UK rights-holders and this can be found here at <https://doi.org/10.5281/zenodo.5249011>.¹² Among the Observatory's findings are that use of streaming services is generally growing in terms of volume, but the price is diminishing, which leads to diminishing or flat earnings for a typical or average British rights-holder; that in the 2015-2019 period, falling prices were partly or fully compensated by favourable changes in the exchange rate of the British pound with major currencies used in the global music business (the US dollar, the euro and the Japanese yen), but since 2020 there may have been changes in the opposite direction; and that for various methodological reasons, without international data harmonisation, and survey harmonisation, it is impossible to take a fully representative, unbiased sample of music creator earnings in the United Kingdom alone.

The evidence gap concerning music creators is apparent in the lack of robust data on how many musicians are active in various markets, including the UK. There are widely diverging estimates as to the approximate number and the appropriate methods for counting. The UK Office for National Statistics (ONS) defines 'musicians' as those who 'write, arrange, orchestrate, conduct and perform musical compositions'. As we explained in the Introduction, we use the term 'music creators' in this report to refer in particular to those musicians involved in the creation of recordings or songs that are therefore eligible for protection under copyright law, notably performers, songwriters, composers and record producers. There are many people who define themselves as professional or semi-professional musicians for whom such activities do not play any role, or form only a relatively small part of their activities and earnings, as is indicated in Chapter 5 and in other surveys. We also pointed in the Introduction to the mix of motivations and levels of ambition among musicians. It seems that large numbers of musicians work as musicians only for some of the time, often supplementing their musical work with other types of work.¹³

¹² State51 music group provided consent for the re-use of its data, originally provided for the creation of CEEMID's streaming indices

¹³ See Chapter 5 for an indication of what musical occupations and roles might be counted under 'musician'. There are other difficulties in defining 'musician' besides these occupational ones, in particular debates about training, skill and expertise thresholds (Zhang et al. 2018). Our focus in this report is on occupational rather than skill issues.

The measurement difficulties raised by these issues is apparent in inconsistencies in surveys. Figure 1.3 shows how the ONS measure of UK musicians has fluctuated over the last 16 years.

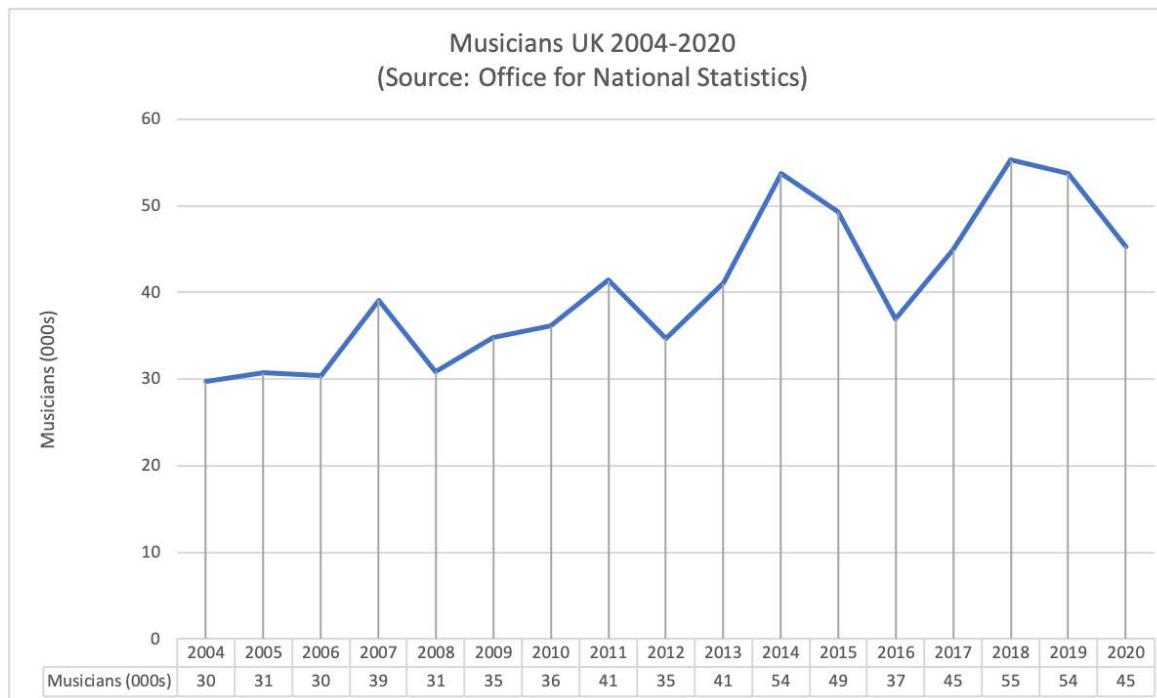


Figure 1.3: Musicians UK 2004-2020 (ONS 2021)

Interestingly, given its much larger population, the USA reports fewer musicians, but this may well be due to different counting methodologies and definitions.

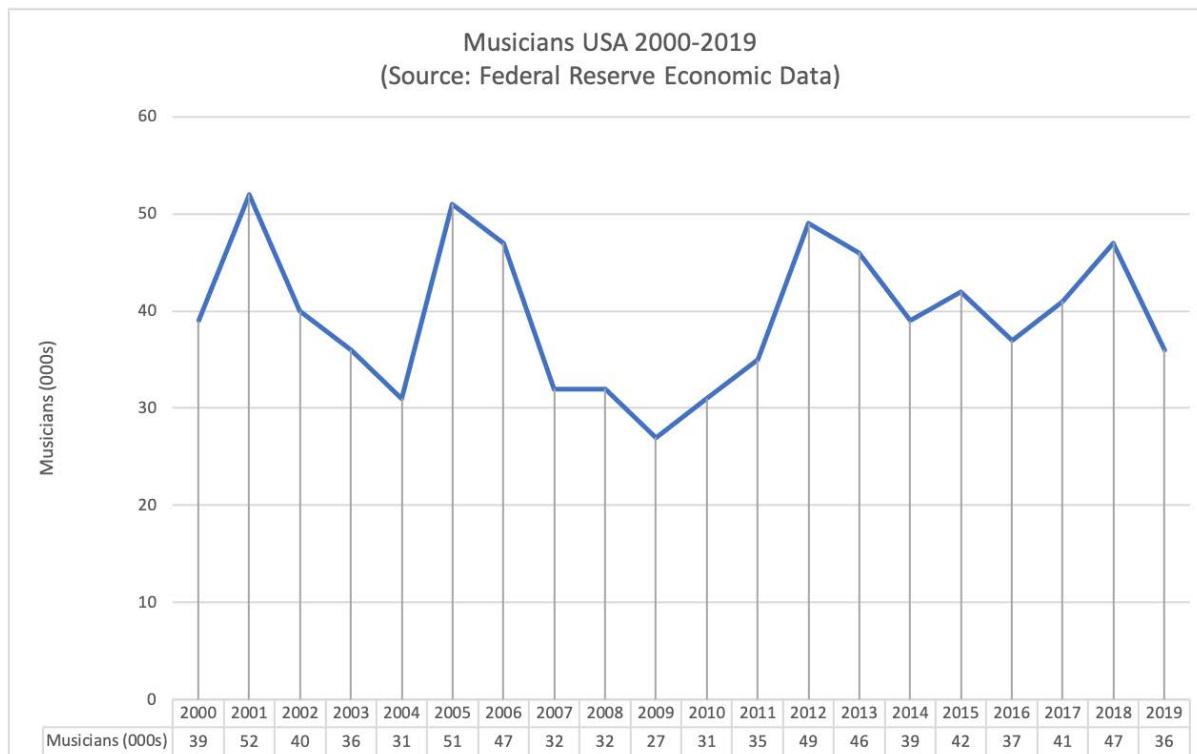


Figure 1.4: Musicians USA 2000-2019 (U.S. Bureau of Labor Statistics 2021)

Meanwhile, EU data indicates numbers of UK musicians second only to that of Germany among European countries, and that countries of comparable population such as France and Italy have smaller counts.

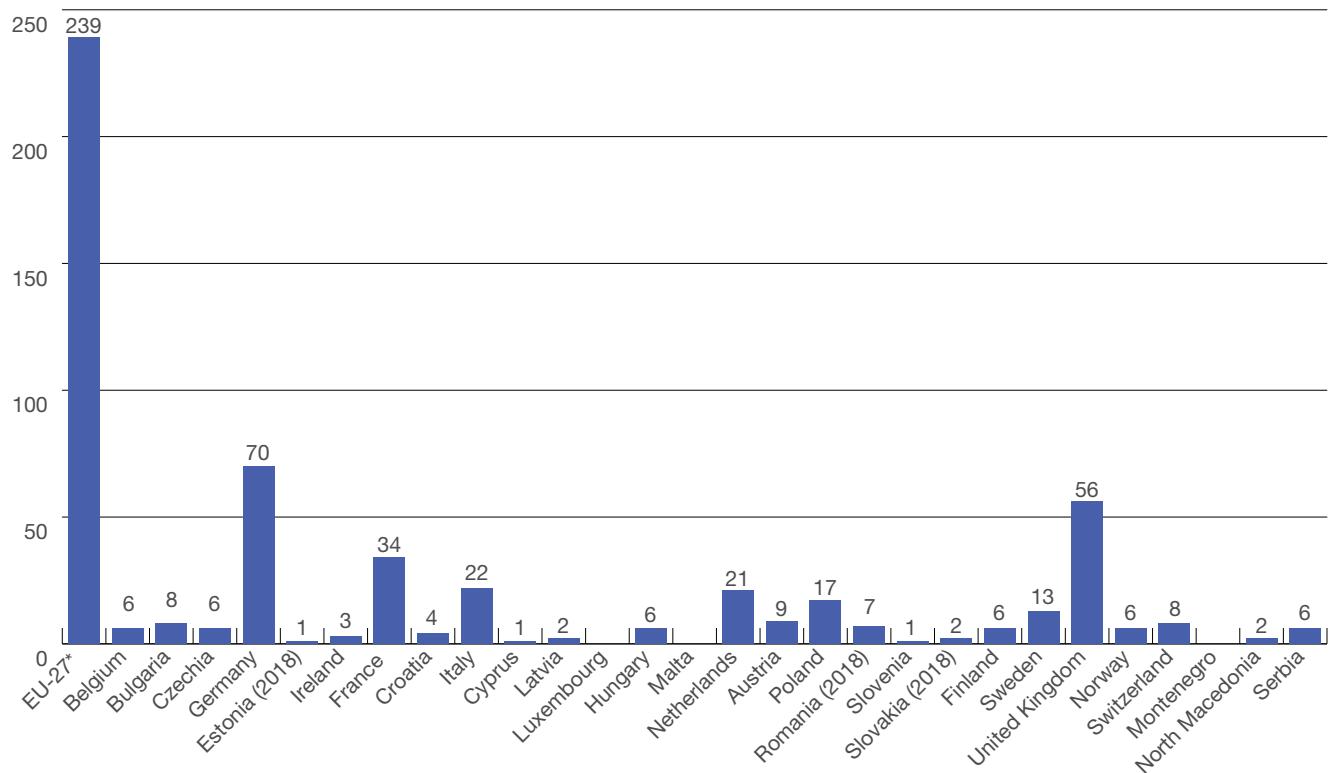


Figure 1.5: Musicians by EU Member State 2019 (Eurostat 2019)

A recent publication by UK Music, an umbrella organisation representing commercial music companies (UK Music 2020a), provides a much higher figure than UK official statistics, reporting that in 2019 there were an equivalent of 142,000 full-time ‘music creators’ employed in the UK industries – though this implies, given that many creators are part-time, that the number of individual music creators is even higher.¹⁴ This compares with 77,500 music creators in 2013 (producers have since been added to the narrower 2013 definition) (UK Music 2014). These figures suggest therefore that the number of music creators has risen by 83% since 2013. (The same report also states that the contribution of music to UK Gross Value Added has doubled in the same period).

Other data also suggests a considerable increase in musicians and music creators in recent years. In an article in the Financial Times, former Spotify Chief Economist Will Page claimed that:

Since Spotify launched in 2009, the number of British songwriters has increased by 115 per cent to 140,000 and the ranks of UK recording artists have ballooned 145 per cent to 115,000. (Page 2021b)

It may be, as Page implies here, that this increase in the numbers of music creators working in the UK has been brought about by, or at least accelerated by, digitalisation, including the way that it has offered new means to make and distribute music affordably.

¹⁴ The 2020 report methodology acknowledges the challenges involved in accurately measuring employment in the sector, ‘When undertaking this surveying, we have been careful to avoid double counting (e.g. someone who works both as a music creator and a manager) and to capture the many freelancers in the industry as accurately as possible. Where surveys were used, they counted part-time staff and freelance staff as equivalent to half a full-time employee.’ (UK Music 2020b: 7).

Even if Page's claims are accurate, it is unclear how many of those songwriters and recording artists are able to sustain a musical career. Nevertheless, it seems certain that there has been a huge increase in the number of active musicians making their recorded music available – including to international audiences. This also means a massive abundance of product. The volume of music released and readily available to consumers in the digital age far outstrips that of the pre-digital age. 60 thousand tracks per day are reported to be added to Spotify alone, adding to estimated totals of over 70 million tracks by seven million 'artists' - an unknown number of whom will be podcasters (Ingham 2021). This of course does not signify seven million individual music creators; inevitably it includes any number of groups and collectives. Arguably, this demonstrates the democratising effects of digital technology as a great many more songs and tracks by a great many more songwriters and recording artists are available to audiences in 2021 than was the case in the pre-streaming age, and those songs and tracks are made available via more distributors. Many of these songwriters and recording artists will receive some payment – but how much? Remarkably little seems to be known about this fundamental issue.¹⁵

One potentially helpful source of information about what music creators earn is the online publication by individual music creators of information about their streaming earnings. Typically, this might include royalty statements (Chakmakian 2014, Cohen 2019, Lavin 2021) or figures that purport to reveal and compare 'average per-stream rates' paid by digital service providers to rights-holders (The Trichordist 2020) or received by music creators. As we have already pointed out, musicians are not actually paid on the basis of a per-stream rate, this can only be a guide to overall circumstances, and needs to be handled carefully in any arguments about fairness, as we show in Chapters 4 and 6.

One source purporting to provide enlightenment on these complexities is Imogen Heap's 'Life of a Song' project. This initiative tracked a single song into the world of commercial exploitation, detailing how the song generates revenue for each stakeholder involved and how the royalty chain works in different settings and markets as the song makes its journey from creator to audience (Life of a Song 2018). It provides interactive visualisations ascribing monetary value to each use of the work. This project has been criticised by some industry stakeholders - for example, for its assumption of a 50/50 split between royalties from recording and publishing rights (see Chapters 2 and 4 of this report for detailed discussion of this split) - but it offers a tantalising snapshot of the further potential for a systematic 'follow the money' project examining a larger number of works and creators.

In sum, very little reliable public data about the distribution and concentration of music creators' earnings is available. However, it is worth noting one notable historical source, the 1996 Monopolies and Mergers Commission (1996) report on Performing Rights. That report examined the role of the Performing Right Society (PRS) in administering performing rights in the UK. It contained data on PRS distributions for public performance and broadcast rights to 15,500 composers and songwriters in 1994. The data, divided into 20 earnings bands between £0-24 and £100,000 and over suggested to some commentators that 'a small number of very high earners earn a disproportionate share of total income' (Kretschmer and Hardwick 1997: 64). This was a very rare moment of public transparency about earnings, and the issue of concentration of earnings is an issue to which we return below and in Chapter 6.

¹⁵ The 'democratising' aspects of digitalisation have been a frequent theme in the academic research literature on the music industries (Alexander 1994, Galuszka 2012, Hviid et al 2018). But few have explicitly addressed whether democratisation includes an increase in the number of people able to sustain a career on the basis of their music.

1.4 Some key surveys of musicians' earnings

Given the very limited publicly available information about musicians' earnings, including those of music creators from copyright works, the most viable way to discover systematic information about them is via statistically significant surveys. Surveys of workers about earnings suffer from some widely-recognised limitations. They depend upon workers reporting their own earnings, and there is no way to verify the information provided. Workers who gain income from a wide variety of sources – and as the surveys reported here illustrate many musicians would fall into this category – might find it hard to recall the various numbers involved, and it might be difficult for even a well-organised person to keep track of earnings. Respondents may not have accurate information easily to hand when they answer the survey. There may be reasons why some workers might underestimate earnings. For example, if someone is finding it difficult to make ends meet, they may believe that they are earning less than they actually are. Or if they feel angry about how they are being treated by their superiors, or by the firm or system that they work within, they may be inclined to make low guesses. Others may overstate earnings, in an effort to appear more successful than they truly are. Nevertheless, in the absence of access to tax returns (available to researchers in some countries, but not in the UK), surveys may be the 'least worst' way of finding out about income.¹⁶ We now briefly discuss some of the most prominent surveys that deal with actual earnings – as opposed to attitudes to earnings and other related issues.

A rare early study by distinguished economists Peacock and Weir, drew on a 1971 survey of income of PRS composer members, and analysed the median earnings and sources of earnings of 575 'composers' (including songwriters) across three generic self-identified categories, conceived in the language of the time as 'popular', 'serious' and 'light'. They found that composers' rewards were significantly better than those of previous generations, largely as a result of the collective action of composers and music publishers and the endeavours of the PRS in successfully exploiting property rights in a changing technological landscape. As a result, 'the composer has successfully been delivered by the Society from the age of sheet music into the age of electronic music' (Peacock and Weir 1975: 146). That said, Peacock and Weir found these rewards remained 'fairly meagre alongside associated occupations, including executant musicians' (Peacock and Weir 1975: 165). This old survey provides some historical context on music creators' earnings: it is clear that precariousness and 'portfolio careers' are longstanding features of musical labour markets.

The most significant international survey we have found was the Money from Music survey, conducted as part of the Future of Music Coalition Artist Revenues Project in the USA (FOMC, n.d.). On the basis of a very large sample ($n=5,371$ musicians), the project identified over 40 revenue streams for US musicians of different types and DiCola (2013: 57) grouped these into eight categories. We reproduce his diagram here to summarise the project's findings about how musicians earned money.

¹⁶ The only research we are aware of that appears to use official government data to survey creators' earnings is a German study reported by Tschmuck (2017: 183). Our thanks to Dennis Collopy of the University of Hertfordshire for input on related issues.

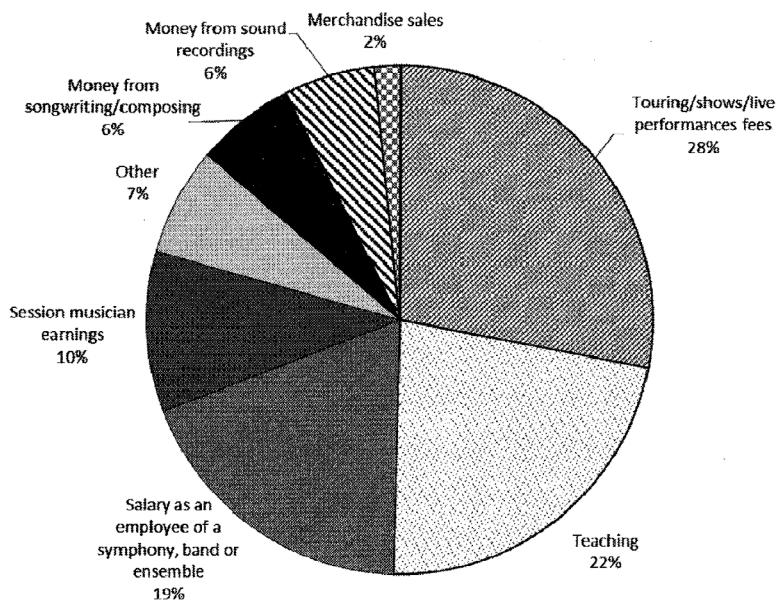


Figure 1.6: Average Share of US Music Income from Major Sources (DiCola 2013)

This included all money from songwriting/composing, ‘including publisher advances, mechanical royalties, ASCAP/BMI/SESAC royalties, commissions, composing jingles and soundtracks, sync licensing, ringtone licensing, and sheet music sales’ and all money from sound recordings, ‘including sales of physical or digital recordings (iTunes, CD Baby, traditional retail, sales at shows), payments from interactive services (Rhapsody, Spotify), SoundExchange royalties, master use licensing for synchs or ringtones’. At the time, payments from ‘interactive services’ almost certainly accounted for only a small proportion of such earnings. Note that live performance accounted for 28 per cent of total annual income, but revenues from compositions and sound recordings accounted for only 6 per cent each, indicating that prior to music streaming income derived from compositions and recordings formed a small proportion of these music creators’ overall income.¹⁷

Another survey of 1227 musicians operating in the USA (Krueger and Zhen 2018), commissioned by the Music Industry Research Association (MIRA) and the Princeton University Research Center, examines a range of issues including work satisfaction, time use, income, and health and well-being. The authors of this study acknowledge the limitations of the sample recruited largely from clients of MusiCares, an industry-led organisation that provides health and welfare support to members of the music community (Krueger and Zhen 2018:2). However, the study provides some insights that are of value in the present context. It focuses on musicians that make most of their income from music and those that aspire to do so. Combining questions on attitudes and experiences of working in music with those pertaining to income from specific sources and time spent working in music, it finds that:

- The median musician in the U.S. earns between \$20,000 and \$25,000 a year.
- 61 percent of musicians said that their music-related income is not sufficient to meet their living expenses.
- The average US musician earns income from 3.5 music-related activities per year.

¹⁷ DiCola (2013) concluded from his analysis of the survey that copyright does not provide much of a direct financial reward for what musicians produce, and suggested that, instead, copyright mainly motivates musicians through ‘the promise of large rewards in the future in the rare event of wide popularity’ (DiCola 2013: 301).

- The most common income source is live performances, followed by music lessons and performing in a church choir or other religious service.

The study provides some detail on the ways in which respondents earn money from music:

- 80% of respondents earned money from playing live and this accounted for around 40% of income.
- Around a third of respondents earned money from recordings, which made up 3.6% of overall income.
- 28% earned income from song writing and composition which contributed 4.2% of overall income.
- In specific reference to income from music streaming sources the survey finds 28% of respondents derived income from this source, contributing 1.5% of overall income from music. (Krueger and Zhen 2018: 1)

There are considerable differences between the UK and the USA in terms of licensing regime and contracting practices, but these findings again indicate that the majority of musicians primarily earn money from live performance. By comparison, far fewer earn income from recorded music and music publishing sources such as sales and streams. Further, these sources tend to make a proportionately small, but not necessarily insignificant, contribution to overall earnings from music.

Recent studies of UK-based music creators echo certain aspects of these US studies. A 2014 survey by UK Music of 900 ‘music professionals’ examined how different types of music creators, asked to describe themselves as composers, musicians, singers or songwriters, earn a living from music (UK Music 2014). The published results provide some useful insights into the highly varied nature of musicians’ income streams. Composers and songwriters derived a far greater proportion of their income from copyright sources such as royalties and commissions, 81% and 60% respectively, than those that identified as performers. In contrast, singers and musicians had a very different income profile, with live performance and tuition respectively representing 83% and 75% of their earnings. While this is valuable information for researchers, it reveals nothing about levels of earnings or changes in those earnings over time.

The ‘UK Live Music Census’ (2018), conducted by academics at the Universities of Edinburgh, Newcastle and Turku, is a recent example of a survey that examined aspects of UK music creators’ earnings. The survey included questions relating to all aspects of music creators’ earnings ($n = 1598$). The survey captures data on a range of creator types tending towards those in middle-age demographics. The creators self-identify as: 463 professional (29%), 719 semi-professional (45%) and 415 amateur (26%) with a median age across the sample of 50-54 years old. The survey found that live music is the main single source of music-related income for professional musicians at 49%, compared to 3% from recorded music – though this may have been influenced by the way that the census was delivered, at live music venues. The importance of live income shows that many of those surveyed are currently active performers. It is worth noting too the very different patterns for professional, semi-professional and amateur musicians. In our own survey, reported in Chapter 5, we sought to capture such distinctions in a more fine-grained manner by asking about the percentage of music creators’ working time that was devoted to music, and correlating various other variables with that information.

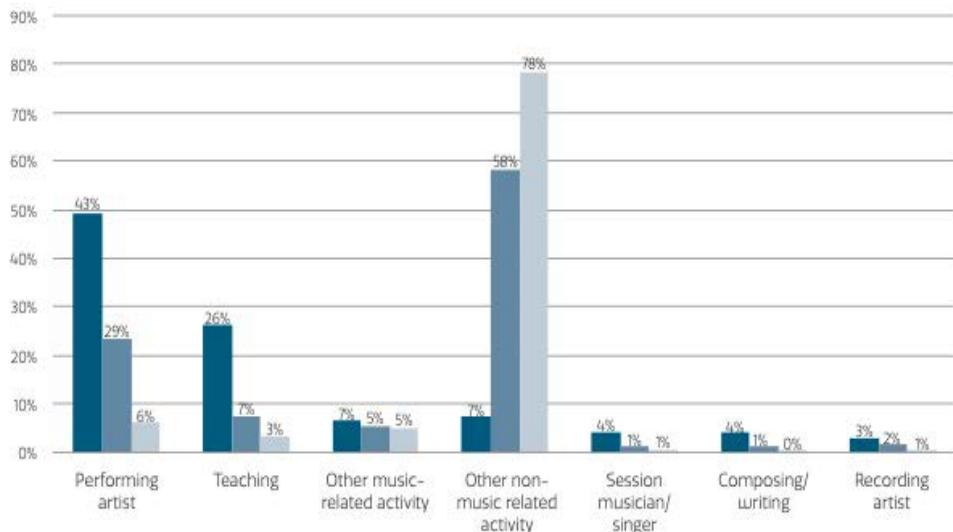


Figure 4: Percentage of annual income by type of respondent to the musician survey

■ Professional ■ Semi-professional ■ Amateur

Figure 1.7: Percentage of Annual Income of Respondent to the Musician Survey (UK Live Music Census 2018)

The UK Live Music Census survey again demonstrates that music creators gain their income from a number of sources. The authors of the study also note that while live music is the main music-derived income source, earnings can be low even for those identifying as professional:

While performing live appears to be an important part of musicians' portfolio careers, it is not necessarily lucrative for all musicians. The census suggests that 66% of those respondents to the musician survey identifying as professional musicians earn less than £15,600 direct from live music each year ... 28% earn less than £5,200 direct from live performance (UK Live Music Census 2018: 20).

The UK Live Music Census survey instructively combines information about music creators' total income but its focus was mainly on earnings from live music. Two studies by the Musicians' Union provide some further relevant detail. A 2012 report drawing on a survey of working musicians ($n=1966$), inevitably now somewhat dated, provides findings on musicians' total earnings.

Over half of all musicians (56%) are earning less than £20k per annum with one in five earning less than £10k from working as a musician. A staggering 78% of musicians are earning a gross annual income of less than £30k. (MU 2012).

In addition to information about total income, the survey also contains useful findings relating to the nature of members' careers in terms of types of musical roles undertaken, time spent on musical and non-musical work, years working as a musician, and educational attainment levels of respondents. As shown in Figure 1.8, the survey confirms that a music career is often a 'portfolio career' with most deriving income from a variety of sources beyond the role they considered to be their principal musical activity.

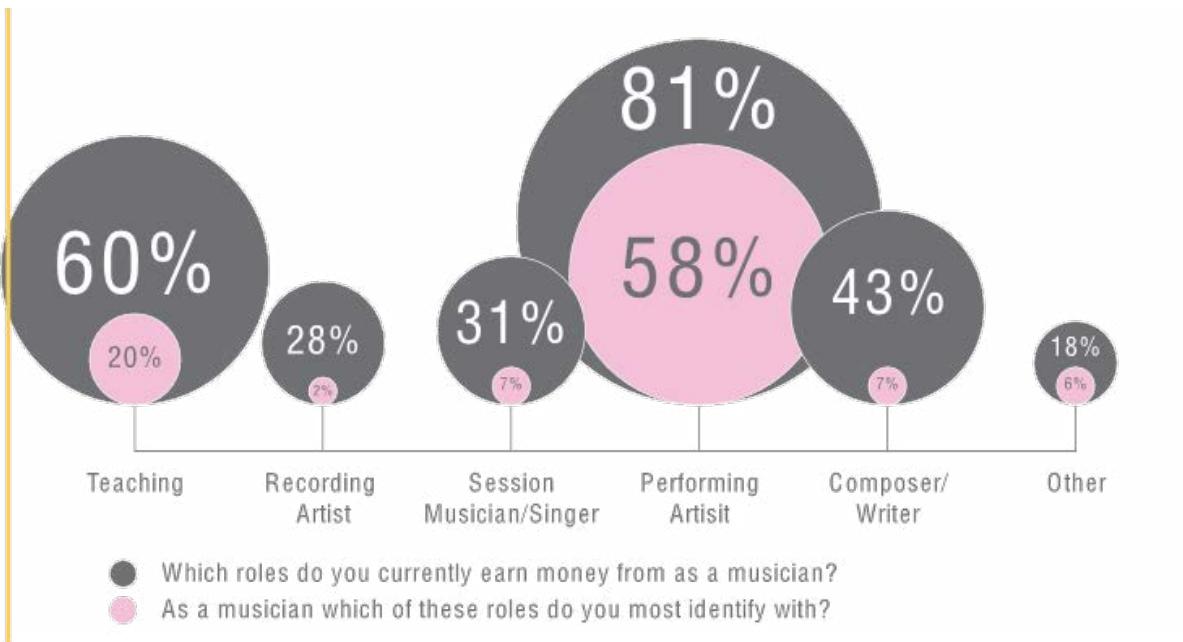


Figure 1.8: Primary role and sources of income (MU 2012)

Moreover, although respondents were members of a musicians' trade union, one third of them reported doing work outside music. In exploring the nuance of the ways in which this constituency of musicians earn, the MU survey served as a valuable precedent for the survey conducted for this study and reported in Chapter 5.

A more recent poll (Ivors Academy 2020, MU 2020) of a relatively small sample of 311 members of MU and music composers' trade organisation Ivors Academy (both of them organisations that have advocated changes in the current musical system) reported some headline findings:

- 82% of respondents earned less than £200 from streaming
- 92% said less than 5% of their earnings came from streaming in the previous year
- 50% said their income from recorded music has declined over the past 10 years
- 43% said that insufficient income from streaming caused them to get a job outside of music

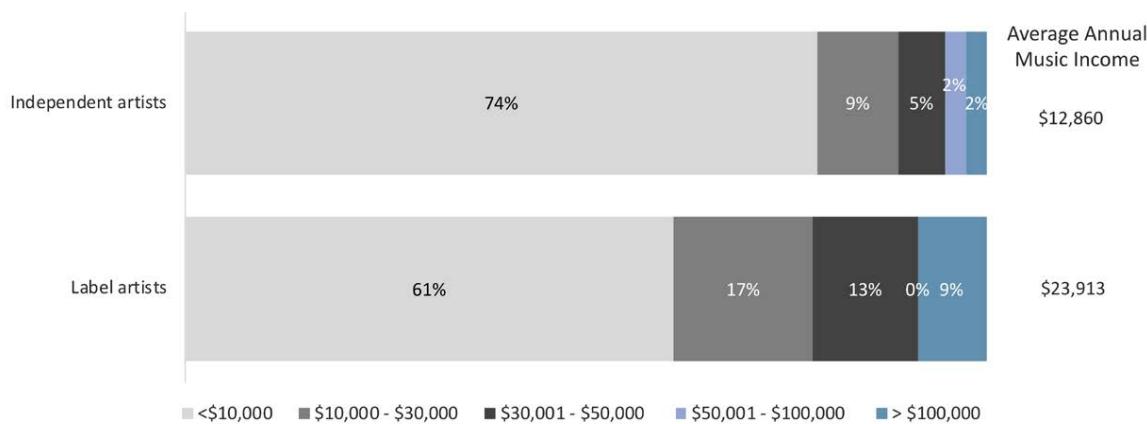
Two Europe-wide surveys are also relevant. The first of these is by Central and Eastern European Music Industry Databases (CEEMID) and its survey of 2065 music professionals in twelve languages in 2019 (CEEMID 2019). The survey set out to 'help collective management societies to justify higher royalties, to justify higher compensation for free home copying, and new compensation for media platforms that do not pay adequate royalties in your country in 2019' (CEEMID 2019). The second of these surveys is part of the #PayPerformers campaign, an initiative that seeks: 'fair remuneration from streaming'. The survey of over 5800 performers across 27 European countries commissioned by European CMOs finds more than 90% of performers receive less than €1000 per year from streaming. The survey calls for intervention on how performers are remunerated by DSPs:

The #PayPerformers campaign calls on Member States to implement article 18 of the 2019 EU Copyright Directive in a meaningful way granting performers an unwaivable remuneration right for on demand uses, managed by CMOs and paid by streaming platforms. (#PayPerformers 2020)

As the commissioners of these surveys note, they were deployed in support of lobbying objectives relating to copyright policy reform. In this, they are not untypical of publicly available information pertaining to music creators' earnings cited here. The majority of these surveys have been commissioned by stakeholder organisations with interests that have been foregrounded in this Report and so their findings should be treated with circumspection but provide important context.

While Krueger and Zhen (2018) provides a useful example from the USA, we have not been able to find any publicly available recent UK survey that provides detail on music creators' earnings, and which combines music creators' reports of their own earnings (with all the limitations concerning memory and accuracy we mentioned earlier) with information about other key issues. This includes issues such as time and money spent on musical activities, and the relationship of these issues to dimensions of ethnicity, gender and class, and to musicians working in different genres. To fill this gap, we commissioned a survey from the market research company AudienceNet. As Chapter 5 reports, that survey confirms DiCola and the Future of Music Coalition's findings that copyrights from recordings and songs account for only a relatively small proportion of music creators' earnings – though our data suggests somewhat higher copyright income than that reported by DiCola. We reflect further on various issues emerging from the data in Chapter 5.

A further survey, again with a small sample size, is worth mentioning however. Media analysis company MIDiA surveyed a cohort (n= 254) of independent creators operating outside the traditions of the record label deal and suggested on the basis of the results that this type of artist now accounts for 8% of the overall value of the music industries. The survey also contained information about creators' earnings, as shown in Figure 1.9, suggesting that artists with label backing make considerably more money from music than their 'unsigned' counterparts.



Question asks: How much money you currently earn from music each year?
Source: MIDiA Research / Amuse Artist Survey (04/19) n = 254



Figure 1.9: Average Annual Music Income (MIDiA 2019a)

When broken down according to income source in Figure 1.10, the composition of this income does not correspond with those accounts found in current debates pointing towards meagre returns from music streaming.

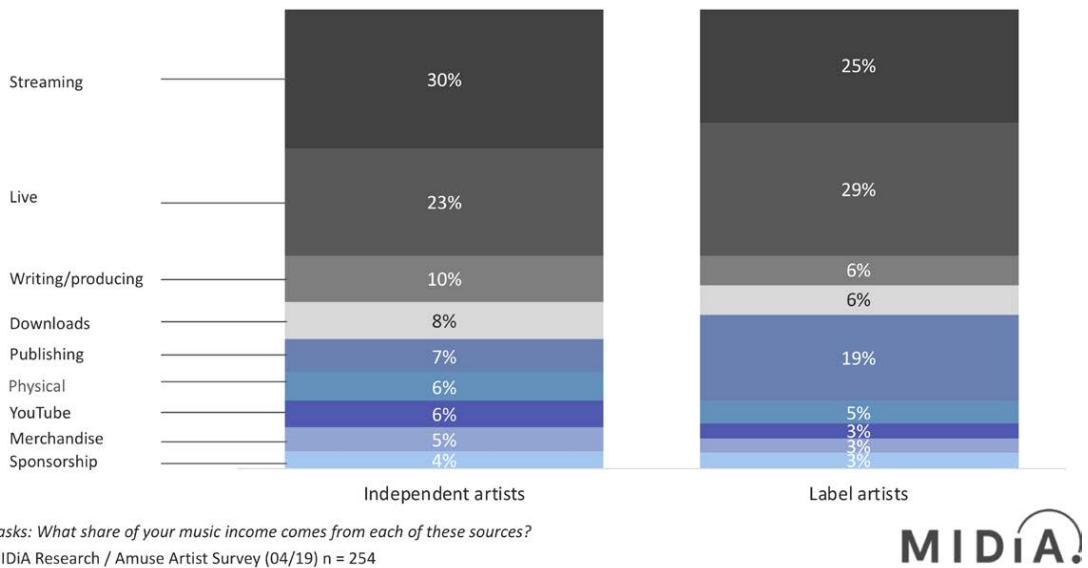


Figure 1.10: Share of Income by Source (MIDiA 2019b)

When all digital sources (including purchased downloads) are combined this accounts for 44% of independent artists' income and 34% of label artists' income. In both cases, this represents a considerable proportion of overall music income. Given the small sample size ($n=254$), drawing on a worldwide population of musicians, and limited disclosure of methodology, it is difficult to assess these figures in a wider context. Chapter 5 of the Report examines in greater detail the contribution of streaming sources to UK music creators' overall income.

The MIDiA research also found that 72% of independent artists and 65% of label artists felt compelled to find other work to support themselves. Again, the idea of the portfolio career emerges, even in the case of signed artists. Drawing on the findings of the survey MIDiA comments:

Independent artists are fundamentally pursuing music for the love of it, seeking the respect of fans and artist peers alike. Sure, they would like to get paid along the way, but this is not what drives them. Record labels need to reassess their value proposition to artists. A plethora of artist tools are competing against all of the basic functions that a record label provides and, on top of this, the majority of independent artists no longer see a label deal as the Holy Grail (MIDiA 2019b: 21).

Identifying precisely what motivates creators to create is very difficult. However, the evidence presented in the studies cited here suggest that, irrespective of their motivations, making a living from music alone is exceptionally challenging for all but the small minority of music creators.

While systematic historical information about music creators' earnings is even more elusive, the evidence from historical surveys going back to Peacock and Weir's 1975 report, suggests that the precarious nature of musicians' working lives is not a feature unique to the age of digital music. The key Monopolies and Mergers Commission reports (MMC 1994, 1996) on the supply of recorded music and performing rights support the conclusion that in the pre-digital age the vast majority of music creators were engaged in poorly remunerated work where commercial failure was endemic. MMC (1994) contains evidence of the small number of creators signed to major record companies at any given time, and claims that the vast majority of the 513 artists fail, though no information is provided about artist income. One interesting statistic offered is that from 1985 to the time of the report, 'at least 20 artists a year have been established in the UK market, in the sense of releasing their first 100,000 selling album.'

(MMC 1994: 94). However the Report also notes that the 'turnover of artists on rosters each year was considerable. Typically the majors gained and dropped between 30 and 50 per cent of their artists each year'. PolyGram, one of the then five major record companies of the time, 'had some 445 different artists under contract between 1989 and 1992 but fewer than half that number at any one time'. A major record company said that only 15 artists remained contracted to its pop labels between 1 January 1988 and 30 June 1993.' (MMC 1994: 94). Independent record companies also offered a route towards a career, but of 'around 330 artists between 1981 and 1992, some 38 per cent were signed to independent companies at the time of their success' (MMC 1994: 94). As we shall see in later chapters, there is clear evidence that the current system based on streaming now offers some music creators the chance to by-pass the majors and independents. The key point here though is that there was never a 'golden age', even in the era where revenues from recorded music were at an all-time high, when substantial numbers of music creators could earn a sustainable living from recording – or by extension, song-writing.

1.5 Distribution of popularity and earnings: winner take all markets and long tails

Section 1.1 established that there is now more revenue flowing to recording and publishing rights-holders, and to music creators as a whole, than since the early 2000s. We have also shown that it seems indisputable that more music creators than ever are competing for a share of those revenues – Chapters 5 and 6 of our report consider evidence about this. This raises the crucial question of the patterns of distribution of those revenues. How equally are they shared? Obviously, a key factor in determining rewards in most industries is popularity. In the music industries, however, this fact may have particular ramifications, because music creators usually operate not as employees, but as freelancers and/or, in cases where they have signed contracts with rights-holders, as exclusive contractors, on a 'project-by-project' basis. The relative success of each project, however defined (a track, an album, etc.), therefore very strongly determines the financial success of the small group of creators associated with that project or product.

Yet popularity is very unevenly distributed in cultural markets. A number of economists have sought to account for and analyse the skewed nature of success and earnings in the cultural industries, and the music industries in particular (Rosen 1981, Adler 1985, Macdonald 1988, Towse 1992). Others have pointed to how some products achieve spectacular levels of attention and success and some achieve very little or none at all, and a widely used term developed to refer to this kind of market is 'winner take all' (Frank and Cook, 1995) – when success in terms of popularity and rewards are highly concentrated among the most successful products and creators relative to the overall number of available products and creators in the market. Cultural markets, including music, are in many respects exemplary of this dynamic – they have been used by economists (including Frank and Cook) and other analysts as key examples of the phenomenon. While these works predate the advent of music streaming by many years, many aspects remain highly relevant in the contemporary setting.

These dynamics mean that, when it comes to recording and songwriting, compared with employed, salaried workers, there might be enormous variation between different music creators, from the hugely popular and well-rewarded to those whose work is consumed by very few people and who therefore receive very little reward. There is also greater variation over time, with great success for a music creator in one period and relative failure in another. Music creators, then, can be seen as part of a 'winner take all' labour market. Another way of approaching this issue, following a hugely-cited article by economist Sherwin Rosen (1981), has been to see cultural markets (including sport) as exemplars of 'superstar economics', where 'relatively small numbers of people earn enormous amounts of money and dominate the activities in which they engage' (Rosen 1981: 845).

Some would claim that the vastly greater rewards of the biggest stars is a result of their vastly greater talent, quality or capacity for hard work. Others would emphasise the role of luck, and how relatively small differences in talent may, through complex dynamics, result in big discrepancies in earnings. Drawing on the earlier work of Rosen, Moshe Adler (1985) examines the disparities in success and earnings between creators whose talents are deemed to be equal. Of course, quantifying talent is subjective whereas commercial success can be more readily objectively quantified. However, Adler's work argues that in markets like the music industry, where consumption is dependent on knowledge i.e. music fans can only be fans of music they are aware of, audiences are drawn to the work of 'stars':

Thus, if other artists are not cheaper by more than the savings of search costs, one is better off patronising the star. Alternatively, if other artists are not sufficiently *better*, one is better off patronising the star. To reemphasise, the star need not possess greater talent. Stardom is a market device to economise on learning costs in activities where, 'the more you know the more you enjoy.' (Adler 1985: 208)

In the context of music streaming, Adler's analysis has particular significance where algorithmic recommendation systems are central to how consumers find out about music and music creators. In subscription and ad-funded models, selecting different products has no direct financial cost to the listener, but the search costs Adler identifies are likely to be a consideration for users of streaming services where choice of products is seemingly limitless. Therefore, reducing search costs by way of algorithmic recommendation potentially plays a central role in the creation and consolidation of superstar artists as brands. This issue is touched upon in Chapter 6 of the Report.

An initial hit can be the basis of a long and successful career – or not. Recordings and artists that initially achieved wide release but floundered in relative obscurity occasionally achieve belated and unexpected success and it is not usually clear how or why this happened except in speculative and general, descriptive terms.¹⁸ Given the lengthy term of copyright in musical works, rights-holders and creators (or their estates) can potentially derive significant rewards in the relatively rare cases where works become popular decades after initial release. Whatever the factors behind success and failure, the implications for music creators appear to be massive inequalities between the successful and the unsuccessful (which will of course include many who do not seek success, as well as many who do) compared with, say, the disparities between successful and unsuccessful teachers or engineers.

However, in the digital age, some commentators have speculated that music industries' dependence on backing winners in 'winner take all' markets would give way to less or differently concentrated patterns of consumption, as a result of various factors, including cheaper means of production, easier access to distribution (via the internet and new digital intermediaries), and the increased ability of consumers to access vast amounts of content, anytime, anywhere. The best known version of this idea is the 'long tail thesis' which claims that in the digital environment, a far wider range of cultural products achieve success (Brynjolfsson et al 2003, Anderson 2006, Waldfogel 2012, Smith and Telang 2017) expanding the 'big head' of the popularity distribution curve, while also allowing more and more works in the rest of the popularity curve (not just the middle but also 'the long tail') to generate at least some income – see Figure 1.1 In the case of music, other things being equal, this would mean more and more creators - and the intermediaries associated with them - gaining some reward for their musical works, with an increasing number being able to make a sustainable living.

¹⁸ The British singer-songwriter and guitarist Nick Drake represents just one example. His popularity surged when his track 'Pink Moon' was chosen for a Volkswagen advert in 1999, some 25 years after his death, but this does not explain why that song resonated with people encountering the advert and then generated greatly increased interest in Drake and his other work.

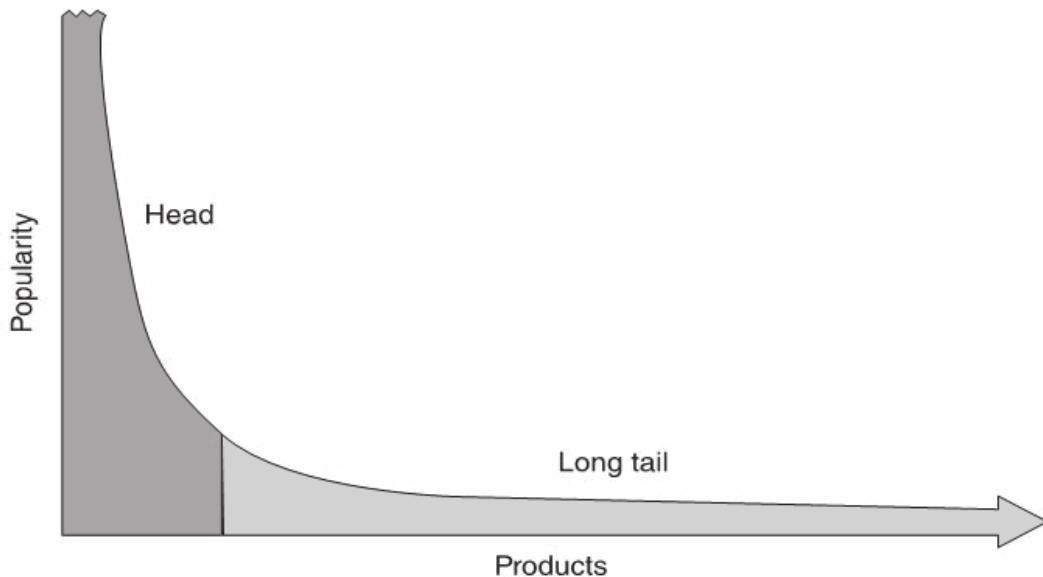


Figure 1.11: A simplified representation of the 'Long Tail' idea (from Hesmondhalgh 2019: 268)

In his influential exposition of the long tail idea, Chris Anderson (2006) cited the immense inventories of emergent music streaming service Rhapsody along with online retailer Amazon and Netflix, at the time still an online DVD retailer, as evidence of the potential for niche products to be discovered by audiences accustomed to the limited repertoire available in bricks and mortar retailers. Anderson's claim that digitalisation would correct the skewed 'winner take all' nature of demand in the cultural industries captured the imagination of journalists and academics, and was also to some extent co-opted by the new breed of cultural industries behemoths including Google and Netflix (Hesmondhalgh 2019: 278).

The idea that 'long-tail' effects have significantly altered patterns of cultural demand and distributions of cultural popularity has been challenged. Critiques suggest that not only did Anderson's 'long-tail' prediction fail to come to fruition, but digitalisation has to some extent resulted in 'winner takes all' patterns becoming even more pronounced (Page and Garland 2009, Elberse, 2008, 2014, Blake 2020). Such critics claim that a very pronounced 'short-head' of demand remains a feature of the digital entertainment eco-system, including music streaming, as it was for previous eras.

Moreover, payments in the 'long tail' are small – which seems inevitable given its extraordinary size (some 7 million artists on the main DSPs). As part of their efforts to show that streaming is allowing more and more music creators to generate income from recorded music, in 2021 Spotify released large amounts of data regarding the success and otherwise of tracks as part of its 'Loud and Clear' initiative.¹⁹ Drawing on these data, Enders Analysis concluded that 'Spotify gives the 'long tail' of largely amateur acts an online discovery platform, encouraging a boom in self-publishing'. But Enders also claim that pay outs in the long tail are 'anaemic': of Spotify's 4.5 million active 'artists' (an unknown number of whom will be podcasters and others involved in non-musical content), only 870 generated over \$1 million in revenues for the industry last year (only some of that 1 million plus would have gone to the music creators, depending on their contracts and rights ownership), compared to nearly 4.3 million generating under \$1,000 (Enders Analysis 2021). This suggests that the 'big head' is very dominant, and the long tail is marked by almost trivial levels of earnings, in terms of making a sustainable living.²⁰

19 <https://loudandclear.byspotify.com/>

20 Of course, Spotify is just one streaming service operating in a market populated by many other services of varying scales. It is extremely difficult to access information regarding streams on other MSPs.

However, there is evidence to support the views of those who claim that streaming has lessened the tendency to ‘winner take all’ patterns. BPI research suggests the streaming market is less concentrated than that of the CD age. Streaming’, the BPI writes, has ‘made the market more ‘democratic’: the top 10 artists dominated less of streaming (5%) in 2020 than was the case for CD sales (13%) in 2005’ (BPI 2021d). In Chapter 6, we examine other evidence about the crucial issue of whether the number of creators within the ‘short head’ has increased significantly.

But what about music creators ‘in the middle’? In the case just mentioned, for example, what about the 200,000 or so ‘artists’ whose works, according to Spotify’s Loud and Clear data, generate between \$1,000 and \$1 million in payments to rights-holders? It is probably here where most attention needs to be directed in assessing whether streaming is generating revenues that might sustain careers and livelihoods for substantial numbers of music creators. Media and online commentary has often claimed that the ‘musical middle class’ has been eroded significantly (Luckerson 2019). The phrase ‘middle class’ is clearly problematic given the various debates about how to define social classes, and the varied political and socioeconomic connotations ascribed to the term, which vary greatly between, for example, the USA and the UK (Wright 1997). However, the term at least points to the need for a much more gradated and stratified understanding of earnings from streaming, and earnings from music in general, beyond the most successful superstar artists, and the long tail of amateurs and hobbyists for whom no doubt an extra 500 or 1000 dollars or pounds might be very welcome, but would not make a major contribution to sustaining a living.

Figures publicly released by Spotify may throw light on these issues. Citing data from the USA (BuzzAngle 2018), Ingham (2019) reported that ‘in 2017, the USA’s top 500,000 tracks racked up 14.6-times as many audio streams as every other piece of music. In 2018, however, this multiple had fallen significantly, down to 12.2’ (Ingham 2019b). It is possible that this is a result of conscious strategy on Spotify’s part. Spotify research scientists have made efforts to strike balances between ‘fairness, efficiency and relevance’ (Mehrotra et al., 2018). Specifically, they have considered the trade-off between consumer relevance and supplier fairness and its impact on consumer satisfaction. They note that ‘A system optimizing for relevance might be unfair to unpopular suppliers’ because being ‘conditioned on being known to a user, a supplier with the same user satisfaction might have a lower probability of being recommended’. On the other hand, they write, ‘exposing all suppliers equally might severely impact consumer satisfaction’. In response, they use sophisticated methods to assess the effects of different recommendation systems, and propose ‘adaptive policies’ which provide ‘the best middle ground without severely impacting relevance and positively impacting fairness and satisfaction’. Interestingly, they seek to take account of ‘user affinity’: that some users are ethically concerned with supplier fairness. (They presumably have in mind consumers who value ‘independent’ and ‘alternative’ content). To do so, they propose an ‘affinity aware recommendation policy’ which considers users’ tolerance towards fair content, and adaptively recommends fair content to users who have a positive affinity towards fair content. In other words, they propose a system where ‘ethically-oriented’ consumers receive recommendations for more obscure content, with the potential for spreading attention down the long tail.

Our efforts to communicate with Spotify for this research were not successful, so there was no way of knowing whether any of the strategies developed by Mehrotra et al. were followed through, but it is striking that Spotify have been very active in making various claims about its growing capacity to pay artists. Spotify has regularly made claims that it wishes ‘to unlock the potential of human creativity by giving a million creative artists the opportunity to live off their art,’ to quote its 2019 Annual Report (United States Securities and Exchange Commission 2019: 49). It tracks its own progress in enabling more artists to do so by identifying the number of artists who earn 90% of streams on the platform, which it calls the ‘top tier’. Spotify’s figures show that the number of artists in that ‘top tier’ has increased from 16,000 in 2015 to 43,000 in 2019 (Ingham 2020).

How many artists share 90% of all streams on Spotify?

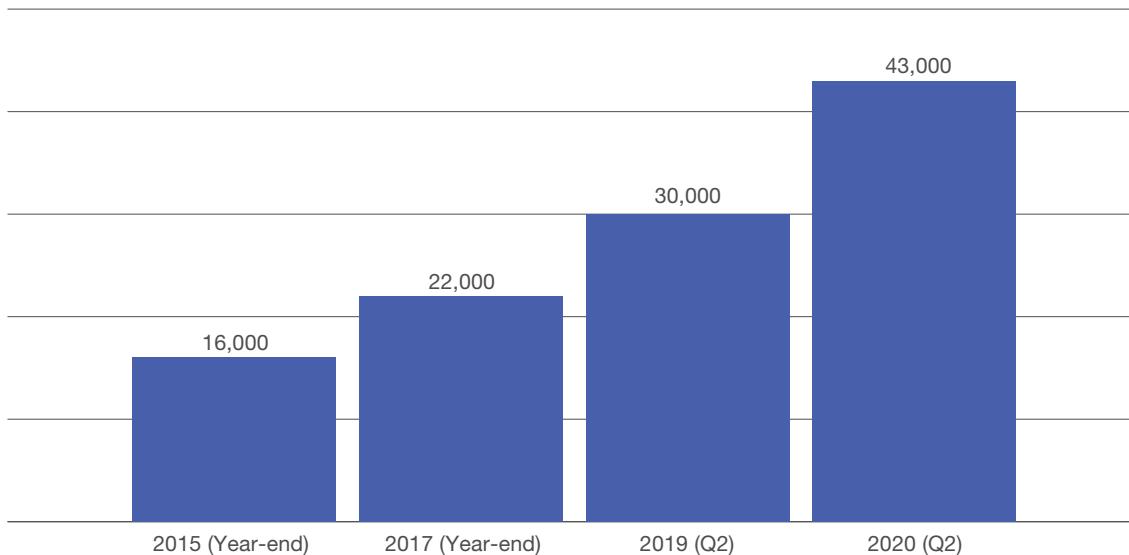


Figure 1.12: Number of artists that share 90% of all streams on Spotify (source: Ingham 2020)

As with the above figure on the decrease in the ratio of the streams achieved by the top 500,000 tracks to the streams achieved by all other Spotify tracks, it seems quite possible that changes made by Spotify to their recommendation systems, of the kind discussed by Mehrotra et al. (2018), had at least some role to play in the change. We discuss the Spotify evidence further in Chapter 6 as part of an analysis of the data we purchased from the Official Charts Company, and more generally consider what we can learn about distributions of popularity and therefore earnings between 2014 and 2020.

1.6 Music contracts

As noted above, creators' earnings from music streaming are strongly influenced by the contractual agreements they enter into with third party intermediaries, chiefly music publishing, recording and distribution deals or contracts. Again, this is an area of the music industries where meaningful data is in short supply. Music industry contracts are by nature commercially sensitive agreements between music creators and the companies they work with, so it is understandable that there is a reticence about publishing such documents. As is often the case in the music industries, when these sources pertaining to financial and contractual aspects of creative labour are made public it is often in the context of a dispute or court case relating to a high-profile work or artist (Evans 2003, Greenfield and Osborn 2007, Stahl 2013). In instances where music creators are successful in challenging these contracts and are able to exit the deal, it does not necessarily follow that they will gain control of rights already assigned to music companies. While these high-profile cases attract considerable attention and reveal seldom-seen details of deals, by comparison, very little is known about the vast majority of music publishing and recording contracts that are not challenged in a courtroom.

Some contributions to the current debate around music creators' earnings suggest that current deals and contracts are excessively shaped by historical factors that no longer apply. For example, in the pre-digital age a central function of record companies was to bear what could be considerable manufacturing and distribution costs of physical artefacts. In the digital age, this role has diminished considerably, yet as we shall see in Chapter 3, many stakeholders claim that royalty rates and other contractual terms continue to reflect these 'old world' practices (Cooke 2020, Bakare 2021). Against this, as we also report, rights-holders claim that they face increasing A&R (talent development) and marketing costs. The focus of the great majority of these accounts is record contracts as opposed to music publishing agreements, and in this report, we seek to give music publishing agreements overdue attention. Conversely, it has also been suggested that contemporary record contracts increasingly reflect the changing environment, particularly in respect of royalty rates from digital sources, and that royalty rates have improved in the streaming age. Yet here too there has been a notable lack of sustained academic research – a gap we seek to fill, especially in Chapter 4 where we examine, in some detail, aspects of record and publishing agreements that have altered in the digital era.

Summary

We have identified a number of major gaps in evidence concerning music creators' earnings, and a pervasive lack of attention, in public debate and even in academic research, to the structures and processes that influence those earnings. The first step in filling these gaps is to provide a clear explanation of how UK music creators' earnings actually work, which we undertake in the next chapter, before dealing with the differing perspectives of key stakeholders on these matters in Chapter 3.

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Chapter 2

How Music Creators' Earnings Work

This chapter summarises the main factors that affect music creators' earnings from recorded music. We begin by explaining music creators' roles and the ways in which sound recordings generate revenue for rights-holders and music creators (2.1). Central to this is understanding the rights embodied in copyright law (2.2), who owns rights (2.3) and who oversees their use (2.4). All this is essential information for understanding how revenue is distributed (2.5) and the opportunities and constraints afforded by the revenue stream (2.6), two issues that are at the heart of debates about music creators' earnings in the digital era. Section 2.7 then addresses some of the complications surrounding revenues. All this provides the basis for understanding the different stakeholder perspectives outlined in Chapter 3, and the outline of how revenue is divided among different entities in Chapter 4.

2.1 The music creator's role and how sound recordings generate revenue for rights-holders

Music creators undertake a number of different artistic roles and the lines between these roles can sometimes be blurred. They are nevertheless grouped along the following lines in respect of remuneration:

- a) Publishing
 - Composers and lyricists: these roles are remunerated similarly
- b) Recording
 - The activities of recording artists are divided as follows:
 - i) Featured artists: these recording artists are signed exclusively to record companies and/or initiate recording projects themselves.
 - ii) Non-featured performers: this category includes session musicians and orchestral musicians who are hired specifically for their input on particular recordings.
 - Studio personnel: studio producers and engineers used to be employed in-house by record companies but it is now almost standard that they will be independently contracted on a project-by-project basis.

There are a number of ways in which sound recordings generate revenue for rights-holders:²¹

- Payments by consumers and retailers for sales of physical recordings (compact discs, vinyl records, cassettes, shellac records etc.)
- Payments by radio and TV stations for the right to use music as part of broadcasts.
- Payments by organisations and firms such as shops, restaurants, workplaces, nightclubs etc for the right to play recordings in their premises. (known as 'public performance')²²
- Licensing payments made by film, television, advertising and games companies for the right to 'synchronize' recordings with images (film, television, advertising, videos, video games etc.) – or 'sync' for short.
- Payments by consumers for the online purchase of digital downloads, i.e. digital files containing music.
- Payments by consumers and advertisers for the on-demand streaming of digital audio files and video files containing music.

The music industries distinguish between:

- a) *Business-to-consumer (B2C) revenues*: revenue that is generated through the consumer purchase of recordings. This category includes physical record sales and downloading. Revenues can be increased either by selling more recordings and/or by charging more for them.
- b) *Business-to-business (B2B) revenues*: various organizations employ recordings as a means of adding value to their businesses. This category includes radio broadcasters (who raise money through advertising revenues or licensing fees), public performance establishments such as shops, bars and restaurants (who use music as a means of attracting paying customers) and television companies, filmmakers, advertisers and games designers (whose use of music increases the appeal of their products). B2B users do not make their money by getting consumers to pay for recordings directly. Their means of increasing revenue is by attracting more patrons for their own products and/or by charging more for those products.

On-demand streaming sits between these two models. It embraces:

- a) *B2C revenues*: digital service providers (DSPs) make money by charging subscription fees, which provide consumers with access to recordings. Revenue can be increased by getting more consumers to pay for access to the service and/or by charging higher subscription fees.
- b) *B2B revenues*: service providers monetize their use of recordings by selling advertising on their platforms and by funnelling their advertising-supported consumers towards their higher earning subscription models.²³

²¹ The streams listed here are the most consistently remunerative for both recording and publishing rights holders. At times revenues from video and DVD sales have also assumed importance, as have ringtones. Currently, royalties from television streaming services are of growing importance to publishing rights holders, whereas the recording rights holders revenues for these services are usually derived from buy-out fees. There are also revenues from cover mounts (recordings supplied with magazines and newspapers), from music embodied into greetings cards, theme park rides, pinball machines and various other uses of recordings. In addition, sound recordings can generate revenues tangentially, such as through merchandise sales.

²² Although public performance includes live performances that do not involve the use of sound recordings, the analysis of public performance in this chapter and in chapter 4 is focused on recorded music uses

²³ Business-to-consumer and business-to-business are useful terms for demarcating different means of generating revenue, but they have limitations that should be noted. On the one hand, in the B2B transactions the rights holders rarely sell directly to consumers, the transaction instead takes place via retailers or DSPs. On the other hand, the target audience of business-to-business transactions is rarely the businesses purchasing the music, but instead the consumers of these businesses.

2.2 How are music creators' interests protected?

The revenue streams detailed above generate two main sources of money for the music industries:

1. Revenue for use of the musical composition (the publishing rights);
2. Revenue for use of the sound recording (the recording rights).

Record companies, broadcasters, film companies, advertisers, games companies, public performance venues and digital service providers are compelled to obtain licences for their uses of music. This is because copyright law contains a number of different 'rights', which protect different ways in which creative work can be utilized. Some of these rights correspond closely with recorded music's revenue streams, but other revenue streams operate across the different rights. The UK's current intellectual property legislation, the Copyright, Designs and Patents Act (CDPA), lists the following 'acts restricted by copyright' (CDPA 1988: s. 16(1), s. 182):²⁴

- *The right to copy the work*: this right is also known as the reproduction right. It addresses the reproduction of the copyright work 'in any material form', including 'storing the work in any medium by electronic means' and 'the making of copies which are transient or are incidental to some other use of the work' (CDPA 1988: s. 17). Physical sales and sync licensing involve use of this right, as do elements of downloading and on-demand streaming.²⁵
- *The right to issue copies of the work to the public*: this right is also known as the distribution right. It partners the reproduction right and in UK law is most commonly utilized in respect of physical products. It is required in instances where the distributor of the product is separate to the reproducer of the product.
- *The right to rent or lend the work to the public*: this right addresses instances where a user accesses the copyright work 'on terms that it will or may be returned' (CDPA 1988: s. 18(2)). It has rarely been utilized by the music industries, other than in a restrictive manner.²⁶ It has been argued that streaming services represent a form of renting access to recordings,²⁷ although international treaties indicate that the 'rental right' applies only to the rental of physical products.²⁸

24 Because these rights give rights owners controls over how their content is used and distributed, and presumably because of the potential confusion concerning these 'rights' to do certain things with musical works, and the different sense of rights, as in the two main categories or types of music copyright (recording rights and publishing rights) the analyst Chris Cooke (2020: 24) uses the term 'controls' to refer to these acts restricted by copyright. However, this alternative potentially has its own problems in that 'copyright control' has a specific legal meaning that is separate to the way in which Cooke uses the term control.

25 Broadcasting will also trigger this right whenever programme makers embed copies of recordings in their productions. This is in most instances, as there are few programmes that are solely broadcast live.

26 Nicholas Garnett, then chief executive of the International Federation of the Phonograph Industry (IFPI) stated in 1993 that the 'Rental of phonograms first surfaced as a commercial threat in Japan in 1980. It spread rapidly as an enterprise and in the space of a few years severely prejudiced the normal exploitation of phonograms through retail outlets. Recognising this unfortunate development as counterproductive to the future of the phonograph industry a number of countries, i.e. USA, France, UK, hurriedly introduced the necessary legislation enabling producers to control the commercial uses to which copies of their phonograms were put' (Committee on the Judiciary 1994: 36).

27 This idea was mooted in some of the earliest debates about how to legislate for 'digital transmissions' (EC 1995: 56-59) and was reprised during the House of Commons DCMS inquiry into the Economics of Music Streaming, most notably in the oral testimony of José Luis Sevillano, Director-General, AIE (Artistas Intérpretes o Ejecutantes).

28 WIPO Performances and Phonograms Treaty agreed statement concerning articles 2(e), 8, 9, 12 and 13: 'As used in these Articles, the expressions "copies" and "original and copies", being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.'

- *The right to perform, show or play the work in public:* this right is also known as the public performance right. It addresses the use of copyright works in venues, cinemas, shops, restaurants, workplaces, etc. and includes the use of sound recordings, films and broadcasts in these public places.
- *The right to communicate the work to the public:* this right addresses various forms of transmission, including radio and television broadcasting. There is also a subset to this right, known as the ‘making available right’, which addresses ‘the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them’ (CDPA 1988: s. 20(2)(b)). The making available right was developed to address the transmission of interactive content online. As such, it embraces the distribution aspects of downloading and on-demand streaming (see section 3.7 for debates about the making available right in relation to on-demand streaming). Collectively with the public performance right, these activities are known as the ‘performing rights’.
- *The right to make an adaptation of the work:* this right addresses various means of adapting, arranging and translating copyright works.

2.3 Who is the original owner of the rights?

Although the intellectual property in sound recordings can be broadly categorized along the lines of ‘publishing rights’ and ‘recording rights’, the CDPA sub-divides these categorizes into four different types of works and rights:

- Publishing rights
 - Literary works:* this copyright addresses all types of creative literary endeavour, including lyric writing.
 - Musical works:* this copyright addresses the melodic, harmonic, rhythmic and timbral aspects of musical composition.

The law treats words and music in a similar manner. In both instances it is the ‘creator’ who is regarded as being the author and who is therefore granted ownership of copyright (CDPA 1988: s. 9(1)). The term of copyright is set at the life of the author plus seventy years (CDPA 1988: s. 12(1)).²⁹

- Recording rights
 - Sound recordings:* rather than being granted to the creator of the recording, the authorship of sound recording copyright is granted to the ‘producer’. The term is not used here in reference to studio work; it refers instead to organizational endeavour and economic input. The CDPA defines this type of producer as being ‘the person by whom the arrangements necessary for the making of the sound recording [...] are undertaken’ (CDPA 1988: s. 9(2)(aa)). The term of copyright is fifty years from the making of the recording or seventy years from the recording being published or made available to the public (CDPA 1988: s. 13A). Although record companies have traditionally owned this copyright and have declared themselves to be the authors of sound recordings under the CDPA’s definition (MMC 1994: s. 12.108), it has become increasingly common for featured recording artists to undertake the arrangements for making a sound recording and therefore be regarded as organizational ‘producers’.

29 In respect of works of joint authorship, where ‘the contribution of each author is not distinct from that of the other author or authors’ (CDPA 1988: s. 10(1)), and works of co-authorship, where the work is ‘produced by the collaboration of the author of a musical work and the author of a literary work’ (CPA 1988: s. 10A(1)), the term of copyright lasts until seventy years after the last of the authors to die (CDPA 1988: s. 12(8)).

- b) *Rights in performances:* as indicated above, performers were not traditionally expected to own the copyright in sound recordings. This is one of the reasons why a separate category of rights has been developed, commonly known as ‘performers’ rights’. The CDPA does not include these rights under the heading of copyright and they are not awarded in respect of creativity. Performers are instead granted certain ‘economic rights’ (CDPA 1988: s. 182-s. 205B).³⁰ In respect of the reproduction, distribution, rental and lending, and making available rights, it is not possible to exploit a performers’ work in recorded form without gaining their ‘consent’ (CDPA 1988: s. 180(1)). In respect of public performance and broadcasting rights, it is not possible to exploit a performers’ work in recorded form without paying ‘equitable remuneration’ (CDPA 1988: s. 182D(1)).³¹ If a sound recording of the performance is released, the term of the performers’ rights is calculated at 70 years from the end of the calendar year in which it is issued (CDPA 1988: s. 191(2)(c)).

As a consequence of these categorizations, music creators have the following positions in UK copyright law:

- *Composers and lyricists:* have original ownership of the copyright in the musical work (before it is usually licensed or assigned to others – see 2.4 below).
- *Featured artists:* might have ownership of the copyright in the sound recording (which will often be licensed or assigned) and are granted rights in performances.
- *Non-featured performers:* have rights in performances.
- *Studio personnel:* there is no recognition of the creativity of studio work or the economic rights of studio personnel within UK copyright legislation and practice; they are instead paid on the basis of fees and, in many instances, a share of the featured artists’ royalties.

2.4 Who oversees the use of the rights?

Rights owners are granted different opportunities in respect of the acts restricted by copyright and rights in performances. In some instances these rights can be subject to compulsory provisions, meaning that the rights owner is compelled to grant access to their works, usually in return for a fee. More commonly, these rights are made ‘exclusive’, in which case the rights owner has a number of options:

- They can hold on to the rights and in doing so can choose whether to restrict or exploit the use of the work;
- They can hold on to the rights, but employ a third party to negotiate agreements on their behalf, such as an aggregator or collective deal-maker (AIM 2019: 17-18);
- They can transfer control to a new rights holder. This can either be by:

³⁰ In general, rights holders view exclusivity as being preferable to compulsory licensing provisions, as it is the ability to withhold their work that provides rights owners with a strong negotiating hand. In respect of literary works, musical works and sound recordings, it is currently rare within UK law that copyright is subject to compulsory licensing provisions (one exception being the Competition and Markets Authority powers under CDPA 1988: s. 144). The situation with the rights of performers is different. Although performers have been granted a number of exclusive rights, these have been described as being ‘ineffective in real terms’, as performers will be expected to waive them on signing a record contract (Cooke 2020: 40). The exception is the equitable remuneration that is awarded for public performance and broadcast, which is exempt from this transfer and is instead subject to compulsory licensing measures.

³¹ The transfer of control can be for a limited period or can be for the duration of the copyright term. Partial assignment is also possible, meaning that a copyright owner can transfer a particular activity that falls under one of the rights, while retaining the right to another activity or assigning it to a different party. The transfer commonly takes place on an exclusive basis, meaning that the licensee or assignee has sole control of activity that is transferred to them.

- i) licence (meaning that the author retains ownership of the rights, but the licensee oversees the use of the rights); or by
- ii) assignment (meaning that ownership of the right is transferred outright).

The different rights can be overseen by separate administrators, licensees and assignees. This is significant in respect of creators' earnings, as the methodologies may result in differing rates of payment and differing negotiating positions. Common music industry practices are listed below:

2.4.1 Physical record sales

Publishing rights

The publishing rights' royalty for physical record sales is typically paid by recording rights holders to a collecting society (in the UK this is the Mechanical-Copyright Protection Society [MCPS]), with whom they have licensing agreements. In order to gain their share of these licence fees, it is the practice of lyricists and composers to either:

- a) sign a direct membership agreement with the collecting society, who will administer the right and distribute the revenues;
- b) license or assign their reproduction rights to a publisher, whose membership with the collecting society will take precedence. The society will therefore distribute the royalties to the publisher, who will then pay a negotiated royalty to lyricists and composers.

Recording rights

When a recording artist receives legislative recognition as the 'producer' of a sound recording, they have the option to either:

- a) retain the copyright and get the recordings to market by setting up a record company and/or engaging the services of a distributor;
- b) license or assign their reproduction rights to a record company, who will market the recordings and distribute the revenues.

Performers' rights

Featured artists and non-featured performers will transfer most aspects of their reproduction right to a record company when signing a recording contract.

2.4.2 Broadcasting

Publishing rights

For the communication to the public element of this activity, broadcasters will typically pay licensing fees to a collecting society, which acts on behalf of rights holders (in the UK, this is the Performing Right Society [PRS]).³² Composers and lyricists commonly assign their broadcast right to the society, which will administer the right and distribute the revenues. If the writers have a publishing deal, the publisher will receive a separate distribution from the collecting society.

Recording rights

Broadcasters typically pay licensing fees to a collecting society,³³ which acts on behalf of rights holders (in the UK this is Phonograph Performance Ltd [PPL]).³⁴ The holder will either be the featured artist (if they have retained ownership of sound recording copyright) or their record company (if it is regarded as being the original owner or if the artist is regarded as the original owner and has transferred their rights). The society will administer the right and distribute the revenues.

Performers' rights

Broadcast revenues are subject to ‘equitable remuneration’, a mandatory payment that was first established in international copyright agreements via the Rome Convention 1961 (art. 12). In many countries equitable remuneration applies to both the sound recording rights and the performers’ rights. In the UK, it is applied to the performers’ rights only.³⁵ The right to remuneration can only be assigned to a collecting society (in the UK, this is PPL), who will administer the right and distribute the revenue.

2.4.3 Public Performance

Public performance revenues are typically administered in a similar manner to broadcast revenues. In the UK, PRS operates on behalf of the publishing rights, while PPL oversees the recording rights and the performers’ equitable remuneration. The two societies have combined to operate a joint licensing scheme.

32 As detailed in section 2.2, radio broadcasting also triggers the reproduction right whenever programme makers make embed copies of recordings in their productions. In the UK, this is embraced by a joint PRS/MCPS licence, which for the BBC is split to 96.4% to PRS for the communication to the public right and 3.6% to MCPS for the reproduction right; for commercial broadcasters it is split 96% to PRS and 4% to MCPS (PRS 2021: 23, 25). Television licensing also triggers the reproduction right in addition to the communication to the public right, as it entails the synchronization of sounds with images. Consequently, the television licensing revenue for BBC, ITV and Sky UK is split 66.66667% to PRS and 33.33333% to MCPS; for Channel 4 it is split 90.31946% to PRS, 9.68054% to MCPS, and for Channel 5 it is split 89.47368% to PRS, 10.52632% to MCPS (MCPS 2019: 29, 31, 33, 34). The MCPS revenue will be subject to a commission fee, after which it will be paid either to the writer (if a direct member) or their publisher if they have a publishing deal. The publisher will then divide the revenues according to their contract with the writer.

33 The United States provides one exception to this as it has not legislated for broadcast revenues for the recording rights, other than for digital subscription services.

34 PPL’s membership agreements address both the communication to the public element of broadcast licensing, as well as the reproduction right element. The society does not indicate the division of revenues between these two rights.

35 Some countries, such as the United States, have not implemented equitable remuneration.

2.4.4 Sync licensing

Publishing rights

Licensees who wish to synchronize images with sound recordings for use in films, advertisements, video games and other audio-visual media will commonly negotiate directly with the rights holder. In some cases MCPS will be mandated to license these uses on the right holder's behalf. The MCPS agreement also covers sync licensing for some of the major television broadcasters, including BBC, ITV and Sky UK.³⁶

Recording rights

Licensees will need to negotiate a fee for the use of the recording rights. For the use of recordings in films, advertisements, video games and some other audio-visual media, this sync licensing will be negotiated directly with the artist/producer, a record company (through the license or assignment of the rights), or a third party agent hired by the artist/producer. The PPL agreement encompasses sync licensing for television broadcasting.

Performers' rights

Featured artists and non-featured performers will transfer most aspects of their reproduction right on signing contracts or session agreements with record companies. The PPL agreement does, however, encompass the reproduction elements of radio broadcasting and television broadcasting. In addition, the Musicians' Union collects sync licensing fees in respect of UK non-featured performers for recordings made in the UK.

2.4.5 Downloading

Publishing rights

In the UK, downloading sites pay licensing fees to MCPS and PRS. This activity triggers both the reproduction right and the making available right, but copyright law does not determine how revenue should be divided between these two rights. The two collection societies have agreed to split this activity between the two rights 75:25 in the reproduction right's favour.³⁷ Although the revenues for these rights are administered separately by MCPS and PRS, the societies offer a joint license scheme for UK-only downloading companies and they license multi-territory services through the copyright hub ICE Services. The oversight and transfer of the rights generally operates in the same manner as for record sales and broadcasts, albeit that most publishers have moved towards the model outlined below for on-demand streaming.

Recording rights

Downloading sites pay licensing fees to the recording rights holders. The recording industry has traditionally overseen most of the activity relating to the reproduction right and has additionally elected to retain control of the making available right, rather than employ a collecting society to administer it. As a result of this approach, the recording industry has not had to indicate the extent to which it believes downloading activates each of these rights.

³⁶ Channel 4 and Channel 5 also pay sync licensing fees to MCPS, but the payments are lower than those of the other broadcasters as they cover 'non-programme use such as trailers and promos' only. The main television programming for these broadcasters is made by independent production companies who undertake the sync licensing directly with music publishers and/or writers (MCPS 2019: 34, 35). Different balances of payments are in place for other broadcasters operating in the UK.

³⁷ There are different policies in different countries, both in respect of the rights activated (in the United States, for example, the making available aspect of downloading is viewed as triggering the distribution right rather than the communication to the public right) and in the division of revenues between these rights.

Performers' rights

The making available right was formulated as part of two 1996 World Intellectual Property Organization (WIPO) agreements: the Copyright Treaty (which addresses the rights in literary, musical and artistic works) and the Performances and Phonograms Treaty (which addresses the rights for sound recordings and performers). It was introduced for two main reasons: first, to ensure that the on-demand aspects of online activity would be covered by copyright law; second, in respect of sound recording copyright and performers' rights, to establish an exclusive right rather than equitable remuneration. This latter aspect was campaigned for by the International Federation of the Phonographic Industry (IFPI), who desired that the legislation for online services should have 'more in common with provisions relating to reproduction' (Committee on the Judiciary 1994: 30). It was also the belief of WIPO that the protection provided by the Rome Convention was 'no longer high enough' (WIPO 1992: 39). Consequently, although making available is categorized within UK law as a subset of the communication to the public right, it is exempt from equitable remuneration (CDPA 1988: s. 182D). Performers are instead granted an exclusive making available right (CDPA 1988: s. 182CA), which they will be expected to transfer on contracting with a record company.

2.4.6 On-demand streaming

Publishing rights

On-demand streaming triggers both the reproduction right and the making available right, but copyright law does not determine how revenue should be divided between these two rights. In the UK, the publishing sector has agreed internally to split the revenues 50:50.³⁸ The sector follows European practice, whereby it is now common for publishing rights holders to work in partnership with selected performing rights societies and directly license Anglo-American repertoire to streaming services.³⁹ In the UK, this has been relatively straightforward in respect of the reproduction right, as it has been the practice of contracted writers to assign or license this right to their publisher, rather than MCPS. Therefore, it has been possible for publishers to remove this right from the society's responsibilities and license directly. The process has been more complicated for the making available right, as this right is incorporated within the performing rights that writers have traditionally assigned to PRS. In order to facilitate direct, multi-territory licensing, many of the larger music publishers (or consortiums of publishers) have entered into Special Purpose Vehicles (SPVs) with performing rights societies, enabling them to front the licensing process on behalf of both the reproduction and making available elements of on-demand streaming.⁴⁰ This is done so with awareness that an SPV can negotiate superior licensing terms and can operate licences more effectively than a collecting society can achieve on its own (Cooke 2020: 71). There are many smaller publishers who are not involved in SPVs; therefore, there is still a significant element of licensing that is undertaken by the collecting societies. The collecting societies will not necessarily be negotiating licences or gaining the initial receipt of the revenues from the streaming services themselves, however. Several of them have joined forces to form copyright hubs, which undertake these activities on their behalf. ICE Services, for example, is a partnership between PRS and the German and Swedish societies.

38 There are different policies in other countries. For example, in France the collecting societies have agreed to divide the revenues 75% reproduction right/25% communication to the public right (depending on the nature of the stream), in Germany the division is 33% reproduction right / 66% communication to the public right. In addition, the division is different in respect of audio-visual streaming services such as YouTube. Here, the reproduction right element is raised in order to account for the synchronization element of licensing. In the UK, this results in a 5:8 division of revenue between PRS and MCPS, with the larger share going to the latter society (MCPS 2019: 80).

39 Definitions of 'Anglo-American repertoire' vary, but it commonly includes works registered with collecting societies in the UK, Ireland, United States, Canada, Australia and New Zealand (and possibly South Africa) (Cooke 2020: 71). This repertoire is distinguished from repertoire registered in continental Europe as the publishers of Anglo-American repertoire are generally assigned the reproduction right, whereas in Continental Europe it is the practice of lyricists and composers to assign this right to a collecting society.

40 In doing so, several of the publishing rights holders have entered into agreements with societies other than PRS:

- The SOLAR SPV has been formed by Sony Music Publishing in conjunction with PRS and GEMA
- The DEAL SPV has been formed by Universal Music Publishing in conjunction with SACEM
- The PEDL SPV has been formed by Warner/Chappell in conjunction with a number of collecting societies
- AMRA has been purchased by Kobalt to operate its SPV
- The IMPEL SPV operates on behalf of a consortium of smaller publishers in conjunction with SACEM

Recording rights

Recording rights holders operate on a similar basis for on-demand streaming services as they do for downloading. They have control of both the reproduction and making available rights and do not indicate the extent to which they believe on-demand streaming activates each of these rights. There are nevertheless a number of different entities who negotiate the licensing agreements with the streaming services:

- The rights holders: this is the practice of the major record labels and also of some independent labels and independent artists.
- Consortiums operating on behalf of a number of rights holders: the most notable of these collective deal-makers is Merlin, who represent more than eight hundred independent labels and distributors.⁴¹
- Distributors: there are many distributors that operate independently of the label consortiums and who negotiate directly with the streaming services.

Performers' Rights

Featured artists and non-featured performers typically transfer their making available right and most aspects of their reproduction right to a record label in return for an advance and royalties, under a record contract; non-featured performers will typically transfer this right in exchange for session fees via a session clearance form. There are some within the performer community who are calling for reform, however, and are suggesting that equitable remuneration should be applied, at least in part, to on-demand streaming (see sections 3.7 for a summary of the arguments and analysis of the suggestions).

2.5 How is the revenue divided?

Having analysed the different types of music creator, their revenue streams, and the way that earnings are channelled via the designations of copyright law and the industry practices that have grown up around them, we now turn to the crucial issue of how revenue is divided. The following sections first address the agreements between music users and right holders. We then turn to the agreements between rights holders and music creators, before providing charts of the divisions for different revenue streams (for rationale relating to these divisions see section 4.2.3).

2.5.1 UK agreements between users and rights holders

Physical record sales

For this revenue stream, recording rights holders operate as both licensees and rights holders. They collect revenues by charging dealer prices to retailers, who in turn are allowed to set their own prices for recordings but generally do so in a manner that entitles them to retain 30%-40% of the retail price. MCPS has negotiated a standard licensing fee with the recording industry on behalf of publishing rights holders, set at 8.5% of the published dealer price or 6.5% of the retail price, which it distributes to its writer and publisher members after deducting commission fees (these can range from 4% to 15% of the revenues). This does not result in a 91.5:8.5 division of revenue, however, as the publishing revenue is based on the published dealer price, whereas the recording rights holders revenues from that dealer price can be reduced due to trade discounts. In addition, for smaller record companies, the publisher revenues will be based on records pressed, while the recording revenues will be based on records sold.

⁴¹ In exchange for this service and for distributing the revenues, Merlin charge a commission rate on each rights holder's revenue share. This is 1.5% if you are a member of a trade association and 3% if you are not.

Consequently, the recording industry has suggested that the publishing share can be more realistically evaluated as being worth 8% of the retail price (which is higher than the percentage rate in the MCPS agreement). In addition, the difference between the recording and publishing rights holders' revenues will vary over time. Utilizing BPI's retail sales and recording industry income figures for the past twenty years, the average division of revenue is 87.5:12.5 in the recording rights holders' favour.⁴²

Broadcasting

MCPS and PRS negotiate a joint licence fee on behalf of publishing rights holders. These fees are then split according to reproduction and performing right divisions (some of which are outlined in sections 2.4.2 and 2.4.4 above) and distributed by PRS and MCPS to their writer and publisher members after deducting administration rates and commission fees that range between 10% and 20% of the revenues; PPL negotiates licence fees on behalf of the recording rights holders and performers, which it distributes after deducting an administration rate of approximately 14% of the revenues. Both sets of licence fees are calculated using a combination of percentages of broadcaster revenues and standardized rates. As a result it is difficult to determine the precise shares of revenues that the two sets of rights holders are gaining. It has nevertheless been suggested that the split between the publishing rights holders and the recording rights holders in the UK is approximately 50:50 (Cooke 2020: 47).⁴³

Public Performance

PRS and PPL have formed a joint venture in respect of this revenue stream, but they have separate tariffs outlining licence fees for different types of establishment. Payments are determined in accordance with usage of music, size of venue, number of patrons and/or revenues generated. PRS generally charges higher administration rates (19%-23% as opposed to PPL's 14%). The two societies also differ in terms of revenue collections. In 2019, for example, PPL's public performance revenues were £99.6m (PPL 2020: 8), whereas those for PRS (not including live music) were £168.2m (PRS 2020: 7). This represents a 37:63 division of revenues in favour of the publishing rights.

Sync licensing

Aside from sync licensing for television broadcasting, much of which is undertaken by collecting societies according to standardized rates, most sync licences are negotiated on an individual basis, with fees dependent on the value of the audio-visual product, the prominence of the recording/composition, and the value of the music. There are instances in which the fees are split equally between the publishing and recording rights; there are also situations in which the licensee decides not to pay the rate requested for the use of an original recording and employs a less expensive version instead (Cooke 2020: 52). Britain's recording industry issues information relating to its sync revenues, but due to the commercial negotiation involved, music publishers do not provide figures for their direct licensing activity. As such, it is difficult to determine the overall division of revenues between the rights holders.

42 This figure is calculated by valuing the publishing rights holders' share at 8% of the retail sales figure for physical products, and subtracting this from recording industry income figure for physical products (Crutchley and Green 2020: 10, 64).

43 Interviewed for this project, Peter Leathem, CEO of PPL, stated, 'if you look at the broadcasting side we are pretty much equal in the deals that we do'. However, as indicated by the tables in section 4.2.3, this is more accurate in respect of radio broadcasting (particularly once MCPS revenues are separated from those of PRS) than it is for television broadcasting.

Downloading

In the early 2000s, the recording industry negotiated a licensing agreement with iTunes that established a practice whereby downloading services retain approximately 30% of the revenues from the sales of recordings as a result of their licensing agreements with rights holders. The UK Copyright Tribunal established a rate of 8% of the revenue for the publishing rights holders, though per download minima guarantees can mean that the rate is effectively higher. This revenue is distributed to rights holders after MCPS and PRS have retained a tenth of the money for commission fees and administration rates, relative to their 75:25 division of the money. The recording rights holders receive the remaining 62%. The share of revenue between rights holders is approximately 89:11 in favour of the recording rights.⁴⁴

On-demand streaming

In certain respects the division of on-demand streaming revenues mirrors that for downloading: the service providers have retained an approximate 30% share, consequent to the licensing agreements negotiated by recording rights holders and publishing rights holders. The division between recording rights and publishing rights also initially bore similarities to that for downloading. However, while the UK Copyright Tribunal set an 8% per cent rate for publishing rights holders in 2007, there has subsequently been no standardization of licensing rates. Rights holders instead operate individually or in consortiums to negotiate terms with the streaming services. Although these are bound by non-disclosure agreements, there is nevertheless an approximate sense of the shares agreed.⁴⁵ In the mid-2010s, recording rights holders were gaining between 55%-60% of the revenues and the publishing rights holders between 10%-15% (Cooke 2015: 53; Ingham 2021a). In 2017, the recording rights holders' share declined to around 50%-55%, with the streaming services rather than the music publishers gaining as a result (Ingham 2017). The current division between the two sets of rights holders is approximately 78:22 in favour of the recording rights (for further detail on the evolution of these shares see section 4.2.1). In addition to revenue shares, some rights holders have secured further benefits in their agreements with streaming services:

- **Equity shares:** streaming services have been dependent on the repertoire of recording rights holders to be effective. When first launched, most services have not been in a position to guarantee these rights holders significant revenue, however. One means of compensation to the major record companies and Merlin has been the offer of equity shares.
- **Minima guarantees:** these stipulate minimum sums that rights holders are guaranteed to receive, regardless of the revenue of the streaming service. As a result, rights holders revenue shares can rise higher than the headline percentages of their deals.
- **Advance payments:** these guarantee the rights holder a sum of money in a licensing period. If the advance exceeds the royalties generated, the rights holder gets to keep the excess (this is known as 'digital breakage') (Singleton 2015).
- **Administration and technology fees:** these are usually only included to cover the costs of providing content to streaming services when they are first established.
- **Marketing spend:** some of the deals offered by DSPs include marketing credits as part of the agreements (Ingham 2021b).

⁴⁴ The publishing share can rise in relation to the recording rights share (in some instances exceeding 11%) due to the application of minima. This is particularly notable in cases where downloads are reduced in price and the discount is supported by the recording rights-holder alone.

⁴⁵ These revenue shares are addressed in publications such as Chris Cooke's *Dissecting the Digital Dollar* (2020: 81). They were also widely discussed in the oral evidence and written submissions for the DCMS inquiry into the *Economics of Music Streaming*.

2.5.2 UK agreements between rights holders and music creators

Music creators are variously paid advances, royalties and fees. The majority of advance payments from rights holders are recoupable, meaning that the money from advances is paid back to the rights holder out of the music creator's royalty share and the creator will not receive royalty payments until the balance due has been cleared. In many instances, music creators will require further advances before reaching royalty payment status.

Composers and publishers

- a) Physical record sales/downloads (75% reproduction right share)/on-demand streaming (50% reproduction right share)

In the UK, it is common contractual practice for music publishers to pay composers and lyricists a royalty rate in the region of 70%-80% (Harrison 2017: 141). On a case-by-case basis this may be reduced to approximately 50% for cover versions that have been instigated by the publisher (Harrison 2017: 137-8). These royalties are recoupable from the advance payments made by music publishers.

- b) Broadcasts/public performance/downloads (25% making available right share)/on-demand streaming (50% making available right share).

Composer and lyricist members of PRS will receive 50% of the distribution from the society (which is not recoupable from publisher advances); publisher members of PRS receive 50% of the distribution, but will commonly pay up to three-fifths of this share to their writers (this share is recoupable from advances) (Harrison 2017: 140). If the writer has no publisher they will receive 100% of the distribution from PRS.

- c) Sync licensing

In instances where the publisher has instigated the sync licence, a royalty rate of approximately 60%-70% of the publishing revenues will be granted to the composers and lyricists; if the writer has instigated the licence, their royalties can rise to approximately 70%-80% (Harrison 2017: 137-8). These royalties are recoupable from advances).

Featured Artists

a) Physical record sales

A number of different options are available to featured artists, including:

- Exclusive recording contracts: a royalty of approximately 15%-20% has become common, with higher rates possible for the most successful artists (Harrison 2017: 98). These royalties are recoupable from the advance payments made by record companies and from recording costs, tour support and half of the costs of video production. The royalty rate has usually been subject to a number of deductions and reductions, such as withholding a tenth of the artist royalties in lieu of faulty goods (known as 'breakage') and reduced percentages when products are advertised on television or sold at budget price.
- Profit-share deals: the featured artist(s) and the record company will jointly account for all costs out of revenues received (with the exception of overheads, which is usually borne by the record company alone). Once these costs are paid, they will share the profits jointly.
- Distribution deals: the featured artist signs to a label for an agreed territory and commitment and the label distributes the recordings on behalf of the artist in return for a distribution fee, typically in the range of 15% to 20% (meaning that the artist retains 80%-85% of revenues). Usually there is no advance to the artist. The remainder of the revenue after deducting the label's distribution fee will go to the artist, after deducting any costs the artist has requested the label to pay. These deals are usually short term (three to five-years).
- Licence agreement: a record label acquires a number of finished recordings from a third party production company or another label (who have in turn acquired those recordings from artists) or directly from an artist by way of an exclusive licence for an agreed territory with the same economics as set out above, but the rights period is usually between five and ten years and the royalty/advance may be higher than a traditional recording agreement, as it is the licensor's responsibility to pay the artist from their share. The royalty paid to the licensor may typically be around 25% (or typically 50% in the case of sync compilation licences), and is recoupable from advances.
- 360 degree deals: these deals can have similar royalty rates and recoupmment measures to exclusive contracts. However, in exchange for paying higher advances, the record company expects a cut (from between 10% to 50%) of some of the artist's other revenue streams, including merchandise, live music income and possibly publishing royalties (Harrison 2017: 84-6). Although common in the early 2000s, these deals have since become rare.

b) Public Performance

Performers receive 50% of the PPL distribution, which is non-recoupable from rights holder advances. If there are no non-featured performers on the recording, the featured artists receive the entirety of the performer remuneration; if there are non-featured performers on the recording, the featured artists will receive two-thirds of the performer remuneration.

c) Sync licensing

Under most types of record deal, featured artists will receive a royalty rate of approximately 50% of the recording revenues, which is recoupable from advances (Cooke 2020: 52).

d) Downloads/on-demand streaming

Featured artists have been offered similar terms for these revenue streams as outlined for physical sales above, with any advances being recoupable. However, in many new deals some of the traditional deductions have been removed (such as reduced royalties to account for ‘breakage’) and artists might also benefit from the rights holder’s equity in streaming services or a share of ‘digital breakage’.⁴⁶ The royalty rate for exclusive deals has witnessed a slight increase for downloads, while for on-demand streaming a 25% royalty has come to be regarded as average (see section 4.3.1). Alternatively, featured artists can elect to retain control of their recording rights and partner with a distribution company rather than a record label. The terms of these agreements vary in accordance with the services offered:

- DIY distributor: in return for delivering the featured artists’ content to the streaming service and administering the revenues, the DIY distributor will charge the artist: a) a set fee (e.g. £10 for a single release, £30 for an album); b) commission (this is commonly 10% of the revenues received or 15% if the distributor provides an advance) (MMF n.d.)
- Independent distributor: these distributors offer the same services as DIY distributors, plus marketing the recordings to streaming services. On average, they retain 20% of the revenues as a commission fee (MMF n.d.)
- Services companies: these companies offer the same services as independent distributors, plus a range of extra optional provisions.⁴⁷ They will charge a commission fee of approximately 30% of the revenues, dependent on the services the featured artist requires (MMF n.d.)
- Label-owned services companies: each of the major record labels owns one or more services companies. In addition to offering the same services as independent services companies, they can mirror the services offered by their parent label but with no transfer of copyright involved (this arrangement is only usually available to established artists). The commission is approximately 40% of the revenues, dependent on the services the rights holder requires (MMF n.d.)

⁴⁶ As DSPs have evolved and/or gone public, some rights holders and consortiums have sold their equity stakes in these companies. In some cases, a share of these equity sales has been distributed to their associated artists, usually proportionate to the artists’ streaming royalty rates. Rights holders have differed in respect of whether these equity payments are used to recoup advances or if they are non-recoupable.

⁴⁷ Artists can pick from a range of services, including physical distribution, facilitation of direct-to-fan services for selling merchandise and physical products, promotion of back catalogue, management of their channels on DSPs, management of performing rights (public performance and broadcast remuneration), royalty administration, sync licensing, and anti-piracy services. Services companies will also offer advances in many instances.

Non-featured performers

- a) Physical record sales/sync licensing/downloads/on-demand streaming

Non-featured performers will receive an up-front fee for contributing to the recording, which is payable by the rights holder. This may be individually negotiated or as set under an industry collective bargaining agreement. In addition, the non-featured performer may receive additional payments upfront for overdubbing or playing multiple instruments, for example. There are some secondary use payments which will arise from use of the recording as a backing track in a music video (paid by the label via the Musicians' Union) or for sync in a film, TV programme or advertisement (paid by the user via the Musicians' Union). If the rights holder is a record company or a production company, the upfront fees will be recouped from the featured artists' recording advances; if the rights holder is a featured artist or if the sound recordings are licensed in, the featured artist/licensor will assume direct responsibility for paying the upfront session fees. No royalties are paid.

- b) Broadcast/public performance:

Out of the 50% share of the PPL distribution that is paid to performers, non-featured performers are entitled to a third of the revenues in instances where recordings include their input.

Studio personnel

- a) Physical record sales/sync licensing/downloads/on-demand streaming

Studio producers and engineers receive set fees for their contributions to recordings, which are commonly paid by the rights holder. If the rights holder is a record company or a production company, these fees will be recouped from the featured artists' recording advances; if the rights holder is a featured artist, they will assume direct responsibility for paying the fees. Studio producers can additionally be paid advances and royalties (which are recoupable from their advances). These range between 2% and 6% of the recording revenues, which are paid out of the featured artists' royalty share (Harrison 2017: 153)

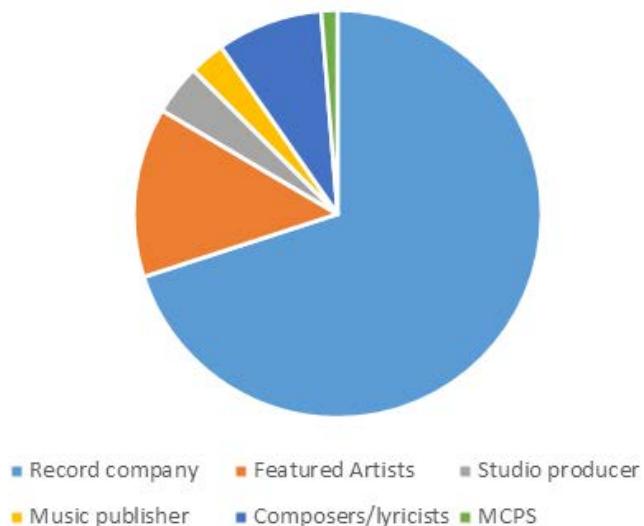
- b) Broadcast/public performance

Studio producers are only entitled to equitable remuneration if they 'make an audible contribution to the recording or if they conduct or provide a similar musical direction to another performer's live performance as it is being recorded' (PPL 'Repertoire Data Policy')

2.5.3 Indicative Divisions of Revenue

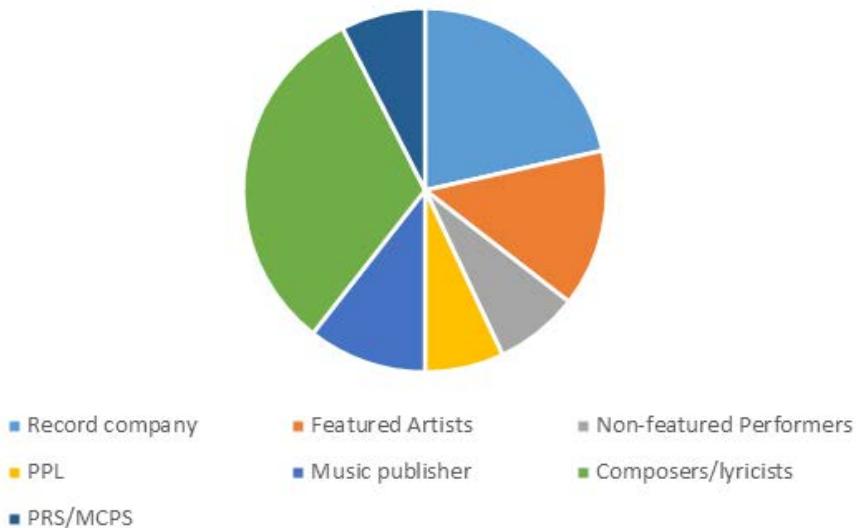
The pie charts below should be assessed bearing in mind that there is no standard division of revenue between recording rights holders and publishing rights holders for any of the revenue streams (licensing agreements are arrived at separately and are subject to different terms). In addition, there are no standard contractual agreements between rights holders and music creators. It should also be borne in mind that recordings and compositions are not bound together. There will commonly be one principal version of a recording (although re-recordings, remixes and alternate versions are possible). In contrast, a composition can appear in numerous different recorded versions. As a result, even though compositions can have lower divisions of revenue in certain instances, they might achieve higher returns than recordings due to the fact that their usage can be more widely spread.

Figure 2.1: Indicative Division of Revenue for Physical Record Sales



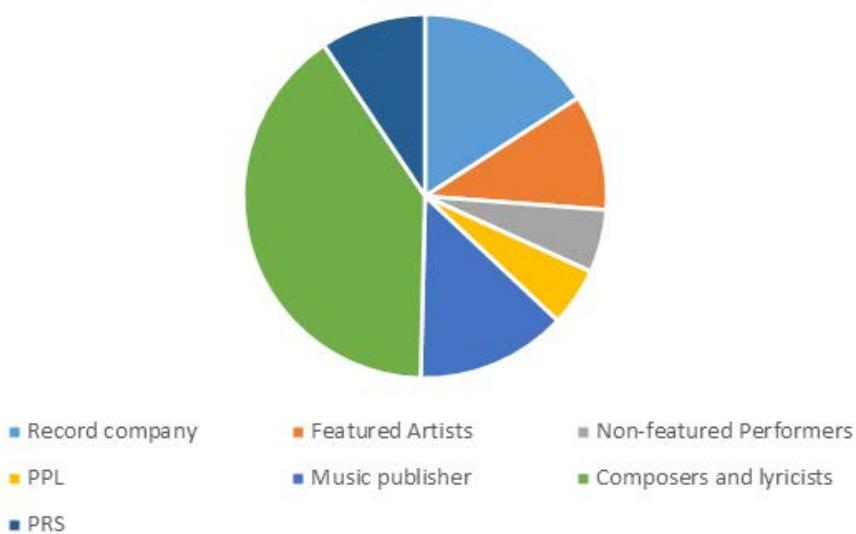
Based on the example of an 87.5:12.5 division between recording rights and publishing rights; featured artist royalty of 17.5% (exclusive record deal), minus studio producer royalty of 4%; the publishing rights revenue is subject to a 10% commission fee from MCPS, after which the revenue is divided 25% to the publishers and 75% to the composers/lyricists.

Figure 2.2: Indicative Division of Revenue for Radio Broadcasting



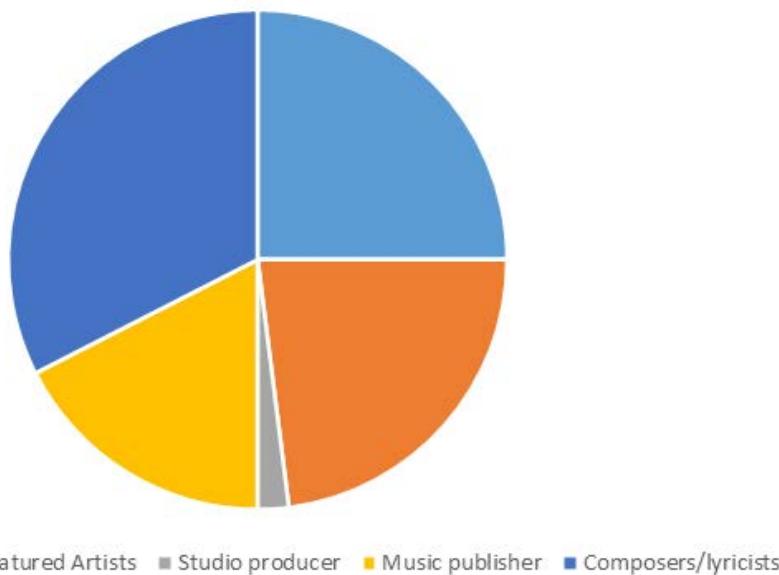
Based on the example of a 50:50 division between recording rights and publishing rights; recording rights revenue is subject to a 14% administration rate from PPL, after which the revenue is divided 50% of the recording rights holders, 32.5% equitable remuneration to featured artists and 17.5% equitable remuneration to non-featured performers; publishing rights revenue is subject to a 15% administration rate/commission fee from PRS/MCPS, after which the revenue is divided 25% to the publishers and 75% to the composers/lyricists.

Figure 2.3: Indicative Division of Revenue for Public Performance



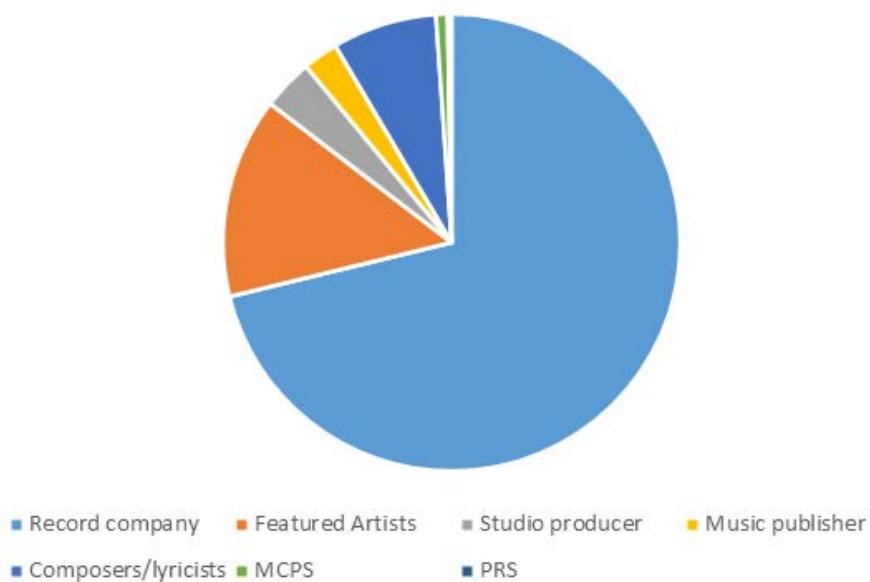
Based on the example of a 37:63 division between recording rights and publishing rights; recording rights revenue is subject to a 14% administration rate from PPL, after which the revenue is divided 50% of the recording rights holders, 32.5% equitable remuneration to featured artists' and 17.5% equitable remuneration to non-featured performers; publishing rights revenue is subject to a 15% administration rate from PRS, after which the revenue is divided 25% to the publishers and 75% to the composers/lyricists.

Figure 2.4: Indicative Division of Revenue for Sync Licensing



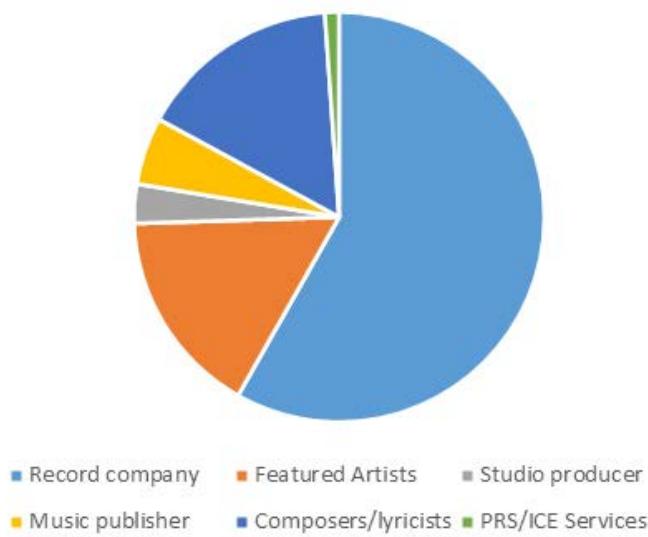
Based on the example of a 50:50 division between recording rights and publishing rights; featured artist royalty of 50% (exclusive record deal), minus studio producer royalty of 4%; composer/lyricist royalty of 65%. This chart does not include the fees collected by the Musician's Union in respect of non-featured performers (revenue that is worth approximately £800,000-£1m per annum).

Figure 2.5: Indicative Division of Revenue for Downloading



Based on the example of an 89:11 division between recording rights and publishing rights; featured artist royalty of 20% (exclusive record deal), minus studio producer royalty of 4%; publishing rights share is subject to a 10% commission fee/administration rate from MCPS/PRS (split 75:25), after which the revenue is divided 25% to the publishers and 75% to the composers/lyricists.

Figure 2.6: Indicative Division of Revenue for On-demand Streaming



Based on the example of a 77.6:22.4 division between recording rights and publishing rights (with publishing rights administered via an SPV);⁴⁸ artist royalty of 25% (exclusive record deal), minus studio producer royalty of 4%; the publishing rights share is divided 50:50 between the performing right and reproduction right. The performing right element is subject to a 10% administration rate from PRS/ICE Services, after which the revenue is divided 25% to the publishers and 75% to the composers/lyricists. The reproduction right element is divided 25% to the publishers and 75% to the composers/lyricists

⁴⁸ This ratio is based on the publishing rights share being 15% of on-demand streaming revenue and the recording rights share being 52% of on-demand streaming revenue, providing a total share for rights holders of 67%. 15 as a percentage of 67 = 22.39; 52 as a percentage of 67 = 77.61

2.6 What affordances and constraints does the revenue stream provide?

2.6.1 Opportunities

Different revenue streams provide different levels of access to repertoire. Physical record sales are limited by the range of titles that a retailer can stock (although retailers have traditionally been able to fulfil orders for consumers); venues, broadcasters and sync licensees are limited by the fact that they can only utilize one recording/composition in a production at any given time; the repertoire of downloading and on-demand streaming services is limited by their rights holder agreements, but in practice most of them offer a vast range of titles (see sections 1.5 and Chapter 6)

2.6.2 Concentration

Greater focus can be given to particular recordings and compositions due to:

- a) Marketing and promotion that is intrinsic to the revenue streams (product placement in physical retailers; advertising on music streaming services)
- b) Marketing and promotion that works across revenue streams (radio broadcasting, television appearances, live performances, public performance uses and sync licensing each generate revenue in their own right but they can also promote the ‘primary’ activities of streaming and sales)
- c) Being selected as editorial content (this can operate externally to revenue streams, as with journalism, or it can be internal, as with the playlists of streaming services and radio broadcasters) (for stakeholder perspectives on streaming playlists see section 3.7)

2.6.3 Distribution methodology

Revenue streams allocate the money to recordings and compositions in different ways:

1. Absolute remuneration

There are revenue streams where the revenues available to one recording and its associated compositional work do not affect the revenues available to another recording and its associated compositional work. One of the features of this form of remuneration is that revenue is received up-front, i.e. ahead of the usage of the recordings by consumers and/or businesses:⁴⁹

- *Physical recordings/downloads*: recording revenues are paid out in respect of individual payments for the sales of products (singles, EPs, albums etc.); publishing revenues are paid out in respect of each track on each retailed product, proportioned according to the relative duration of each composition.
- *Sync licensing*: recording and publishing revenues are paid out separately in accordance with each recording and composition utilized; payments will vary in accordance with value of the audio-visual product, the prominence of the recording/composition, the value of the recording and the value of the composition.

⁴⁹ This is not to say that music creators will be paid quickly, as the revenue is subject to the accounting periods and methodologies of rights holders and collecting societies. It is nevertheless the case that, even if the ultimate revenues from different sources are the same, music creators will usually receive more money earlier with absolute remuneration, whereas the payments of relative remuneration will be usually be smaller but more prolonged.

2. Relative remuneration

There are revenue streams where there is a pooling of revenue and the payments to recordings and their associated compositional works are proportionate to their share of this pool. A characteristic of this form of remuneration is that revenue is incremental and can only be calculated in relation to the usage of recordings in a given period:

- *Broadcasting*: recording and publishing revenues are paid out separately in accordance with each recording and composition that is broadcast. In some instances the payments will be weighted in relation to the size of the audience, the duration of the recording/composition in relation to the duration of the broadcast, and/or the time of day the programme is broadcast. With larger broadcasters all usage of music is monitored; with smaller broadcaster the assessment might be made on a sample basis (monitoring particular days each year) or by analogy to the output of a larger broadcaster.
- *Public performance*: recording and publishing revenues are paid out separately in accordance with the recordings and compositions that are utilized, but the assessment is often on a sample or analogy basis rather than though monitoring all usage.
- *On-demand streaming*:
 - a) Pro-rata: DSPs (with the exception of one strand of SoundCloud's business) operate a pro-rata system of payments, whereby the total revenues for each of the provider's services (advertising-supported; premium subscription rate; family subscription rate; student subscription rate; etc.) are pooled separately, as is the activity of the users of each service. The service providers then allocate revenues proportionately in respect of each recording's share of that total activity. The formula for recording rights holders is as follows:

Total pool of revenues after tax has been deducted ÷ the rights holder's catalogue share of total streaming activity x the rights holder's licensing terms (based on percentage share of revenue or, if established payment thresholds are not reached, an agreed minima per-stream rate).

In respect of the publishing rights, the service providers issue streaming data to each of the rights holders, who then claim which of their works have been used. The revenues are then paid out in relation to the rights holders' share of total streaming activity and in accordance with their negotiated percentage of revenue or, if established payment thresholds are not reached, an agreed minima per-stream rate.⁵⁰

Following their receipt of revenues, each recording rights holder will divide their money between the recordings in their repertoire in accordance with their relative popularity; each publishing rights holders will do the same in respect of the compositions in their repertoire.

- b) User-centric: At present, the only DSP to utilize this system is SoundCloud, who have employed it for one area of their streaming service.⁵¹ In place of the pro-rata system's methodology of totaling all streaming activity, the user-centric system places its focus on each user's monthly subscription fee, which is divided in accordance with their own streaming activity.⁵² Therefore, if the user has streamed only one track, the entirety of their subscription fee will go to that recording/composition. If they have streamed 100,000 different tracks, the subscription fee will be divided between those 100,000 tracks. The formula is as follows:

⁵⁰ In general, the DSP distribute revenues in respect of each recording or composition that is listened to for more than thirty seconds. At no point in the distribution process is there any weighted payment in respect of longer works.

⁵¹ For a good summary of surveys and debates relating to pro-rata versus user-centric methods of distribution see Pederson (2020).

⁵² It is also theoretically possible to divide advertising revenues in accordance with each user's activity.

Total pool of revenues after tax has been deducted ÷ each user's subscription fee ÷ the rights holder's catalogue share of the streaming activity of each user x the right holder's percentage revenue share.

Following receipt of revenue, rights holders divide the money between their recordings or compositions in the same manner as the pro-rata system.

2.7 Complicating factors: collaboration and success

An important issue influencing music creators' earnings is the number of collaborators, and the nature of the agreements between them.

The revenues of recording artists will be diluted in accordance with the numbers of featured artists and non-featured performers per recording, as well as the divisions drawn up between them:

- i) *Physical record sales, sync licensing, downloading and streaming:* featured artists might share revenues equally between each group member; alternatively they can come to agreements that outline disproportionate shares. Non-featured performers will be paid fees in accordance with their session agreements.
- ii) *Broadcasting and public performance:* the revenue splits within and between featured artists and non-featured performers are outlined in collecting societies' distribution rules.

Meanwhile, in terms of publishing, the majority of works are co-composed. The writer, or their publisher, will register the copyright making clear the percentage shares of the composition that have been agreed. The shares agreed for a work will then commonly be utilized in respect of all sources of revenue.

Another source of variation is that the division of revenues can be balanced against levels of success. There are some aspects of earnings over which music creators have limited control. This includes the means by which revenue is generated, the methodologies for distributing revenue, the agreements between users and rights holders, and compulsory licensing rules. There are other aspects where they have a stronger determining hand. This includes their collaborative agreements, as well as negotiations over the assignment of rights and their royalty shares.

Featured artists, in particular, have a wide array of recording and distribution agreements to choose from. The point about how division of revenues can be balanced against levels of success is crucial. A lower royalty rate might be compensated for by greater investment and support, which might ultimately result in higher earnings. There is a further complicating factor in respect of these opportunities, however. Negotiation is most readily available to new artists and those renewing their contracts. So-called 'heritage artists', by way of contrast, are less adaptable in respect of new revenue streams. Although some of them have managed to renegotiate their deals or have come to the end of their contractual and copyright terms, many continue to be bound by terms of deals that were negotiated in the pre-streaming era.

2.8 Summary

This chapter has summarised the key terms and processes involved in how music creators' earnings actually work. The next chapter discusses the different perspectives that contemporary stakeholders have concerning music creators' earnings, and then Chapter 4 will address how the revenues from streaming are actually divided.

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Chapter 3

Stakeholders' Views and Perceptions

This chapter summarises the diverse range of views and perceptions, amongst different stakeholders, of the issues surrounding music creators' earnings in the digital age. It provides some indication of the evidence that stakeholders draw upon to justify their opinions. The main purpose of this chapter is to highlight some of the most contested areas of debate and discussion by comparing views and perspectives. Arguments and evidence provided in this chapter are an analysis of the views put forward by various stakeholders, and our reporting of them below does not necessarily mean that the authors of this report agree with them.

We have organised our discussion as follows. In Section 3.1, we discuss views of the overall changes brought about by music streaming to the music industries. We then outline, in Section 3.2, differing views on the split in revenues between DSPs and rights-holders. Section 3.3 focuses on issues regarding the amount going to rights-holders, and the split between recording and publishing rights. Section 3.4 then outlines views on the proportion of revenues going to music creators. Section 3.5 goes into greater detail on competing perspectives on the range of deals available to music creators in the new musical system centred on streaming, and the increasing availability of distribution deals, including 'DIY' arrangements. Section 3.6 drills further into perspectives on the fundamental issue of music creators' earnings and deals briefly with perspectives on streaming algorithmic systems. Section 3.7 discusses some proposed 'solutions' to perceived problems in the way current revenue is distributed among various stakeholders, namely: issues arising from how streaming should be defined (including issues related to the 'making available right' and equitable remuneration (ER)); issues regarding 'contract revision'; and proposals regarding the introduction of alternative ways of distributing revenues from on-demand streaming, especially the so-called 'user-centric' system. These proposals have been selected because they were widely discussed and debated at the time we were doing our research. We do not endorse or oppose any of them. Proposed measures aimed at increasing overall revenues, for example changes to the 'safe harbour' principle, are addressed in other sections of this chapter (3.2), and are relatively uncontroversial among stakeholders.

We draw on three main sources:

- A series of focus groups held with a range of music creators.
- Interviews with key stakeholders (see Appendix 1)
- Submissions (oral and written) to the UK House of Commons Digital, Media, Culture and Sport (DCMS) Select Committee Inquiry into *The Economics of Music Streaming* held in 2020-21. We use the terms 'oral evidence' and 'written submission' as an abbreviation for these sources.

3.1 Views of the growth of streaming and its impact on music creators' earnings

As indicated in Chapter 1's review of existing research, there has been considerable controversy surrounding the effects of streaming on music creators. There is widespread agreement across the full range of stakeholders that streaming has reinvigorated the music recording sector, which faced declining revenues for many years following digitalisation, by delivering an abundance of music at an affordable price via legal platforms. Warner's DCMS Inquiry submission provides just one example.

Streaming, which did not exist in a commercially meaningful way a decade ago, helped the recorded music industry return to growth following 15 years of decline and is now the preferred way that consumers access and interact with their favourite music. (Warner, written submission)

The picture with music publishing is more complex. As we showed in Chapter 1, publishing revenues were achieving steady growth even when recording revenues were in steep decline in the 2000s, and, according to our calculations, streaming still makes up less than a third of publishing revenues (see chapter 4).

Many stakeholders representing songwriters and composers are somewhat less enthusiastic about the effects of streaming on the musical eco-system than those representing the recording industry. Representatives of the streaming and recording sectors claim that streaming has brought great benefits. One key argument is that streaming has increased the number of creators who achieve substantial success. To support this view, some point to evidence that compares streaming success with success in 'physical' (CD, cassette and vinyl) markets in the same period.

Another claim is that, as streaming has grown, more and more music creators have had access to levels of success that would generate significant earnings. For example, Tony Harlow, CEO at Warner Music UK, offered these figures during an oral evidence session to the DCMS Select Committee Inquiry:

1 million streams is worth £4,000 to £5,000 in revenue, and that would deliver, on that same 20% [royalty rate], £1,000 to the artist. The number of artists reaching those levels is changing quite considerably. In 2016, 582 Warner UK artists did 1 million streams; eight did 1 billion. In 2020, 1,739 Warner artists do 1 million; 35 do 1 billion-plus. Those billion-plus candidates would all be recouping that deal, I would think. Four of our acts did 10 billion streams-plus. Those artists are going to be earning multiple millions.

Similarly, Spotify pointed out in their DCMS Inquiry submission that the number of artists who make up 90% of streams increased from 16,000 artists 2015 to 57,000 in 2019.

Perhaps the more significant claim is that streaming is central to a new musical eco-system that has made it possible for more creators to achieve success – and consequently earnings from music – than was the case under previous eco-systems based around physical sales and (transitionally) digital downloads. Taking the position that one CD sale is equivalent to around 1,000 streams (see chapter 6), Geoff Taylor, Chief Executive of the British Phonographic Industry (BPI), explained in oral evidence to the DCMS Inquiry that 'more artists are being successful in streaming than ever were even in the days of CD', citing evidence that 'some 1,800 artists in the UK hit 10 million streams a year; if you went back to 2007, only about 1,000 artists were hitting 10,000 sales'. In an interview for this project, BPI claimed that 300,000 different music creators now achieve 100k streams in a year in the UK, six times the number that achieved 100 CD sales in 2007.

Against this, some stakeholders feel that the earnings of music creators have not increased in proportion to the growth in revenues enjoyed by the DSPs and by some sections of the recording industry.

You look at the total value of the music business, and then you look at whether or not artists rose proportionately versus the valuation of the music business back then, and the answer is no. It's not about are you managing, are you eating, I heard you can't pay your rent? Like what are you talking about, they should be absolutely rolling in it now, they should be enjoying the fruits of Daniel Ek, in the same way that the majors are. (Executive at a publishing company, interview)

Some stakeholders, including some representing music creators and managers, take the view that the 'phenomenal success' of streaming enabled benefits record labels but 'is not reflected in musicians' earnings.'

Streaming is a phenomenal success and labels are reporting record profits from it. The IFPI's Global Music Report 2019 showed that the recorded music market grew by 9.7% worldwide in 2018, the fourth consecutive year of growth [...] However, this growth is not reflected in musicians' earnings. The average musician earns around £20k from music. A survey of members of the Musicians' Union and The Ivors Academy on streaming income in November 2020 (with 320 respondents) returned the following results: More than 80% of respondents had earned less than £200 from streaming in 2019. (Musicians' Union, written submission)

The Broken Record Campaign⁵³ claimed in its DCMS submission that Covid-19 has exposed the underlying issues whereby 'without touring income, UK creators have very little income' and this jeopardises the 'talent pipeline'

Without touring income, and with diminished licensing income from closed business premises, UK creators have very little income [...] there is jeopardy for our world-leading music industry. There is ample evidence of the contribution of music to the UK economy, but there is mounting evidence of a problem developing in our talent pipeline. If music creators can't earn fair rewards, then fewer people from non-privileged and diverse backgrounds will be able to afford to enter and stay in the industry. This endangers Britain's global lead: we will, in effect, be drawing water from an ever shrinking well.

(Broken Record Campaign, written submission)

In his DCMS Inquiry submission, Will Page, a former Chief Economist at Spotify took the view that the streaming economy works in favour of the recorded music business, but that artists' income had not grown proportionally.

Everyone benefits from the streaming-led recovery, but some more than others – with artists and songwriters feeling short-changed. For labels, the music industry is thriving. Between 2015 and 2019, the streaming-led recovery boosted UK major label turnover by 21% and operating profit margin increased from 8.7% to 11.8%. The recorded music business not only got bigger, but also much more profitable for record labels. Artists, however, have not received proportional benefit. (Will Page, written submission)⁵⁴

Strong views were expressed on these matters by music creators in our focus group discussions.

Streaming is amazing and the variety of stuff you can find and listen to is excellent for, on the grand scheme of things [...] So the money that is sloshing about the industry has gone up through the streaming subscriptions, and that money is then disproportionately going to already popular [...] music [...], where if you're popular and you've already hit a certain level, then you will get a disproportionately large amount of money, and it just all flows up that way, and away from the middle tier and lower tier of musicians. (MU focus group)

⁵³ This campaign was launched in May 2020 by Tom Gray of the band Gomez. It claimed that performers and songwriters receive too little money in the contemporary music industry system. The Musicians' Union and the Ivors Academy ran a parallel #FixStreaming campaign.

⁵⁴ Page goes on to write 'As for the implications of streaming for artists, there is more money available but also many more mouths to feed', commenting that 'PRS for Music has seen membership grow from 65,000 songwriters to 140,000 (up 145%) and PPL, which represents artists and recorded rights holders, has seen membership grow from 47,000 performers to 115,000 (up 115%)' (Will Page, written submission)

Music creators feel that the diminished value of music associated with streaming ‘hurts’ them, much more than the ‘iTunes’ download model.

It’s like the ship has sailed. I know we’re trying to fix it but we have as consumers access to every single piece of recorded music in one app, one desktop or whatever, one DSP for £9.99 a month. It’s like, dammit, why? How? It didn’t used to hurt when you used to spend 99p on a download from iTunes. (FAC focus group)

For some industry commentators, an abundance of choice has resulted in ‘the dilution of streaming royalties’ (MIDIa, written submission). According to MIDIa, this is because as well as new releases, there is also competition for a limited pool of income from older ‘catalogue’ tracks. According to this perspective, although the streaming market is growing, payments from DSPs to rights-holders are divided among more and more creators, potentially suppressing earnings.

3.2 Split between DSPs and rights holders

There was widespread consensus among interviewees and contributors to the DCMS Inquiry that currently around 25-35 per cent of streaming revenues are retained by DSPs, with 30 per cent frequently cited as some kind of average. There is general agreement amongst a number of stakeholders, including the DSPs themselves, that the share they retain is justifiable given their investment in providing the digital infrastructure that sustains streaming and growth in industry revenues and is lower than that retained by retailers.

Net retail margins in streaming services of around 30% are lower than those in the CD world, where net retail margins average around 38%. This is despite the fact that DSPs take on a larger marketing role in the streaming ecosystem, not just satisfying demand, but also helping drive it. (ERA, written submission)

Another justification for the amount retained by DSPs is that they pay considerable licensing fees to rights owners for the music they offer. ERA argued further that this is why DSPs are far less profitable than their peers in other sectors, such as video.

Music remains an expensive acquisition for services. Whilst Spotify and other audio streaming services have yet to deliver profits, similar subscription-based companies like Netflix and Sky in adjacent sectors such as video deliver margins of 13% and 11% respectively. (ERA, written submission)

Paul Firth, Director of Amazon Music, emphasised the DSPs’ investment in customer experiences during their oral evidence to the DCMS:

It is the customer experience that people end up paying for. It is the customer experience that we built as streaming services that persuaded people to pay for music again when they were previously accessing it through file-sharing sites or piracy. It is about the advance investments that we have to make to build the streaming services at scale, to build the customer experience and to keep up with the ever-increasing customer demand. We are investing ahead, and we are taking some risk in that as well. (Paul Firth, Director of Amazon, oral evidence)

Spotify also argued during the Inquiry that the cost of producing and distributing physical artefacts such as vinyl, cassettes and CDs, which were a major cost during the pre-digital era, no longer apply, and the implication is that recording rights-holders might ask for a smaller cut from DSPs than they currently do:

If you talk about distribution, the world of physical distribution that existed before, when you had to print the vinyl record, you had to package it, you had to ship it, you had to store it, you had to put it in a retail store, you had to market it almost on a retail basis with radio stations, those were costs that label undertook. As the internet has allowed for frictionless distribution, those costs have been driven out of the equation and that for the most part just goes straight to the bottom line of labels that have benefited from that. Of course, on the other hand, they faced other challenges and emerging competition from independent labels and do-it-yourself artists, so they also have their own challenges, but the reality is that was not a cost saving that we realised. It was a cost saving that labels realised. (Horacio Gutierrez, Head of Global Affairs and Chief Legal Officer at Spotify, oral evidence)

However, some see the share retained by platforms as very large compared with other industries: “I’m not aware of another sector of the economy where platform businesses charge margins anything like 30%, I think they’re normally between about 8%-10%”, an industry stakeholder told us in an interview. He was also sceptical about views that see the ‘margin’ as justified by the difficulties DSPs face in generating profit:

As a former banker, I’m very clear on my view, in that Starbucks didn’t make a profit until they chose to. When a company is looking at growing exponentially at the heart of the S-curve, if you make a profit, your investors will complain because ‘why the hell aren’t you sweating your capital harder?’ [...] I have very little sympathy on the Spotify doesn’t make a profit proposition. (Industry stakeholder, interview)

There was widespread agreement that increasing the size of overall revenue (often referred to as ‘the pie’), as much as dividing it in different ways, would be an important way of increasing income for music creators.

Some rights holders and trade bodies have argued that the market for on-demand streaming is distorted due to the ‘safe harbour’ provisions that were introduced to UK law via the European Union’s Directive on Electronic Commerce of June 2000. These measures state that a DSP is not liable for user-uploaded content ‘stored at the request of a recipient of the service’ (EC 2000: art. 14). This has meant that companies such as YouTube can host material on their services even if rights holders withhold a licence, although they are obliged to ‘remove or disable access’ to this material once they are made aware that it is on their platforms (EC 2000: art. 14). It is argued that services such as YouTube provide user-uploading services with a strong negotiating hand, which enables them to gain favourable licensing terms. As a result, there is a ‘value gap’ between the revenues generated by companies that facilitate user-uploaded, safe harbour-protected content and those that are reliant on recordings sourced from rights holders.

The value gap is the gap between what YouTube should be paying and should have been paying from the start, or what would be paid for fully by a service like Apple Music. This ambiguity has given rise to an under-licensing of YouTube. YouTube has had a licence from the music industry pretty much from the start, but it has not been a full licence...if entities like YouTube are benefiting from parasitic growth—growth where you are not paying for the full inputs that you should be. That is having a chilling effect on competition in the market. (Graham Davies, Ivors Academy, oral evidence)

Likewise, BPI emphasises that closing the ‘value-gap’ can ensure further growth of the UK recorded music market. They also point to the importance of combating piracy and further export growth, issues BPI devoted considerable efforts.

This will facilitate increased investment into UK talent and greater choice for UK consumers... This requires more concerted action to combat piracy, through a ‘Duty of Care’ on platforms using content, and by preventing platforms misusing ‘safe harbour’ provisions to reduce the value that flows back to those who create and invest in music. (BPI, written submission).

This view is also shared by the publishing sector.

The composition tends to do worse in markets where there is not a willing buyer, willing seller model [...] if in Europe when you have the biggest providers being able to provide content for free or at minimum consumer inconvenience versus the likes of Spotify, Deezer et al, then that of course limits their ability to raise their prices and all of those debates come into it. (Publishing sector stakeholder, interview).

On the other hand, YouTube, in its DCMS submission, expressed concern about legislation such as the 2019 EU Copyright Directive’s Article 17, which makes content-sharing providers (e.g., YouTube and Facebook) liable for copyright-infringing material appearing on their platforms and argued that this could risk ‘lowering the revenue to traditional media and music companies from YouTube’. (YouTube, written submission)

Some stakeholders argue that the free services offered by other DSPs such as YouTube and TikTok prevent music streaming services from raising their own prices and/or withdrawing their advertising-supported offerings. This argument was made by both rights holder and creator representatives at the oral evidence sessions for the Inquiry, including Roberto Neri of the Music Publishers Association (MPA) and Graham Davies of the Ivors Academy (oral evidence, DCMS Inquiry, 10 February 2021) and in PPL’s written submission.

In relation to overall streaming revenue, many stakeholders questioned why subscription prices for streaming had stayed the same for the past ten years and more, whereas video streaming subscription prices had increased.

We think it should be worth a lot more [...] the consumer price has not moved in ten years and has fallen behind inflation [...] The £9.99 has been in play for ten years now. It would be £13-plus with inflation alone. (Geoff Taylor, BPI, oral evidence).

The DSPs themselves see the fact that much catalogue appears across all the main DSPs as making it difficult to increase subscription prices (whereas film and TV streaming services offer different choices, making it easier to differentiate between services).

The other challenge with prices and what differentiates music from Netflix is that when it comes to the pure music, the pure songs, we all have a similar catalogue. If you are looking to find specific music that you love, all of our services have very similar things, so we have to look for other ways to differentiate ourselves [...] But you make it challenging to put prices up in a vacuum, just by yourself, because people can opt to go to free or to another service that will have the same music. (Elena Segal, Global Senior Director of Music Publishing at Apple, oral evidence).

3.3 The proportion of revenue going to rights holders – and the split between recording and publishing

The consensus indicated above that DSPs retain around 25-35 per cent of streaming revenues obviously implies that rights holders receive in the range of 65-75 per cent – and 70 per cent was often cited as a typical or even average figure. As explained in Chapter 2, the rights holders then distribute earnings to music creators, on the basis of the terms in contracts. 52% was cited by some, reflecting media reports of licensing deals between major DSPs and recording rights holders and 10-15% as a range for publishing, with 15% often cited as a common revenue share. Chapter 4 discusses this split in greater detail; our focus here is on stakeholder views of whether these splits are justified. However, as we discuss below and in Chapter 4, this does not mean that songwriters receive substantially less from publishing royalties than performers do from recording royalties, for they tend to have higher royalties. (David Martin, FAC CEO, interview).

Many rights holders, especially record companies and their representatives, defend the current share they retain, and what they retain when paying out revenues to contracted music creators (which we examine in 3.4), on the basis of their need to invest in nurturing new talent and the considerable risks this involves. In their DCMS Inquiry submissions, all major labels and their representatives emphasised the high levels of investment they make in A&R (talent development) and marketing.⁵⁵ The BPI, for example, highlighted the increasing A&R investment and its evolving marketing strategies in streaming:

As streaming revenues have grown, both major and independent labels have reinvested those revenues into talent by increasing their investment in A&R (artist & repertoire), the record industry's R&D. Not only has spending on A&R increased in absolute terms, it has grown to more than 25% of UK labels' revenues. Over the same period marketing and promotional spend has also increased – rising to some £150 million per year in 2019, on top of A&R costs of more than £250 million per year. Marketing strategies have evolved significantly in streaming: where previously promotion was heavily tied to release schedules to drive purchases, marketing in streaming is a more 'always on' activity, to drive listening daily and over the longer term. Marketing and promotional spend is generally non-recoupable and is entirely an investment by the record label. (BPI, written submission).

AIM, representing UK independent record companies, stated similarly,

Music publishing tends to be a far lower risk model than Master Rights, or recording companies. Music copyrights on the written song have a far longer duration than the rights on individual recordings and can often benefit from the fact that the song can be recorded multiple times by multiple artists over time.⁵⁶ The publishing company rarely invests in the promotion and marketing of individual artists or releases and its investment is in the development of its own business and signed writers. (AIM, written submission).

Meanwhile, the UK independent Beggars Group stated that 29% of their gross revenue is spent on A&R and emphasised that the profits generated from streaming are much higher than from physical records, due to reduced costs, and this allows them to invest more in new talent. As part of this argument, they recognised the lower profits available to music publishers (and claimed a lack of willingness on the part of the live sector to invest in talent development):

⁵⁵ Sony demonstrated that it normally requires around £300,000 for the marketing budget for a new or developing artist. WMG explained their A&R budget accounted for a total of \$1,560 million.

⁵⁶ The term of publisher agreements is, however, generally short and with limited retention periods.

If we look at Beggars' figures, we spend 29% of our gross revenue from new releases on marketing. The profit margins of streaming are better than probably physical records at the moment because physical records have distribution costs, freight costs, storage costs and so on [...] They are the engine or the foundations for an artist's career. If record labels cannot do that, who will step in to provide that risk investment? I do not know the answer. Publishers do not have the margin. The live industry does not have the margin or the inclination and, even when live was doing great, it did not really dabble in that. They will be thrown at the mercy of the tech platforms. (Rupert Skellett, Beggars, oral evidence)

Others disputed such views. One publishing stakeholder claimed that the majors' A&R investment in 'new artists' is 'a drop in the ocean'.

The number of new artists is independent of who they chose to invest in, and the number they invest in is a drop in the ocean compared with the total number that are there. (Executive at a publishing company, interview)

Another stakeholder from the music publishing sector claimed that the major investment classified as A&R is spent on purchasing catalogues rather than on talent development.

And it is about them going out and just spreading cash across so many different new bets of what could potentially... because their business model is now based entirely on catalogue. They're spamming money around, just spamming it, to try and create new catalogue for this cycle of life at the cost of the original catalogue, who have no say in it and are chained into perpetuity deals. (Executive at a publishing firm, interview)

Some also questioned the major labels' claims to have increased spending on A&R. A music industry accountant commented on Warner Music Group's public figures, showing that cumulative recorded income had risen from 2.36 billion to 3 billion US dollars over four years:

Let's have a look as a percentage of turnover. Here you can see the artist and repertoire cost as a percentage of turnover: 31.92%, just slightly shy of 32%, 31.37%, 30.68%, 30.13%. A&R costs have gone down 2% as a proportion of turnover – 2% over 31 is about 5% [...] There are only three major record labels and here's one of them publicly quoted, so how can you say that A&R costs have gone up? (Music industry accountant, interview)

Stakeholders outside the recording sector claimed that the current division between the recording sector and the publishing sector should be revised for a number of reasons. First, echoing comments made by DSPs questioning the revenue going to rights-holders in current licensing deals, they argue the current split is a continuation of the model adopted for the transitional era when purchased digital downloads were an important and growing source of revenue as physical sales declined. This, claimed one contributor to the DCMS Inquiry, was based on the economics of the analogue era.

Much of the division of that 55% between the label and the artist is a holdover from the physical world of the last century. That is at the heart of the artists' complaints. They are seeking a levelling up and a rebalancing of the risk-reward trade-off. (Tom Frederikse, music industry lawyer, oral evidence).

Some stakeholders from the publishing sector highlighted that the current split is based on developments made in a very different time when record companies had to take much more responsibility than publishers (see Chapter 4). A stakeholder from the publishing sector echoed such views:

The industry has shoehorned traditional agreements and traditional methodology into how streaming is dealt with, and that has not worked. The result is that it has thrown up an inconsistency and an inequitable division of the royalties that emanate from that. (Maria Forte, Maria Forte Music Services, oral evidence)

However, some stakeholders emphasised that rates for publishing had improved. A representative of the music publishing sector stated at the DCMS inquiry that,

'If we go back to where we were 10 years ago, when streaming first surfaced, we were at 8% to 10%. We have moved up in the right direction. Equally, my understanding is that in more recent negotiations the label share has come down slightly, as we are moving up. We are convinced that we are moving in the right direction. I am very glad to say that songwriters are at the table when we are discussing our negotiations, both at society level and at the various hubs we are working with. (Roberto Neri, Chair of the MPA, oral evidence)

Stakeholders representing publishing and songwriters/composers point to arrangements in broadcasting as a potential model for distribution of streaming revenues:

The arguments that labels require such a high proportion of streaming royalties to fund A&R and risk are no longer valid. Label and publishing values are generally equivalent for broadcasting. This provides a much better model for streaming than the proportions based on the old physical sales model. (Ivors Academy, written submission)⁵⁷

In its DCMS submission, the Independent Music Publishers Forum (IMPF), also argued that the current growth primarily benefits the recording sector.

The streaming rates issue is the most important and urgent priority for the wider community to address. Rates for publishers have been low from the outset. While record labels are reporting dramatic increases in revenues from streaming services, the publishing sector (and thereby the songwriters and composers they represent) does not benefit from this growth. (IMPF, written submission).

The split between recording rights holders and composition or publishing rights holders has obvious implications for how much performers, composers and songwriters gain from their musical labour. There was a widespread perception among songwriters and composers and those representing them that they should be getting more, perhaps at the expense of recording rights holders.

The song value has been suppressed, and we would argue that that is because of the industry mechanics, in that it is in the interests of the record label to do so. Streaming came on the back of downloads. If we go back to 2005 when digital started, it was a download economy and we used to download singles and albums. We can see why the industry adopted a model more akin to a physical sales model, but it really is not applicable to streaming. (Graham Davies, Ivors Academy, oral evidence).

We discuss these issues in chapter 4 in a greater detail by analysing the evidence provided by stakeholders.

⁵⁷ It applies to the ratio of remuneration and rights (only).

3.4 Music creators' share of revenues

As already indicated in the Introduction and Chapter 1, recent controversies surrounding the music industries, and the rise of music streaming, often centre on the feeling among music creators that they are not sufficiently rewarded in the industry.

There is nothing wrong with gazillions of dollars flowing from streaming into the music market, there is something happening in terms of where it goes next is my concern, how much cream is coming off the milk. (A former industry executive, interview).

After the roughly 65-70 per cent of the revenue going to rights holders is split between the recording (roughly 52 per cent) and the publishing (roughly 15 per cent), music creators receive their share depending on their deals with labels, publishers, or other intermediaries. Many stakeholders spoke in terms of a rough norm where many or most recent record deals now usually pay 25% of their share (though sometimes lower figures are quoted) to contracted performers, and publishers pay 75% of the share to the songwriters or composers.⁵⁸ There is some consensus that royalty rates for music creators have improved over the last 50 years or so.

Royalty rights for artists are generally in the category of around 20%, 25%, 30%, while the label is taking the rest of it. This is a huge improvement on deals from, say, the early 1960s when bands like the Drifters were getting 2%, 3%, 4%, and Atlantic Records was taking 96%. Yes, there is improvement but it only comes from a point of something like 25:75. (Tom Frederikse, oral evidence).

As indicated above, some stakeholders argue that one of the main reasons that recording rights holders (mainly record companies or labels) received such a large slice of sales revenue in the physical era was because of the costs and risks associated with manufacturing, storing and distributing physical products. Music creators and managers echoed this view.

A manager for indie artists questioned the labels' cut and outlined other ways in which they thought the industry had changed in a way that meant that labels' marketing work was less important.

In the past, labels used to give quite big advances to artists so they could take time to make a record. Nowadays you can't have a deal if your record is not already there and if you're not already buzzing. If nothing is happening with you, then nobody is going to put any money on you. Why would they give you an advance since the work is already done? And the advance was the justification for labels to have those provisions in your contract. [L]abels still take an enormous cut of everything, which is fair enough if they do their job and we know that most of them, especially with upcoming artists, don't. They just secure the rights, give you £2,000 as an advance and then your music is locked with them and that's it.

The labels' counter-argument is that the contemporary recorded music industry now involves other costs and risks, including a different temporality for marketing. In the words of CMU, summarising various contributions from recording rights stakeholders: 'Release campaigns now run for longer, require unprecedented amounts of promotional content to be created, and involve managing relationships with an ever-expanding network of influencers.' (Cooke, 2021) In its DCMS submission, BPI put it in the following way:

⁵⁸ As with all these issues, Chapter 4 explores the evidence in greater detail; our focus here is on stakeholder perspectives. Chapter 4 suggests a headline rate of 25% might be more standard now.

Launching an artist is also a complex and costly enterprise. It is estimated that it costs on average between £400,000 and £1.5 million to break an artist globally; and it is often commented in the industry that approximately only one in ten investments made by record labels breaks even on the upfront label investment (BPI, written submission).

However, there is a view that music creators are required to provide a great deal of the resources necessary to build a career:

With the featured artist, yes, we have [...] a royalty, which is stacked against the artist because 100% of the origination costs, 100% tour support, 50% video costs and only 21% of the income, the chances of recoupment... it's like saying to somebody 'this is how much it costs to build this record, to originate it, we want you to pay for it all, but we're only going to allow you one fifth of your earnings to pay the recoupment'. And then, once you have recouped it, it doesn't belong to you but you can get a royalty of 21% thereafter. It's a very punishing arrangement for the recording artist. (Music industry accountant, interview).

Many songwriters and composers feel their revenue has dropped significantly in the streaming age. Fiona Bevan, who has written songs for popular acts such as One Direction and Kylie Minogue, reported at the DCMS inquiry that one of her co-written songs had recently featured on a number 1 album but claimed that this had earned her only £100.⁵⁹

I had a track on an album that was recently No. 1 in the album charts in the UK. That was the fastest-selling solo artist album of the year at the time of release. That track has earned me about £100.

Like many, Bevan emphasised the historical legacy:

It comes from an archaic split where the labels had huge physical overheads to produce vinyl and CDs, to store them and to ship them...Streaming has taken over utterly [...] There is not really an excuse for these huge behemoth companies to have 55% when they do not have these physical overheads anymore. It is very cheap for them to distribute the music....15% is what the song itself gets...That to me is the very fundamental basis of the problem. If that was a bit more even, the songwriters would be able to survive. Right now, hit songwriters are driving Ubers.

Another stakeholder, from a firm now highly active in publishing, emphasised the importance of paying songwriters:

The songwriters are the people who are laying the golden eggs that everything else is based on, and if they carry on just treating them badly and they sort of drift off to some other career where they can actually earn a proper wage... a lot of them are driving Deliveroo bicycles at the moment, it's that bad. But they will lose those people and then you start to lose the creativity that our whole industry is based on. (Publishing company stakeholder, interview).

Many stakeholders also claimed that poor data practices often result in unallocated royalties. According to the Music Managers Forum (MMF) & Featured Artists Coalition (FAC)'s DCMS submission, over 100 million euros have remained unallocated in ICE for European markets which then is distributed to rights-holders based on the market share, further 'benefiting big corporate rights owners and superstar songwriters.'⁶⁰

⁵⁹ In our interview, BPI pointed out that at the time evidence was given (8.12.20), the track had only been released in the last month (6.11.20). For more detail on this case, see Chapter 6.

⁶⁰ During the DCMS Inquiry the Ivors Academy proposed a mandatory system to ensure that recordings should be matched with standardised recording identification data. 'We would advocate—together with the platforms, which we would like to join with us in saying this—that no recordings should go forward anymore without this required data, because songwriters will suffer and not get paid. We put out a statistic—a guess—that there were over £100 million worth of unattributable streaming royalties in the collecting societies. No one has disproved that yet. We would like to know what the full scale of it is.' (Graham Davies, Ivors Academy, oral evidence)

These complexities also mean that a portion of the money paid by the platforms every month cannot be accurately matched to the songs that have been streamed. ICE, the digital licensing hub co-owned by UK songwriters collecting society PRS, estimates over 100 million euros for Europe alone was unmatched in 2019. And the problem is potentially much worse in non-European markets. What happens to that money varies from country to country. But often it is ultimately distributed to rights-holders based on market share, benefiting big corporate rights owners and superstar songwriters. (MMF & FAC, written submission).

Alongside complaints about the income they earn, some music creators feel that their views and interests are not sufficiently represented in negotiations between DSPs and rights holders. Overall, there is a strong sense among representatives of music creators that unless measures are taken to bring a change to this power imbalance where a few major players have a strong grip over the market, little change can be expected.

You can have all the best arguments in the world but if you don't have the power, because if three people rock up to the tables and say we just need that amount of money please, that amount of the pie, or you can't have my music, it stops and starts there, doesn't it? (Head of a trade association representing music creators, interview).

3.5 Perspectives on deals

There is a wide variety of deals and contractual relations that range from traditional record deals to DIY arrangements. This section reviews some perspectives on major issues and changes relevant to music creators' earnings that were widely discussed during the DCMS inquiry, drawing on interviews as well as focus group discussions. We provide more comprehensive coverage of deals in Chapter 4, including important issues surrounding advances and 'recoulement' (the traditional record deal typically involves an advance where an artist receives a lump sum amount which is recouped by royalties from record sales).

There is widespread consensus that digitalisation has created new choices and pathways for music creators, in terms of how they make and distribute music, and build an audience. In their DCMS Inquiry submission the BPI emphasised the widened range of deals and negotiating terms available to music creators:

This plural environment means artists have enormous choice in the labels they choose to work with, the type of deal they wish to sign, and, indeed, in the era of streaming, whether to sign with a label at all. This means that 'DIY' self-releasing artists can release their music on streaming platforms, either themselves where user-upload is permitted or using aggregator distribution services. (BPI, written submission).

However, deals with majors and large indies remain prestigious. One of our focus group participants explained the advantages of a major deal:

What being on this label, on a major would do is increase my profile. And the industry is a profile game. It shouldn't necessarily be, but it is. So, if you have a bigger profile, you get a bigger listing on the bill and you get more money for doing live gigs. So, for me, I'm a touring musician and I'm going to be touring as much as I can, if I'm signing with a bigger label, I will get my money back because actually my prominence as a musician will go up in the eyes of the industry at large, and then that will show itself in all the other associated means of income that I come into contact with. And for me it has worked. (FAC focus group discussion).

Others pointed to drawbacks with these deals, including longer contract terms, information asymmetry, and a lack of transparency.⁶¹ In his oral evidence to the DCMS Inquiry, Colin Young, an entertainment accountant and auditor, argued that the difficulty of recouping , typically within two years, caused difficulties for music creators. While costs to music creators rise quickly, income is often delayed, often by six months or more for overseas income. Meanwhile:

Under a conventional record deal an artist would receive a royalty of 20%. It might be as high as 24%. From that 24% the producer will have to be paid, so the artist is likely to receive a royalty of 20%. The record label then maintains a ledger. It is an internal arrangement. The ledger is maintained by the record company and every six months it sends a royalty statement to the artist. On that ledger will be included the personal advance that was paid to the artist, which makes sense. It will include all of the origination costs for the recording. It will include the studio costs, the travel to get to the studio, the flights. It will include the producer, the accommodation, all of the origination costs to record it. It will also include 100% of tour support. When the band goes and tours the UK, then it stretches further and tries to break Europe and then stretches further still and tries to break America, those costs to pay for the band will be added to the ledger. It will also include 50% of video costs. It is quite a big mountain, and it is going to attribute 100% of each of those costs. In return, it receives a royalty, and that royalty is 20%, as I said. So, 20% of the income and 100% of the costs. (Colin Young, oral evidence).

In their joint DCMS submission, the MMF & FAC argued that the 'life-of copyright assignments on recordings are still common-place.'

It is also worth noting that life-of-copyright assignments on recordings (covering the full copyright term of 70 years from release date) are still common-place with both indie and major labels, and such lifetime agreements mean artists who may have signed deals whilst still teenagers are often unable to renegotiate outdated rates decades later. (MMF & FAC, written submission).

A successful musician previously signed with a major expressed their views about the difficulty of finding out about their income from streaming.

I'm not proud of this but I have absolutely no idea what we earn on streaming. And I never have and it's not that easy to find out if you are under major label contracts, which are themselves subject to NDAs with the DSPs, I think. I'm not even certain about that. It's not really in the culture to examine your own earnings in this way and it's not because we are so comfortable and driving Rolls Royce into swimming pools, it's just that the information is quite mysterious really. (FAC focus group).

At the same time, with many more choices available, some music creators feel the 'experts' chosen by the majors, to support and develop their career, are not necessarily the ones they want to work with, or who are best suited to them.

I've got another album coming out with the label, when I look at the team that they're employing, it's not necessarily someone... I'm going into debt for them against my bank account on the label, but they're not people that I would necessarily hire. (Ivors Academy focus group).

There are also claims that some of the old business practices, including contractual terms, have not changed significantly. BMG, for example, point to the longevity of the royalty deal.

⁶¹ In contrast, BPI stresses that 'Streaming has also facilitated greater levels of transparency for artists – with (some/all) of the major labels (and some independents) developing online portals that show detailed real-time information about royalty payments due to the artist from each separate digital platform, and how payments have been calculated.' (BPI, written submission)

While the technologies used to distribute recorded music have changed dramatically over the decades, the business practices of record companies, in particular their contractual relationships with artists have barely changed at all. The default deal type, the royalty deal, dates back 100 years. We believe many of the complaints from artists and songwriters about remuneration in the streaming age are not a result of streaming itself, but are a result of the slow progress of the music industry in modernizing its processes, approaches and contractual terms (BMG, written submission).

Many stakeholders believe that a significant benefit for music creators in the digital era is that the new musical system now offers a range of new ways for music creators to release their music without necessarily relying on traditional gatekeepers. A self-releasing artist who had achieved considerable success expressed during a focus group discussion that her success is based on her ability to release her own album, in her own way. This was achieved without compromising her music creative endeavour for commercial success.

For me, the option of being able to self-release my music and to be able to promote it myself, I credit with my career taking off. If that option hadn't been there to me and the only option had been signing to a label, and probably not in a very good deal, would I be where I am today? I don't know. With my music it's described as quite niche, although its appeal is actually very, very broad. So a label could have quite easily messed up my career, like when I had the offer from Warner, I'd already got my debut album finished, but the label exec said to me in this final meeting before they made the offer, 'can we get a few more kind of pop orientated songs in there?' And it was quite obvious that was the route that they wanted to push me down. (AIM focus group).

However, some creators are attracted by the way in which labels can help with the business side of making music:

I think where a label can help, even with somebody who has already managed to establish themselves as a self-releasing independent artist like me is with scale. I'm constantly torn in my head, because I like all the positives of being an independent artist but at the same time, I spend 90% of my time or more bogged down in all the admin side, and the business side of everything I've got to do. I literally sort of negotiate my own contracts, even write my own contracts sometimes and it's massively time-consuming. (AIM focus group).

Returning to the issue of the variety of deals now available to music creators, a diverse set of distributors now offer the opportunity to choose between a range of distribution and marketing options. An increasing number of music creators opt to select from a varied set of distribution deals. An employee at a distribution company discussed some.

We still offer two or three different deals. One of our most popular deals especially called an admin deal which is basically we sign people short term initially for three years and then year after year on a year-by-year basis. There's not an assignment it is a licence, they licence their rights for us to collect, there's no ownership on our part. As I say, we want them to continue with us because we were doing a good job not because they are contractually bound to us. (Representative of a distribution company, interview).

Some distributors also offer an A&R service and label services where artists would receive an advance, although the amount might be less than the major deals. The biggest difference between the admin deal and other deals is the level of marketing and promotion.

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. Because of market pressure, some labels will now also work with artists on these more favourable terms. (MMF & FAC, written submission).

In the focus group discussion, a self-releasing artist who used a label services said that the advance, as well as the ability to retain the rights, have given a sense of empowerment that she / he had control over the creative process.

I basically self-released all my music from the beginning, but I used the label services [...] The label services gave us an advance of money and we pretty much used all that advance for marketing of the album, because I produced the record, I played all the instruments and wrote all the songs, so it was all ready to go. And basically, I've kept all the rights to the music, I didn't give away any of the rights which is amazing. And just being able to have that power to self-release, it's almost like I have released my music on my own terms, without having to depend on whether it be an indie label or a major label. (AIM focus group).

As the importance of playlists increases, making efforts to 'pitch tracks' is one of the important tasks for distributors:

It is hard to influence the editorial of the actual DSP beyond what we do which is we have what we call trade marketing, or you could call it DSP marketing and that is pretty much our biggest service beyond distribution. We essentially pitch tracks, projects, products and that is through the pure, as you know Spotify has the track pitch and that basic element, also long-term manual work, the teams will speak months ahead of releases and plan campaigns and try to get marketing campaigns agreed and the support of the DSPs to playlists to offer social media support maybe sessions. (Employee at a distribution company, interview).

3.6 Views on earnings and playlists

How do all these different deals affect music creators' income from streaming? The focus group participants had varied views and experiences of streaming, and this section summarises them.

Most music creators earn their income from a wide variety of sources (see Chapters 1 and 5). The focus group participants' experience chimed with this existing understanding. Most participants, ranging from early career musician to an experienced singer songwriter, said that before Covid-19, live music had been their main source of income.

Most of my income pre-Covid was from live music, from performing live and obviously the ultimate PRS royalties from that, actual tickets, or as a support act I would get paid to support and then CD sales. (FAC focus group).

I've been a professional musician for 20 years and the majority of my income has always come from live performance and touring, with maybe a slightly lesser percentage coming from the writing and composition, orchestral arrangement side of things. (MU focus group).

So, I would say with touring bands, it was just about selling merch. That's where the money really came from. (Ivors Academy focus group).

During the focus group discussion many songwriters and composers emphasised the increased importance of income from 'sync' licensing (where music is used in film, television and games).

So, the avenue I went down more this year is looking for sync deals. I think sync is a massive thing that kind of came out, especially over the last year, as a way to get income quickly, if there is a fee involved, and then it's also if you get on a TV show, or something like that, there is revenue from the royalties. (Ivors Academy focus group)

But again, there was widespread frustration that streaming did not generate more income. Many music creators saw streaming more as a promotional tool as a means of generating income. One told us:

For me streaming I don't see it as a key revenue stream for me as a creative. It's more a way of opening up my audience to new people. I would see it more as that, as a marketing platform and passive income, than it is an actual main source of income for me. (FAC focus group).

An orchestral session musician made this comment:

I think streaming is an amazing thing, I think it is fantastic but it's just not working at the moment as how the funds are distributed...orchestral musicians work so bloody hard all the time, they do six, seven, eight concerts a week...they're now looking at their income and going, hang on, my Brahms' Symphony, my concerto is being streamed and I'm not getting a penny from it. Why are people all over the world able to hear my music and I'm not getting any money? It is not fair that orchestral musicians are not getting any money for their orchestral tracks. (MU focus group)⁶²

A relatively new artist who had seen 24 million streams with her first single said that streaming is a promotional tool which can 'lead to other opportunities.' However, it has not been a source of meaningful income.

Since I released my first single under this new project this time last year, my streaming numbers have never been better, largely because I did one song with some other producers and DJs and it's had like 24 million streams, which is obviously amazing and has meant my numbers, if you like, all year have looked really healthy, but it doesn't really equate to earnings.

Whilst there are many other factors influencing streaming income, rights ownership came across in our focus groups as a noticeable element that strongly influenced streaming income. An independent artist who owns rights for their songs earned £5,000 a month for around 50,000 plays a month.

As an independent artist, I would say streaming for me, even the last quarter, it wasn't £10,000 but it was above £5,000 that I earned from streaming. I literally stream maybe 50,000 plays a month on Spotify, so in the pop world I'm tiny, but I've got all the rights so I'm actually earning. It's more than I've been earning touring. (Ivors Academy focus group).

Another early career self-releasing artist who owns all rights for her work said that streaming has been 'by far (the) biggest' income.

I'm pretty sure that the digitalisation of music and the advent of streaming, and also the democratisation of being able to make music and release music yourself without having to go through the traditional gatekeepers of the industry is what actually facilitated my career and the success that I've had to date.

I have revenue coming in in dribs and drabs coming from all over the place, and it's the amalgamation of all of those sources that allows me to make a good living. But first and foremost for me, by far my biggest income stream is actually streaming, so streaming does work well for me. (AIM focus group).

There is a strong agreement that the significant role playlist plays in music creators' success and the earnings. A self-releasing artist, for example, explains the Spotify's playlist allowed him to 'live off music'.

⁶² Session musicians are paid a one-off fee for the recording session regardless of the recording's success. See 3.7.2 on equitable remuneration (ER) for more discussion of payment for session musicians.

With my last album one of my songs took off organically, through the algorithmic Discover Weekly [Spotify playlist]. So now it's kind of changed the model of how artists can release music and live off music. (AIM focus group)

However, artists who are not lucky enough to have their music added to playlists feel the barrier is too high. For example, an artist said that the most influential playlists such as RapCaviar or various 'Friday' (editorial) playlists can only be accessed by the labels.

Right now, the labels are kind of shutting things down, like you've got the caviar playlists, you've got the good music Friday playlists, and stuff like that, and those are playlists that it's very hard to get onto now but were easier to get on before, that are kind of run with the labels. (AIM focus group).

3.7 Proposed changes that might affect the distribution of revenues

A diverse range of possible 'solutions' to the perceived difficulties of music creators was discussed during the DCMS inquiry and in the interviews undertaken for this project. This section summarises viewpoints in relation to four sets of perceived problems and advocated changes related to distribution of revenues (as opposed to proposed measures to increase the size of the UK pie, such as promoting UK exports or curbing piracy and illegal downloading, which are relatively uncontroversial measures, and therefore outside the remit of this chapter; see Chapter 1).

3.7.1. The legal definition of streaming

How a stream should be defined was raised by a range of stakeholders. Should it be considered akin to a sale of a CD, the rental of a CD, or more like a broadcast of a recording? This matters for the remuneration of music creators, because different definitions determine which of the rights or controls apply to streaming. We deal here with issues regarding 'the making available right', equitable remuneration (ER), and whether streaming should be treated as a sale or a license.⁶³

The making available right

The making available right is a right granted under UK and international copyright law that applies when content has been made available in such a way that it can be accessed at a specific time, and place, of the user's choosing. It was introduced first in Article 10 of the WIPO Performers and Phonograms Treaty (WPPT) 1996 and adopted in the EU (which then included the UK) in the 2002 Information Society Directive.⁶⁴ In the UK, it was enacted in 2003 by adding it to the Copyright, Designs and Patents Act 1988.

As the music business model has evolved significantly since the late 1990s, questions were raised over the applicability of the making available right into streaming. Some stakeholders contend that this less interactive listening behaviour is better protected under the 'broadcasting' rather than the 'making available' right. They are referring to 'lean back' listening on curated playlists or other forms of 'passive' listening such as Spotify Radio. The crucial distinction between these two rights is the degree of interactivity: while in broadcasting, users may access the work only when the work is transmitted, in making available, they can access the work when they choose. This section summarises the diverse views put forward by stakeholders on how they think streaming should be treated in legal terms.

⁶³ See section 2.4 on how copyright law provides copyright owners with a number of rights or 'controls'. UK copyright law uses the phrase 'acts restricted by the copyright' (CDPA, 1988) for such rights.

⁶⁴ See Article 3(1) of Directive 2001/29/EC

Stakeholders who are, or who represent, rights-holders and featured artists argue that streaming falls under the making available control or right:

Because of its interactive nature, streaming clearly falls within the definition of the ‘making available’ right. From the perspective of the user’s experience, the making available right is essentially the internet age form of what was previously a sale. An individual listener can choose what to play, when to play it, skip forward or replay [...]. None of these interactions are possible via broadcast where every listener hears the same track at the same time with no possibility for individual selection of or interaction with the content. (Warner, written submission).

The Musicians’ Union argues that streaming playlists are becoming a dominant way of music listening and are more like radio than sales, in that the lists are curated by the streaming companies and are provided for users. Whilst it is possible for users to choose and skip, the MU emphasises how users engage in ‘lean-back’ forms of consumption, thereby making streaming more akin to radio. In addition, they state that streaming is beginning to replace radio.

As far as we see it, there’s a clear element of streaming that’s like radio and therefore you could argue in rights terms that it is a broadcast. If you look at curated playlists, it’s so similar to radio. You’re not selecting each individual track, you put a track on, and then further tracks follow and it’s either human curation or algorithmic curation. So, the way we see it, there’s an argument that a percentage and perhaps even 100% of the money that’s currently paid to record labels should go through PPL and be split 50/50 [between copyright owners and performers]. (Naomi Pohl, Musicians’ Union Deputy General Secretary, interview).

There are conflicting views over what was the intention behind the creation of the making available right in the 1990s. The recording sector claims that the introduction of the making available right was to ensure rights-holders have the same protection in the digital environment as they did in the physical world.

In fact, the reason for introducing the exclusive making available right at the international level in the first place was to ensure that rights holders can authorise online uses that have the same commercial effect as the distribution of copies in the off-line world. (Universal, written submission).

An opposing view is that it was difficult to envisage the impact of the current music streaming model when the making available control or right was introduced:

The thing is that the WPPT— the WIPO Performances and Phonograms Treaty—was designed for the digital sale of music. It saw the Apple iTunes model coming; it had to react quickly. WIPO did a very good job on the WPPT, but at the time nobody envisaged streaming; nobody knew what streaming was. (Horace Trubridge, Musicians’ Union General Secretary, oral evidence).

Is streaming a sale or a licence?

In relation to the adequacy of making available right for streaming, a controversy has arisen concerning the monetisation of streaming services as a ‘sale.’ Currently, record labels license their music to DSPs, and distribute revenues to artists based on a ‘sale’ model and views are divided as to whether this is appropriate.

At the DCMS Inquiry, Horacio Gutierrez, Spotify's Chief Legal Officer, outlined the licences paid by DSPs to record companies:

Spotify pays record labels a licence. It is going to be the higher of three things. It is going to be the higher of the subscription rate, of the streaming rate, and of net receipts if there are any marketing moneys. That is receivable under a licence and Spotify pays down 55% to the record label. The record label receives that money plus some streaming data. The record label's interaction with the artist is, it is a reproduction. It is not admitted that it is a licence [...] It (an artist) could never participate (in the conversation) because one is receiving revenue under a licence and paying it out under a reproduction model. (Horacio Gutierrez, Spotify, oral evidence).

The Ivors Academy explained their view of why majors prefer to see streaming as a sale rather than as a licence:

The Major Music Groups seek to reinforce the 'sale' model of streaming because it maximises profits rather than is justified because of activities and costs. This is evidenced by the financial reports from the labels/major music groups. Those publishers and creators who are not subject to the label/publishing conflicts of interests are unable to value their publishing rights at a fair market value because of the concentration of power held by the three Major Music Groups. (Ivors Academy, written submission).

Others argue that this practice allows labels, who already take the biggest share of the pie, can benefit first from the bigger share of the revenue in contracts with their artists, as well as the margins generated from the outdated contracts (Hipgnosis, Written Submission). In oral evidence to DCMS Select Committee Inquiry, Tom Gray of the band Gomez and founder of the Broken Record campaign, noted that 'my original record contract that I signed in 1997 says that if my music is licensed, I get paid 50:50, but I am actually paid at my reproduction rate from streaming'.

An alternative way to interpret streaming was proposed by accountants CC Young, receiving support from Hipgnosis and the International Federation of Musicians (FIM), that those aspects of on-demand streaming (e.g. algorithmically generated playlists) most akin to broadcasting should be reclassified as broadcasts within copyright law, so that performers would be in receipt of ER. Other aspects of on-demand streaming, in contrast, would be classified as falling under the reproduction right, with royalties being paid in accordance with an artist's regular contractual terms.⁶⁵

The recording sector, however, supports an interpretation that the 'exclusive right' to control the making available of the performances was granted because digital media was replacing physical sales.

When the framers of the internet treaties granted rights for the future, they granted an exclusive 'making available' right, which is what applies to streaming, and they did that in the knowledge that an exclusive right was needed because these interactive digital transmissions were going to take over from the sales model. So, we would say that, if you are going to compare to either, it is really a 'making available', but the better comparison is to a sale. (Geoff Taylor, BPI, oral evidence).

⁶⁵ In our interview, AIM stated 'This assumes no non-featured performers – the featured artist does much worse if there are session musicians on a track under this model, which probably means fewer session musicians likely to be employed on tracks under this model compared with now.' Colin Young, on the other hand, took a different view. 'I don't think artists would think like that. They would say, 'if he makes a valued contribution, he'll get a piece of the action, why not?''

From the recording rights owners' perspective, the benefits of the making available right is that licensing terms are left to commercial negotiation. In many cases, this leads to higher payments to them than collective licensing, and licensing for broadcasting, which then can benefit the creators.

With an exclusive right such as streaming, the rightholder can determine whether and under what conditions the work may be used, including the right to refuse to make the work available. Licensing terms for 'making available' rights are subject to individual commercial negotiations that are not possible with mere remuneration rights. Because rightholders can refuse to license their content, licences are agreed at market rates as determined by the parties and the rates tend to be higher than for collectively managed remuneration rights such as in broadcasting. (Warner, written submission).

Record companies also stressed that a 50% royalty rate is only affordable for 'ancillary' sources of revenue. The Beggars Group originally paid this rate for streaming but moved away from it once streaming activity increased. Chairman Martin Mills stated some years ago, 'As streaming becomes core income, it has to bear its share of all our costs: A&R, overhead, marketing, promotion, back-office services, etc.' (Smirke, 2014).

3.7.2 Equitable Remuneration (ER)

Stressing the perceived inadequacy of the making available right for streaming, some recording artists and their representatives have worked on campaigns to reform copyright law. The arguments tend to centre on whether ER can, or should, be applied to on-demand streaming. ER is a statutory right to ensure that artists are paid whenever sound recordings are broadcast in public regardless of the contract or copyright ownership. This is to guarantee a minimum share of the payment that is not subject to recoupment, discounts or deductions in the recording contracts. However, ER is not applied to streaming in the UK and session musicians therefore do not receive ongoing royalty payments.

Currently, the performers' making available right is applied to streaming via contractual agreements between performers and their record labels. Unlike ER for broadcasting, the making available right can be waived or transferred to a third party. This may happen in return for ongoing royalties, a lump sum payment, or no remuneration at all. This is dependent on the contract.

A proposal has been made to reclassify the making available right so that performers are entitled to ER for all forms of electronic transmission. This would bring the making available right in line with broadcasting, which it adjoins it in UK copyright law under the banner of the communication to the public right (see section 2.2). In this case, the remuneration would be collected and distributed by the collecting society, PPL, in the UK.

This is advocated by the Broken Record campaign with backing from the Musicians' Union and the Ivors Academy. In May 2021, an open letter was sent to the UK Prime Minister, Boris Johnson, signed by 234 musicians (as of June 2021), many of them prominent British musicians such as Sir Paul McCartney, Kate Bush and Nitin Sawhney (Beaumont-Thomas, 2021). The letter claims that,

Today's musicians receive very little income from their performances – most featured artists receive tiny fractions of a US cent per stream and session musicians receive nothing at all. To remedy this, only two words need to change in the 1988 Copyright, Designs and Patents Act. This will modernise the law so that today's performers receive a share of revenues, just like they enjoy in radio.

The proponents of ER argue that streaming should pay performers in the same way a broadcast does, in which case session musicians can get paid as per the use of the work. Currently they get around £130 for three hours' session, but do not get any additional payment from streaming. Session musicians get additional payments when they're played on radio but do not receive any additional payments from streaming. Drawing on evidence that he claims shows streaming replacing radio play, Horace Trubridge argues that performers' income is decreasing.

When equitable remuneration came in for radio play, it was a lifeline. It meant that you had a source of income that the record companies could not get their hands on. However, it will gradually—it is already—dwindling, as people listen more to streaming services than they do to radio. (Horace Trubridge, Musicians' Union, oral evidence).

The suggested benefit of ER is that an ongoing income stream is guaranteed for performers who do not receive royalties from streaming, i.e., non-featured musicians and those who have signed contracts before streaming and/or remain unrecouped.

The best thing about equitable remuneration is that it is a guaranteed income stream [...] It would be a 50/50 split. Most, if not all, record deals are paying under a sales model for streaming. If you're lucky you might get 30%. A lot of people are on deals where they might be on more like 10%. So, getting 50/50 via a CMO would be much better for the majority of artists [...] If you're unrecouped, then it's a new income stream for you.

There's plenty of artists out there who are signed to a record label 20 or 30 years ago who are considered to be successful but never recouped and therefore, still don't receive any royalties from streaming. (Naomi Pohl, Musicians' Union, interview).

Many artists and managers claim ER is a potential alternative to the current system where there is a lack of trust in the system. The collective administration by PPL is properly regulated and therefore would ensure that artists receive a fairer distribution of royalties.

The artist-label negotiation rarely takes place on a level playing field, so this goes some way towards helping that problem. Also, as we can see in the US and elsewhere, collective licensing for all forms of streaming and broadcasts is certainly possible. (Tom Frederikse, music industry lawyer, oral evidence).

Although supporters of ER highlight the positive impact this might bring to music creators' income stream, it is not without concerns. Prominent among them is a claim that ER will impact differently on different types of music creators. For example, whilst it is believed ER would be beneficial for non-featured performers in terms of royalty payments, any rises here could result in an adjustment to their session fees, which may impact negatively on session musicians. Whilst artists who have signed disadvantageous deals, or have not recouped their royalties, are likely to benefit from ER, new artists who are on better deals might not necessarily benefit from ER if new inefficiencies, such as increased deductions and lower upfront fees, arise.

Others are concerned that whilst ER may solve some of the problems, it can create others:

From a purely featured artists perspective, firstly it's going to be us that see the split. That non-featured artist payment will come from the featured artists' share, so that's a reduction. There's a lot of pressure on the featured artists' portion at the moment. ER puts a further downward pressure on that. (David Martin, FAC, interview)

On the other hand, labels are concerned that the collective administration by the CMO will take away the negotiating power the labels currently have, which could impact negatively on their ability to get the best rates and the best deal for the artists.

If streaming was treated as a broadcast and equitable remuneration applied, then this would be administered by collective licensing (e.g., PPL). Because of the restrictions placed upon collective licensing - making it significantly harder for them to 'walk away' from a negotiation, and deferral to the copyright tribunal if there is a dispute, it is generally accepted that the rates that would be payable under a collective licensing regime would be significantly less than those that would be negotiated by the labels direct, where we can choose to license or not license our catalogue, or specific recordings, if necessary. Accordingly, whilst the artist may receive a bigger share under that regime, it would be a bigger share of a much smaller pie – which would also further reduce the label's ability to invest in new artists. By way of example, in the UK broadcasters pay approximately 4 % of their revenue to PPL for distribution to rights holders and performers, whereas with direct licensing DSPs pay approximately 55% of their revenue to recorded music holders. (Sony, written submission).

Other stakeholders from the recording sector echoed this concern, including the BPI:

Equitable Remuneration (ER), would, quite frankly, be a recipe for disaster – a black hole that would suck value away from music sector and towards the platforms. (Geoff Taylor, BPI, quoted Ingham, 2021b).

As well as AIM:

We have to be careful that the cure is not worse than the disease, and we have to be really careful to keep the value of music rights high, keep the commercial marketplace operating and not allow ourselves to lose our rights in favour of mandated compensation through an outdated mechanism like equitable remuneration. (Paul Pacifico, AIM, oral evidence).

Questions also arose as to the practicality of implementing ER. This would need to be delivered through industry wide consensus and debate which could take years to agree and implement. Some stakeholders believe effort to improve contractual terms would be more beneficial, given the controversial and potentially negligible impact ER might have. Whilst collective licensing which is implemented in many other countries including the US and EU countries, it is questionable as to whether this ER model will be good for the UK.

The way that ER is implemented in Spain is completely different to what a lot of UK creators and a lot of UK trade bodies are talking about when they talk about ER. They're talking about ER in the sense that it is distributed in broadcasting in the UK. That's not how it operates in Spain, and I don't think a lot of people recognise that. The figures from AIE, they're not insignificant but they're not significant enough to make any material difference to a creator that's not already doing well, and I think that's really important. (David Martin, FAC, interview).

3.7.3 Contract revision

A third separate set of proposals centres on enabling artists with older contracts to have them revised. Many industry stakeholders have highlighted potential inequities surrounding these 'legacy' contracts. Back catalogue is accounting for a significant proportion of streaming revenue (see Chapter 6 for discussion and definition) but some artists signed contracts with low royalty rates, and out-dated contractual terms such as 'breakages' and other deductions that were only relevant to the physical era. Another factor pointed out is advances:

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 where 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 incurred - long before an artist has paid back any recoupable costs. (MMF & FAC, written submission).

Some companies have taken measures to correct the 'unfair' contractual terms in old legacy contracts. Beggars 'has reviewed royalty rates and written off unrecouped balances on older contracts,' and BMG is 'reviewing (and in some cases changing) its contracts for what it considers out-of-date business practices.'

Unfair and out-dated terms in legacy record contracts covering newly lucrative catalogue is where the biggest inequities in streaming occur. Some labels have taken some action [...] However, given the increased value of catalogue in the streaming age, and the fact labels and their shareholders often earn more from older recordings, some labels are not motivated to voluntarily make these progressive moves. (MMF & FAC, written submission).

Sony Music has also recently announced that they will write off the unrecouped balances of some heritage artists, so artists signed contracts before streaming can receive streaming income without modifying contracts (Ingham, 2021a).⁶⁶

It is argued that these legacy record contracts have become a lucrative source of income, due to 'the increased value of catalogue in the streaming age, and the fact labels and their shareholders often earn more from older recordings' (MMF & FAC, written submission), record labels are not necessarily incentivised to track their artists and pay the royalties. As one stakeholder argued, the door is in principle open for review, but apart from the top tier superstars, most artists rarely have enough bargaining power to negotiate with big corporations. In addition, most of these artists have not been active in the music market and won't have the bargaining power to ask for an improvement in their royalty rate.

It's very difficult if you're a heritage artist who's not currently recording to actually go back to your label and renegotiate, and actually track the label down, because I think a lot of artists who recorded music 20 or 30 years ago, possibly the rights have been sold onto various labels and it's actually quite hard to even figure out who even owns the rights in your music now. But if you can do that, trying to negotiate a better deal when you've got absolutely no negotiating clout, you've got no bargaining power because you've got nothing to offer, why on earth would the labels agree to open up that deal again and improve your royalty rate? (Naomi Pohl, Musicians' Union, interview).

Furthermore, during mergers and acquisitions, their music could have been sold to other labels, making it difficult to identify who owns which rights. It is also argued that sometimes record labels can manipulate the remastered version of a track, so as they own the rights and that that version is highlighted in search results on the streaming services, with the original recording being moved further down the list or removed altogether. (Head of a trade association, interview).

⁶⁶ A stakeholder from the independent sector told us in our interview that 'They are not writing them off – they are ignoring them for the purposes of accounting on royalties but holding them on the books for the purposes of any future negotiations where artists want to buy out or take back their rights.'

In contrast to these claims, the BPI have emphasised that ‘commercially successful artists often renegotiate, obtaining additional advances and sometimes securing higher royalty rates in recognition of their success or in return for committing to make more recordings with the label’. (BPI, written submission).

IFPI agrees with this view.

‘What we have heard from many of our member company execs is that artists that do want to renegotiate, they normally have an open door and the companies are willing to, open to renegotiate...With some legacy artists, if sometimes they’re complaining, it’s because they’re perhaps not played as much or listened to as much as some of the new artists and, therefore, their returns are less than some of the new artists. That’s just life.’

3.7.4 User-centric systems of streaming payment & the ‘artist growth model’

A further set of proposals concern how music streaming payments operate. As explained in Section 2.6, some stakeholders advocate the introduction of a user-centric system, which in place of the pro-rata system’s methodology of totalling all streaming activity, places its focus on each user’s monthly subscription fee, which is divided in accordance with that user’s streaming activity. Some argue that the current system of pro-rata is favourable to the rights-holders or music creators who have large catalogues. SoundCloud have introduced a user-centric payment method (known as the fan-powered royalties) for the subscription and advertising element of their payments:

In the current system that the industry operates in this full pro rata system is beneficial essentially to any rights holder or maybe individual creator or individual rights holder that has amassed a large catalogue. And that again is rewarding size of catalogue and not necessarily the creative elements of the content that people maybe are highly engaged in at a much smaller scale. So sheer economic benefit to certain stakeholders maybe even creators but not necessarily...they basically undercut what used to be able to be deemed the middle class of musicians and artists and creators. (SoundCloud interview).

Deezer has been looking into User Centric Payment System (UCPS) for the past two years and claims that it might help to combat fraud involving fake artists accruing undue royalties, and a ‘distorted’ distribution of royalties skewed by heavy listeners. According to their research, users under 25 are heavy listeners and take up the biggest percentage of listens. Deezer considers this to be a distortion of revenue distribution as that age group usually represents around 31% of the user group but is responsible for 70% of the royalties distributed by Deezer. This leaves a smaller amount of royalties distributed from users from other age groups. A shift to the UCPS that Deezer advocates would, according to them, affect negatively, the benefit the most popular music genres. Whilst niche music genres would be affected positively. Arguably, this could diminish the ‘winner take all’ distribution patterns discussed in Chapter 1.

SoundCloud also argues that a user-centric payment system could enhance fan engagement with artists and increase the level of transparency.

I hope it will start realigning some of these things back towards looking more towards ‘what is your community, who are the artists that you like, who are your fans, who is your audience’? And a lot of these questions that artists want to know about stats like ‘who lives with my music?’ . (SoundCloud interview).

BMG, in its DCMS submission, argued for a UCPS on the basis of transparency:

The most significant enhancement to the existing streaming model we believe should be investigated is so-called user-centric licensing. At its heart is that each subscriber’s month payment would be divided solely

among the artists to whom the subscriber listened to, rather than as now all streams and payments being aggregated into larger pots. We acknowledge that the impact overall on artists incomes may not be significant, but we believe its greatest value would be in strengthening the bond between artist and fan, increasing the transparency of the streaming ecosystem and, above all, satisfying a desire among musicians for fairness. Too often the status quo gives the impression it was designed for the convenience of industry players, rather than with a view to the perceptions of artists and fans. (BMG, written submission).

However, a recent report conducted by the Centre National de la Musique (CNM) in France claims that the actual re-distribution of income may not be as significant as many anticipated(Centre National de la Musique, 2021). This reflects the uncertainty claimed by some stakeholders:

There's not been any research that really shows there's a meaningful redistribution of income and I think nobody's looked at the impact it would have on processing costs, for instance, and I think if you're only getting 1,000 streams, you're still only going to be getting 1,000 streams. I know that sounds very harsh, but it doesn't change that [...] Unless you massively increase the income, you're not going to see a massive difference in the way money flows out. (Industry executive, interview).

Others have questioned the cost and complexity involved in implementing the system (Page and Safir, 2018). In his DCMS submission, former Spotify Chief Economist Will Page emphasised that the user-centric system 'increases administrative and operational costs' whilst it 'would have only a minor impact' on creators' earnings:

[User-centric] arguably increases administrative and operational costs for the numerous intermediaries, not least due to the hugely increased complexity introduced by the variance of the value of each individual stream. [...] industry analysis suggests that [user-centric] would have only a minor impact on the allocation of net distributable revenue among different tiers of artists. Under [user-centric], a subscriber who listens solely to a blockbuster artist's new album would make that artist even richer. (Will Page, written submission).

Both Deezer and SoundCloud, however, expressed the view in interviews that the costs and complexity involved in introducing the UCPS were relatively small.

In their DCMS submission, AIM raised different concerns, such as fluctuations in earnings, but also potential effects on culture:

The concern is that User-Centric therefore leads ultimately to cultural homogenisation, with older, catalogue artists and artists with older fans who listen less, such as The Eagles, winning, rather than The Eagles of Death Metal whose younger fan base are likely to be more active on the platforms and listen to a wide range of music. (AIM, written submission).

Similarly, in oral evidence to the DCMS Inquiry, Yvette Griffith, CEO and executive director at Jazz Re:freshed, an independent label, raised concerns over the potential damage to indie musicians, on the grounds that a UCPS potentially gives more weight to older age groups' music listening habits, and as they tend to listen to 'catalogue', rather than new or niche music, therefore limits innovation.

User-centric is not going to work for the indie sector. The people who are going to listen to a lot of indie music want to discover new things and are going to be streaming broad amounts of different varieties. They are going to be listening to their favourites, but they are also going to be doing a lot of discovering. That means that £9.99 will be spread very thinly across quite a broad expanse of artists and streams, so that payment will be quite small. (Yvette Griffith, Jazz Re:freshed, oral evidence).

Nonetheless, the DCMS Inquiry revealed an openness on the part of some labels about implementing user-centric payment systems. In its submission, Sony said it was ‘agnostic’ about user centric but emphasised that it was a matter of redistribution rather than an increase in the size of the amount being distributed:

We feel that whether a user centric model is used is ultimately a matter for the DSPs (who will have to invest significant sums in changing royalty reporting systems) and the artist community (as some artists will win from a changing model and some will lose) [...] It is extremely important to understand that a shift in reporting methodology will not increase the amount of money artists are paid in the aggregate.’ (Sony, written submission).

For one stakeholder we interviewed, user-centric payment could be a potential distraction from the systemic problems of the music industries:

This is why when the labels kind of hint that user centric might be the way forward, it’s like yes, that is one tiny piece of a massive jigsaw puzzle. Switching to user centric wouldn’t fix the problem, it would be a step in the right direction but there’s all these other problems that need to be resolved as well [...] I’m concerned that if the labels are forced to deliver one thing, they might say we’ll engage with trials of user centric, but it’ll be a deflection tactic because they’re more concerned about equitable remuneration and they’re more concerned about having to adjust their contracts or admit that streaming’s a licence rather than a sale. (Industry stakeholder, interview).

Overall, there appears to be some agreement that more research is needed to demonstrate whether user centric would be a more efficient and equitable system than the current ‘pro-rata’ system, and to explore the practicalities involved in actual implementation.⁶⁷

I would assume that you would really need to show clear evidence that actually the marketplace does not function and that there are such profound flaws in the way the market works that it produces disproportionate and unfair results and at that point, I think I’d really like to see the evidence. (Head of a trade association, interview).

It is an interesting idea but just the practicalities of actually making that happen, how would you do it in such a way that everybody could be confident in what the outcome was going to be and who gets to make the decision? That is very interesting, no idea what the answer is. (Industry executive, interview).

Based on some of the drawbacks of the user-centric system, AIM has proposed an ‘artist growth model’. Paul Pacifico, CEO at AIM, explains the potential benefit of this model as below.

The artist growth model speaks to the challenge of distribution of income in the market and the concentration of wealth at the top. It applies a dual model. So at the bottom end, it would apply a progressive scale. So you would have accelerated maturity on your streams and at the top end, it applies a degressive scale, so your top slice of streams would be worth a bit less. So it’s just a little bit of a Robin Hood model where you shave the top streams off the top 1% and you move that money just a little bit further down the chain, and what we see is that that improves sustainable revenues for credible niche artists and emerging artists.... So the top artists are still benefitting from every stream they get but incrementally each one is worth a little bit less. A bit like the way we view income tax. When you pass a threshold, each pound is worth a little bit less in your pocket. (Paul Pacifico, AIM, interview).

⁶⁷ Concerns have been raised by music publishers, relating to user data/GDPR protections and complications to rights-holder audit capabilities therein

Summary

This chapter has summarised the views of stakeholders on a number of difficult and contentious issues. Our aim has been to establish the different positions involved. The key summary of this chapter include:

- The growth in streaming has given new life to the music economy, that had been on a downward trajectory since 2000. However, views are divided how this economic growth has impacted on music creators' earnings.
- The major recording companies and DSPs highlight there are more music creators gaining remuneration now, than there ever was in the pre-streaming, CD era. The creators' community, as well as independent sector, however believe it is much harder to make a sustainable living now.
- Many stakeholders expressed the need to revisit the current split of the streaming revenue and the 52 per cent allocated to the recording sector received most scrutiny.
 - The recording sector argues that the current share is justified given the increased spending on A&R, new costs associated with digital business, marketing and the economic risk of promoting new artists. Other sectors challenged this view, arguing that the costs for A&R had decreased and the claim of risk-taking is unfounded as less is invested in new artists.
 - The publishing sector feels that the song writing element be valued higher so the songwriters can receive improved remuneration. During the analogue era labels bore the cost for reproduction and distribution. However, streaming has changed the economic dynamic and it is argued that the current split, based on the analogue era, should be revised.
 - Stakeholders representing music creators and independents feel that they do not have sufficient negotiating power in the discussion.
- The focus group discussions with a range of music creators revealed that most music creators feel the current streaming economy 'hurts' them, more than the download model and streaming is used primarily as a 'promo' tool, rather than an actual source of sustainable income.
 - Most music creators emphasised the importance of getting onto a playlist for their career. Those who had their music added to the playlist reported an instant positive impact on their career, and an increased level of income from streaming. Others who could not have their music added to playlist feel that the barrier is too high, and more needs to be done to create a level playing field.

- Four major proposed solutions were discussed, including:
 - Investigating the adequacy of making available right where a proposal was made to apply passive listening as broadcasting;
 - Equitable Remuneration (ER), relating to recorded performing rights (not musical works), to reclassify the entire streaming as broadcasting, so the performers are entitled to on-going royalties from streaming;
 - Contract revision for legacy contractual terms so the artists signed before the streaming can also receive income from streaming;
 - A user-centric system to distribute the royalties in accordance with the users' streaming activity, and artists growth model.

However, there is not enough publicly available evidence to conclude which of these solutions have potential or what impact they will have for creators. More research is required to better understand and inform decision making.

In the next chapter, we provide the most comprehensive summary available in the UK of the core issue of how revenues are actually shared among the different stakeholders, in order to cast light on the issues raised above.

Chapter 4

The Collection and Distribution of On-demand Streaming Revenues

The purpose of this chapter is to detail the process of collecting and dividing revenues for on-demand streaming, and to contextualize it in relation to music creators' other revenue streams. It aims, where possible, to provide data in relation to these revenues, as well as to indicate where there is currently a lack of information.

The focus is on revenues generated in the UK. This is in keeping with recording industry data, which is oriented towards the money generated by recording rights holders within separate countries, rather than the revenue that a nation's rights holders accumulate globally. One of the advantages of this methodology is that it provides evidence of the money generated for recorded music by UK consumers; one of the disadvantages is that these figures include revenue that has been generated for international rights holders and do not include the export figures for UK creators. Moreover, a need for more granular export revenue data is increasingly necessary, given the global nature of online distribution.⁶⁸

In contextualizing earnings from on-demand streaming, our focus is on revenues for uses of recorded music (physical sales, downloading, sync licensing, public performance and broadcast in addition to on-demand streaming), as it is here that the interests of recording artists, composers and studio producers are most effectively comparable, both in relation to the divisions of revenue and to the manner in which on-demand streaming may have replaced or supplemented other revenue streams. This does, however, omit significant sources of income, such as live music, merchandising and musical tuition (see chapter 5). It should also be noted that, whereas the recording sector views revenues in terms of 'primary' revenue streams (physical sales, downloading and on-demand streaming) and 'ancillary' revenue streams (sync, public performance and broadcast), the publishing sector does not view revenue in this manner. It draws revenue from a diverse range of sources and has been less affected by the transition from physical sales to online distribution. It also has some revenue streams from recorded music, such as video on-demand, which are of significance but that have less impact on the recorded music sector.

The earliest revenue figures we address are from the year 2000, and the most recent are from 2019. It has been decided to culminate with this year for two reasons. First, the full data for 2020 was not available at the time this research was undertaken. Second, the figures for 2020 will be distorted due to the impact of Covid-19.

Creators will encounter a variety of intermediaries in the distribution of their earnings, their precise number and nature being dependent on the role of the creator, their contractual arrangements, and the licensing practices of their rights holding partners. It is nevertheless possible to group the progress of revenues into the four-stage process outlined below:

- The collection of revenue by DSPs
- The division of revenue between DSPs and rights holders/administrators

⁶⁸ UK Music provide export figures for each sector of the UK music industries, but this is not outlined in respect of different revenue streams. The financial accounting of the UK's CMOs includes revenue generated for UK creators from the uses of their music abroad, which is reported in their annual transparency reports. PRS's reports categorize the revenues from international territories, but the broad heading of 'online' does not distinguish between on-demand streaming and other online uses of music. PPL's reports do not categorize their international revenues into different streams. The BPI provide figures for the UK recording industry's export earnings (which were £363m in 2000, after which they declined to a low-point of £203m in 2007; a steady rise began in 2013, when the revenue was £243m; and by 2019 it was worth £490m) (BPI 2021a: 23). The BPI also provide data on the number of UK featured artists hitting key global streaming thresholds (BPI 2021b). The detail, in respect of different revenue streams, does not match that provided in the BPI's UK reports, however

- The division of revenue between rights holders/administrators and music creators
- The division of music creators' revenues

These roughly correspond to the way we have categorised stakeholders' views in the preceding chapter. We now address each of these stages in detail. Because of the much greater length of this chapter, we here provide a detailed set of contents for what follows:

4.1 Collection of revenue by DSPs

4.1.1 Total streams

4.1.2 Methods of generating revenue

4.1.3 The 'value gap'

4.1.4 Revenue figures

4.2 Division of revenue between DSPs and rights holders/administrators

4.2.1 Division of revenue between rights holders/administrators and music creators

4.2.2 Trade revenues

4.2.3 Rationales underlying divisions of revenue: primary and ancillary revenue streams, substitution, risks and costs

4.2.4 Summary

4.3 Division of revenue between rights holders/administrators and music creators

4.3.1 Divisions of revenues

4.3.2 Divisions of revenue adapted for inflation

4.3.3 Divisions of revenue: alternative scenarios

4.3.4 Contracts

4.3.5 Recoupable costs

4.3.6 Contract revision

4.4 Division of music creators' revenues

4.4.1 Division of music creators' shares of recording rights

4.4.2 Division of music creators' shares of publishing rights

4.5 Concluding comments

4.1 Collection of revenue by DSPs

4.1.1 Total streams

On-demand streaming services have two principal means of monetizing the consumption of music: advertising revenues and subscription fees. The main companies operating in the UK can be categorized as follows:

- Audio services: companies offering subscription only (e.g. Amazon, Apple, Tidal)
- Audio services: companies offering subscription and advertising-supported services (e.g. Spotify, Deezer)
- Audio services: companies offering subscription and ad-supported services, as well as the opportunity for users to upload their own content (e.g SoundCloud)
- Audio-visual services: companies offering subscription and ad-supported services, as well as the opportunity for users to upload their own content (e.g. YouTube)
- Social media services: companies offering ad-supported services and the opportunity for users to upload their own content (e.g. TikTok)⁶⁹

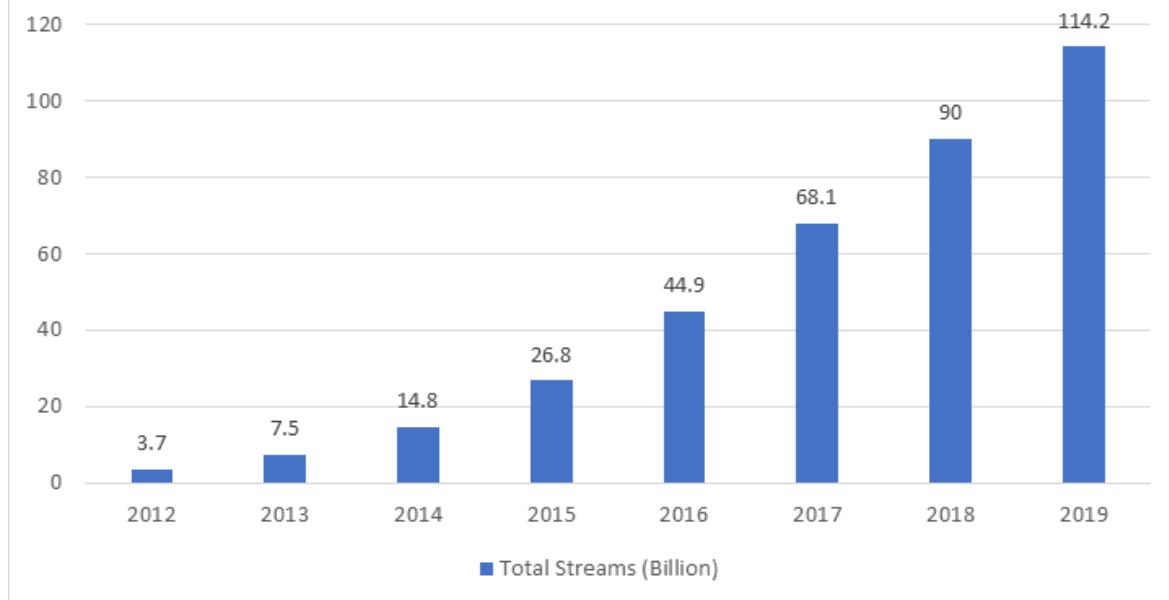
In respect of ad-supported services, an increase in the total number of music streams can have a direct bearing on rights holders' revenues. This is on two grounds. First, advertisers will increase their payments in accordance with amount of activity that a streaming platform generates. This results in increased total revenue for rights holders from companies such as YouTube, who distribute a share of their advertising income.⁷⁰ Second, companies such as Spotify and Deezer pay a minimum per-stream rate for their ad-supported services, which will rise if advertising revenue reaches established thresholds (Mulligan 2020d: 5).

In the UK, the Official Charts Company (OCC) provides accurate data relating to on-demand streaming activity, some of which is published in the statistical yearbooks of the British Phonographic Industry (BPI). Information relating to the total number of recorded music streams was first collected in 2012:

⁶⁹ These companies can be further differentiated in that for some, such as Tidal, Spotify, Deezer and SoundCloud, music streaming is their primary interest, while for others, such Apple, Amazon and YouTube, it forms part of a wider range of services.

⁷⁰ YouTube reported that in 2019 it paid \$3bn to music rights holders globally, and that it generated \$15.5bn in advertising revenue in the same calendar year. It nevertheless remains difficult to calculate what percentage of advertising revenues is distributed to music rights holders, as the \$3bn figure includes the money from YouTube's subscription services as well as the revenue generated from the ad-supported streaming of music (Ingham 2020). Mark Mulligan of MIDiA has indicated that YouTube's music usage brought in \$4bn in advertising revenues in 2019. If 70% of this were distributed to rights holders, this would equate to \$2.8bn in ad-supported revenue (Mulligan 2020c: 6)

Figure 4.1: UK Total Audio Streams 2012-2019 (Billion)



Source: Crutchley and Green (2020: 18).

When it comes to subscription services, the volume of streaming activity has less bearing on revenue for rights holders. This is because the minimum per-stream rates for these services are commonly exceeded.⁷¹ The main means by which these services can increase revenue is by expanding the number of subscribers and/or by gaining greater returns from existing subscribers.

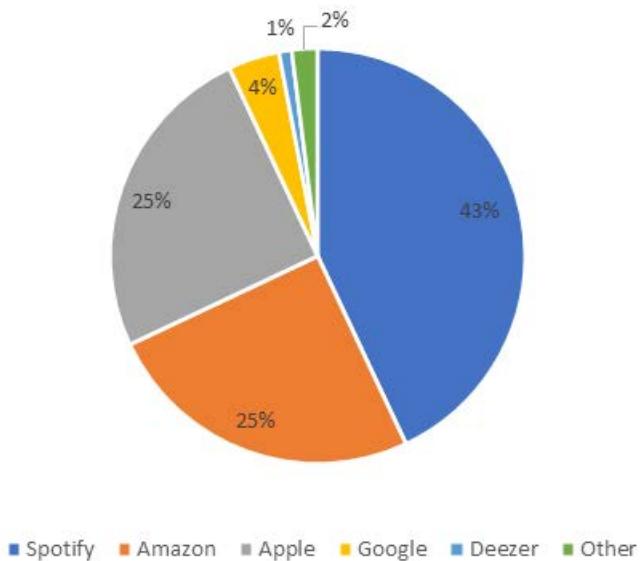
Among the streaming companies offering ad-supported and subscription services there are some, such as YouTube, who gain greater revenue from advertising than from subscription, while others, such as Spotify, are oriented the other way round. More generally, the UK market is oriented towards subscription. This is in relation to the amount of streaming activity (subscription services accounted for 86% of total audio streams in 2019) and even more so in terms of revenue (subscription accounted for 96% of the audio streaming income for recording rights holders) (Crutchley and Green 2020: 17).⁷²

⁷¹ Horacio Gutierrez, Head of Global Affairs and Chief Legal Officer, Spotify, has stated that 'It might be better if we paid out on a per stream basis. We would have better opportunities to generate a bigger margin, but that is not the way the industry has evolved over the years. Fans do not pay per listen anymore; they are paying for access, and this is what happens when you try to use this imputed per stream rate in the context of access. You end up making the wrong decisions. You undervalue the really valuable users. Let me explain why. A user who pays £9.99 per month and only listens to one song is not as valuable to us or frankly to artists as a user that pays £9.99 and listens to 500 songs. A more engaged user is a user that is likely to stay in the service longer, the long-term value of that user is higher, which means that the monetisation value for artists on our service is bigger, yet a user that listens to a track or tracks 500 times would yield a lower per stream rate because you are dividing the £9.99 by the number of streams that they did' (Oral evidence, Economics of music streaming, HC 868, 23 February 2021).

⁷² The BPI's figures are backed up by Jason Iley, Chairman and Chief Executive, Sony Music UK & Ireland, who has stated, 'My personal view is that we would much rather the ad-funded model was not there and that people literally went to subscription straight away, because 95% of our revenue comes from the subscription model' (Oral evidence, Economics of music streaming, HC 868, 19 January 2021). There is nevertheless evidence that, at a global level, advertising revenues are growing at a faster rate than those for subscriptions. Mark Mulligan has predicted that subscription revenues will fall from the 72% of the total revenues it had in 2019 to 66% by 2027. This is due to 'a combination of declining subscription ARPU and the growth of ad supported' (Mulligan 2020a: 2)

The number of subscribers in the UK is increasing. The market intelligence company MIDiA has recorded growth over the past three years from 14.3m in 2018, to 18.2m in 2019, to 22.6m in 2020 (Mulligan 2020b: 3). It has also provided a breakdown of market share:

Figure 4.2: UK Music Subscribers by Service Q1 2020



Source: Mulligan (2020b: 14). Google in this chart represents a combination of YouTube and Google Play Music.

A considerable number of the new subscribers are converting from the DSP's ad-supported services. Spotify have argued that, globally, they have provided an 'effective funnel' whereby 60% of their subscribers have come from this source (Gutierrez, oral evidence DCMS Inquiry, 23 February 2021). The Entertainment Retailers Association (ERA) have provided evidence of this transition happening in the UK:

Table 4.1: Use of Streaming Services in the UK, 2018–2020

Type of service	Date		
	August 2018	August 2019	August 2020
Ad-supported	21.5%	26.0%	25.4%
Subscription	20%	24.3%	33.1%

ERA consumer survey with 1,550 respondents based on the questions 'have you used a music streaming service in the last three months?' and 'was it paid-for or ad-funded?' *Entertainment Consumer Tracking Study: Wave 29; Tracking the Changes 2018–2020*

Another means of increasing revenue is to raise subscription fees. However, while there is some indication that increases are on the horizon, the monthly subscription charges for the DSP's premium accounts have centred on a price of £9.99 since Spotify launched in the UK in 2009.⁷³ Factoring in inflation, this fee has encountered a 27% decrease in worth in the period from 2009 to 2021. There is also conflicting evidence whether consumer spend has increased or decreased with the transition from sales of physical products and downloads to the access model of

⁷³ It has been suggested that this fee was itself derived from the \$9.99 that the first significant music subscription DSP, Rhapsody, charged when launched in 2002 (Page 2021: 178)

on-demand streaming. Paul Firth, Director of International Music, Amazon has stated, ‘Looking back at data from our CD and vinyl and MP3 stores, we could see that about 70% of our customers would spend £30 or less a year on music, so they were buying one, two or three albums a year maybe. It is quite a big step for them to go into £120 a year’ (Oral evidence, Economics of music streaming, HC 868, 23 February 2021). Former Spotify Chief Economist Will Page has provided figures for the USA, indicating that the average spend per music purchaser was \$63 per annum in 1999, and that this declined to \$52 per annum in the following decade. The latter figure constitutes ‘less than half of the ARPU generated by a subscription model with an agreed price of \$120 per year’ (2021: 42). This data is nevertheless countered by UK information in BPI yearbooks, which indicates that per capita spend on recorded music declined from £34.77 in 2000 to £18.26 in 2010; it has subsequently increased steadily from £16.12 in 2014, to reach £21.87 by 2019.⁷⁴

The subscription fees for the main DSPs operating in the UK as of July 2021 are detailed below:

Table 4.2: UK Subscription fees for streaming services (prices correct as of July 2021)

DSP	Subscription Package		
	(price per month unless otherwise stated)		
	Individual	Family (encompassing six separate accounts unless otherwise stated)	Student
Amazon Echo (access to 70 million songs via Echo device)	£3.99		
Amazon Prime (access to 2 million songs)	£7.99 or £79 per year (as part of regular Amazon Prime membership)		
Amazon Unlimited (access to 70 million songs)	£9.99 / £7.99 (for Amazon Prime Members + another £7.99 per month for Prime membership)		
Apple Music	£9.99	£14.99	£4.99
Apple One (provides access to up to six different Apple Services, including Apple Music)	£14.95 (access to four services)	£19.95 (access to four services)	
		£29.95 ('premier' access to six services)	
Deezer Hi-Fi	£14.99		
Deezer Premium	£9.99 / £89.91 per year	£14.99	£4.99
SoundCloud Go (limited catalogue)	£5.99		
SoundCloud Go+ (full catalogue high quality audio)	£9.99		
Spotify Premium	£9.99	£16.99	£5.99
		£13.99 ('duo' service for two accounts)	
Tidal HiFi	£19.99	£29.99	
Tidal Premium	£9.99	£14.99	
YouTube Premium	£11.99	£17.99	£6.99
YouTube Music	£9.99	£14.99	£4.99

⁷⁴ It should be noted that the methodologies for the BPI data have changed over time along with the suppliers of the information (from TNS to Kantar), so these figures do not represent fully like-for-like comparisons.

While some subscribers to high-fidelity services are spending more than £9.99 a month, the average revenue per user (ARPU) is below this level. This is because most of the DSPs offer free trials or reduced prices for limited periods, as well as the beneficial rates of family and student accounts (it should also be noted that Amazon and Apple Music have introduced high-fidelity to their services without increasing their rates). Moreover, the employment of these different price tiers has increased over time. Precise ARPU figures for the UK are hard to calculate, as only a few of the DSPs provide ARPU information and they provide global rather than national figures. Moreover, these global ARPU figures are pulled down due to the fact that emerging markets tend to have lower subscription rates than established markets. It is nevertheless the case that, not only are these ARPU figures significantly lower than the common UK premium rate, they are falling. Spotify, for example, have reported a decline from €6.38 in quarter one 2016 to €4.19 in quarter three 2020 (Mulligan 2020d: 9). Tim Ingham of Music Business Worldwide has used revenue data compiled by the IFPI to suggest that the combined global ARPU rate for streaming was \$1.87 per month in 2020, a decline of 8.8% from the previous year (Ingham 2021c). This is of significance for music creators and rights holders, as it is ARPU rates, rather than individual subscription fees, that provide the gauge of how much revenue is being generated per user of the DSP.

4.1.2 The ‘value gap’

In section 3.2, we outlined discussions relating to what some stakeholders view as the ‘value gap’. This has arisen from the ‘safe harbour’ provisions in European law, implemented in the UK in 2002, which stipulate that DSPs are not liable for copyright-infringing user-uploaded content, although they must remove or disable this content if requested by the rights-holder (EC 2000: art. 14). The European Union’s 2019 Directive on Copyright in the Digital Single Market is imposing stricter obligations on DSPs in respect of such content, but now that it has left the EU, the UK is not implementing this directive (EC 2019: art.17).

In support of arguments that these safe harbour measures enable user-uploading video services to have a strong negotiating hand, BPI have provided figures indicating that video streaming accounted for over 20% of total streaming consumption in the UK 2020, but generated only 5.5% of revenues for recording rights holders (BPI 2020: 17). YouTube, meanwhile, have stated that ‘organic engagement’ with their service provides ‘a launchpad for true commercial success in the industry’ and that it is possible they will become ‘the music industry’s number one source of revenue by 2025’ (YouTube 2020: 1, 4). Figures for revenues generated by YouTube in the UK are not publicly available. However, according to MIDiA figures, the service is currently in second place in global terms: YouTube generated \$2,969m in royalty payments in 2019, while the market leader, Spotify, generated \$5,198m (Mulligan 2020c: 22).

4.1.3 Revenue figures

ERA have provided figures for the years 2014-2019, detailing UK subscription revenues for on-demand streaming services:

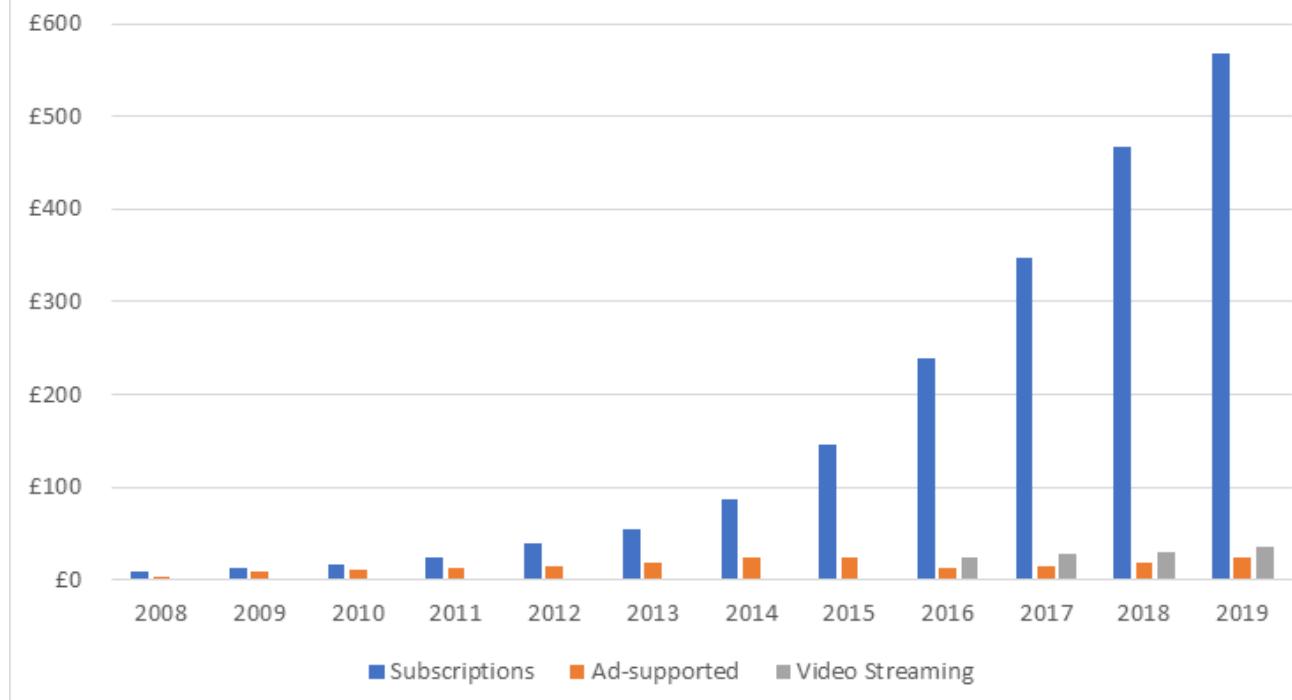
Table 4.3: UK subscription revenues for on-demand streaming services, 2014-19

2014	2015	2016	2017	2018	2019
£167.7m	£253.5m	£406.6m	£601.9m	£812m	£1,045.8m

Source: ERA (2021)

These figures are partly compiled from, and can be correlated with, BPI yearbook data, which is drawn from the accounting information of its recording rights holder members (Crutchley and Green 2020: 11). The BPI information can be regarded as being authoritative, as the trade association's membership includes the three major labels operating in the UK, as well as more than 400 independent music companies.⁷⁵ Some of the activity of DIY artists escapes the BPI's surveys, however (Mulligan 2021). Moreover, the BPI's yearbook data relates only to revenues generated in the UK. The British music industry has a substantial export trade, as documented in UK Music's annual Music by Numbers reports. For the 2019 trading year, UK Music has calculated that music creators gained 31% of their revenues from exports; record companies gained 46%; and music publishers 57% (UK Music 2019: 11, 16, 20). The BPI's own figures, compiled for a report outlining the export trade, indicate that British recorded music generated £489.5m from abroad in 2019, driven largely by the 'convenience and value offered by streaming' (BPI 2021a: 4, 23).

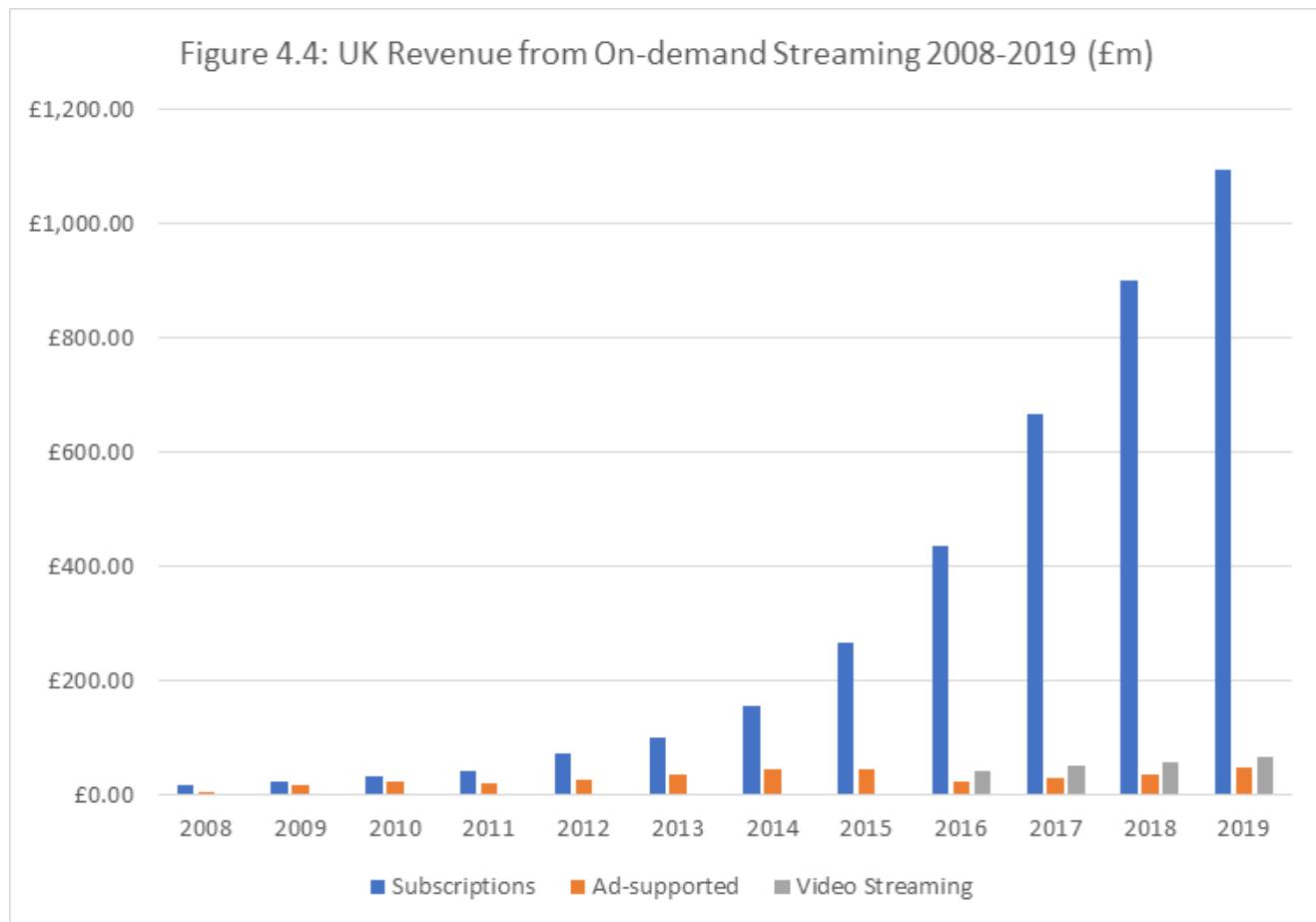
Figure 4.3: UK Recording Rights Holder Revenue from On-Demand Streaming (£m)



Source: BPI, Crutchley and Green (2020: 11)

⁷⁵ The BPI figures are consistent in terms of the total amounts for streaming revenue but there has been variation in respect of their categorizations. Prior to 2016 the subscription figures included ad-supported revenue from services that offered both ad-supported and subscription services, while ad-supported was reserved for services that did not offer subscriptions. From 2016 onwards, the figures are broken down into subscriptions, audio-only ad-supported and video streaming (Crutchley and Green 2020: 11). In respect of YouTube, the BPI figures assign revenues from ad-supported services and YouTube Music Premium to video, and revenues from YouTube Premium to subscriptions.

Working on the basis that recording rights holders had an average 49.2% revenue share in the years 2008-2010, a 55% revenue share in the years 2011-2016 and a 52% revenue share in the years 2017-2019 (see section 4.2.1 below), the BPI figures can be employed to provide an indication of overall UK revenue data for on-demand streaming revenues, as summarised in Figure 4.4.



4.2 Division of revenue between streaming services and rights holders and administrators

4.2.1 Revenue shares

Although the commercial terms between DSPs and rights holders are subject to non-disclosure agreements, there is some consensus that recording rights holders are gaining revenue shares in the region of 50%-55%, and publishing rights holders' revenue shares range between 10%-15%, although any negotiated shares can vary due to the implementation of minima guarantees.⁷⁶ There is also some agreement that the recording rights currently account for about 52%, publishing rights 15%. Additionally, it is possible to construct a sense of when and by how much the percentages have changed.

In the UK, the publishing rights share was set at 8% in 2007, following a decision by the Copyright Tribunal.⁷⁷ PRS for Music announced an increase in the rate to 10.5% in 2009 (PRS for Music 2009). Following on from this, there was the development of 'option three' licensing, which enabled publishers to enter into direct licensing negotiations with DSPs in respect of mechanical rights and to form joint ventures with CMOs in respect of performing rights (Awbi 2016). This resulted in a revenue share of approximately 12% by 2012, and incremental rises thereafter. The initial ambition was to reach a percentage share of 15%. Some publishing rights holders had achieved this by 2016 (Mulligan 2016).

The shares of recording rights holders were originally based on a percentage of the revenue after the deduction of the publishing share. Between 2008 and 2010, recording rights holders were receiving an average share of 55% of the 89.5% that remained after the 10.5% deduction valid at the time, resulting in a 49.2% share overall. In 2011, the calculation was transformed, so that the recording percentage was calculated in relation to the total revenue, resulting in an average 55% share. This average was reduced in 2017 to a 52% share, although this reduction was dependent on the relevant DSP achieving a sufficient volume of subscribers (Ingham 2021a).⁷⁸

⁷⁶ This division applies to YouTube as well as to the audio DSPs. See the exchange between Alex Davies Jones and Katherine Oyama, Director, Government Affairs & Public Policy, YouTube (oral evidence, DCMS Inquiry, 10 February 2021).

⁷⁷ Case no. CT84-90/05, available at: <https://webarchive.nationalarchives.gov.uk/20140603093817/http://www.ipo.gov.uk/ctribunal/ctribunal-decisionorder.htm>

⁷⁸ Although the licensing terms of other DSPs are not available, Apple Music shared with the research team (personal communication, 10 June 2021) a newsletter they distributed to rights-holders stating that they pay the same 52% 'headline rate' to all record labels and claiming that 'other services pay some independent labels a substantially lower rate than they pay major labels'.

4.2.2 Trade revenues

Trade revenues: on-demand DSPs

By combining the revenue share figures with BPI's statistical data it is possible to provide some indication of the trade value of the shares of recording rights holders, music publishing rights holders and DSPs for on-demand streaming for the years from 2008-2019.

The revenue shares in this chapter are based on the following percentages of DSP revenues after VAT is deducted:

- Recording rights holders: 2008 = 50.6%; 2009-2010 = 49.2%; 2011-2016 = 55%; 2017-2019 = 52%
- Publishing rights holders: 2008 = 8%; 2009-2011 = 10.5%; 2012-2013 = 12%; 2014-2015 = 13%; 2016-2017 = 14%; 2018-2019 = 15%
- DSP share (based on the remainder after the recording and publishing rights holders have received their shares): 2008 = 41.4%; 2009-2010 = 40.3%; 2011 = 34.5%; 2012-2013 = 33%; 2014-2015 = 32%; 2016 = 30%; 2017 = 34%; 2018-2019 = 33%

It is important to note that calculating the publishing rights holder share and DSP share on the basis of recording revenues can only provide estimates. This is because there can be significant variation between the 'headline' revenue share figures and the revenues received by rights holders and retained by the DSPs. On the one hand, the DSP's share can be diminished due to minimum per-stream rate guarantees, 'digital breakage' and rights holders charging administration, technical or legal fees (Cooke 2020: 102-103).⁷⁹ On the other hand, the amounts paid to rights holders can be reduced due to transaction costs such as credit card fees.⁸⁰ Moreover, these agreements can affect recording and publishing rights holders in different ways. Ideally, in order to arrive at more accurate data in respect of the on-demand streaming market, publishing rights holders and DSPs would publish annual trade revenue figures.⁸¹

⁷⁹ Rights holders receive agreed advance payments from DSPs. If there is a shortfall between the advance paid and the royalties generated, this is known as 'digital breakage' (a significantly different use of the term to the 'breakage' deduction for faulty goods included in traditional recording contracts). These breakage sums are retained by the rights holders and there is some debate about whether and how a share of this revenue is paid to music creators (Cooke 2020: 101-102). Interviewed for this research project, one member of staff at a licensing hub suggested that the DSP share is reduced to around 25% of revenues 'as a result of per subscriber minima or other forms of minimum that operate over and above a percentage'

⁸⁰ The trade figures for recording rights holders that are quoted by the BPI and utilized in this document are inclusive of these transaction fee deductions. The publishing rights holder figures are calculated in relation to the BPI's figures and do not detail these deductions.

⁸¹ PRS for Music and MCPS provide annual accounting information for their distributions for online music: in 2019 PRS distributed £155m in respect of streaming and MCPS distributed £44m. When combined this is similar to the figure that we have calculated for publishing rights holders from the BPI data (£199m as opposed to the BPI figure of £181m). It is sourced in a different manner, however. The PRS data includes performing rights revenue for streaming from its multi-territorial licensing, but is devoid of UK rights holders' performing rights revenue that has been collected by other multi-territory SPVs. The MCPS data details the domestic streaming reproduction rights revenue that the society has collected but there is also a good deal of this revenue that is collected by publishers directly (see section 2.4.6). It would be desirable for the revenue that publishers derive from direct licensing to be compiled and made available in a similar manner to the BPI's compilation of recording rights holder revenue in its annual yearbooks.

Figure 4.5: UK On-demand Streaming Services
Estimated Trade Value of Revenue Shares 2008-2019 (£m)

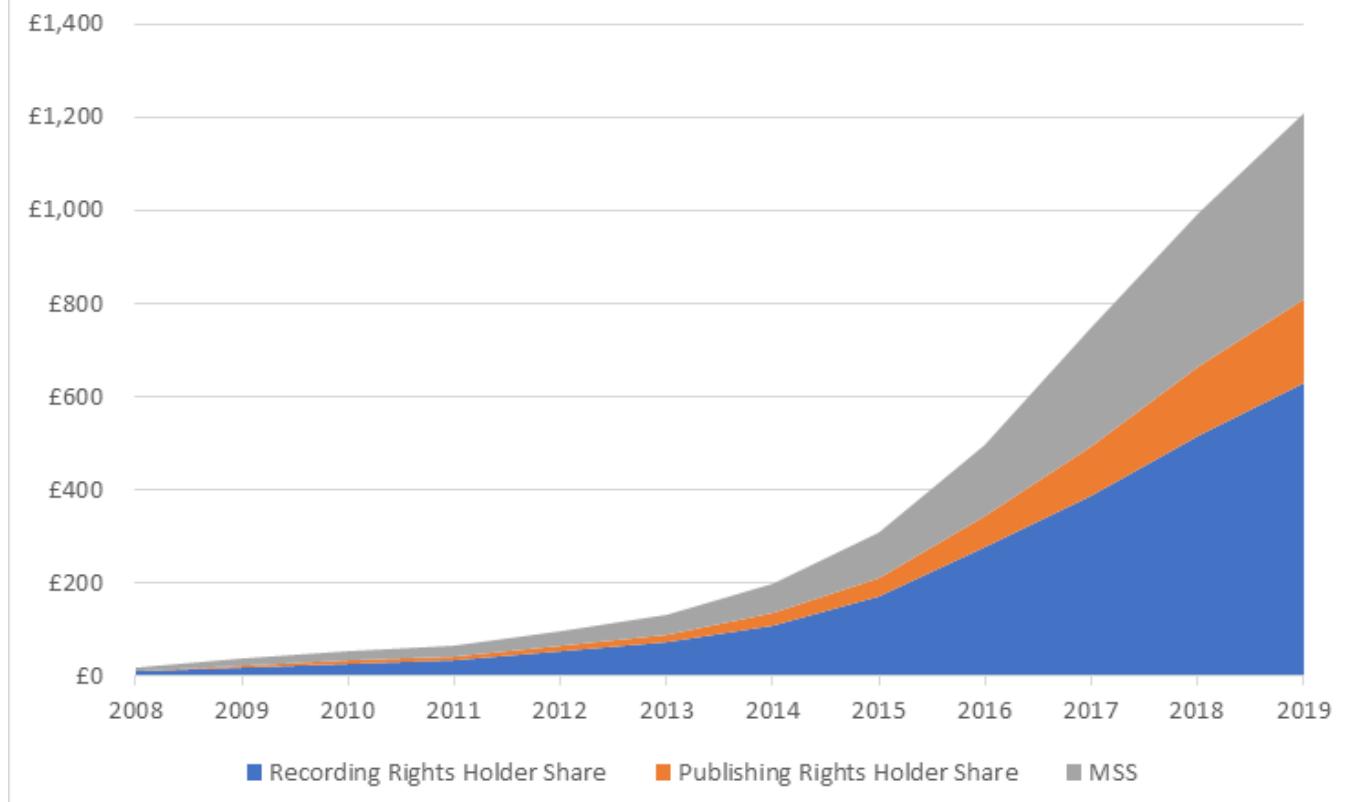


Figure 4.5 illustrates the rapid rise in on-demand streaming revenues, which grew at an increasing rate from 2013-2016 (from 35.5% year-on-year to 60% year-on-year) before slowing down in the period from 2017-2019 (from 50.7% year-on-year to 21.7% year-on-year). While there is growth in the share for publishing rights holders, their share remains lower than the share retained by the DSPs, and significantly lower than the share for recording rights holders, which declined slightly after 2017.

Per-stream rates

As indicated above, the per-stream rates of streaming services are variable. Nevertheless, the BPI's revenue figures can be divided by its streaming activity figures to give an indication of average per-stream rates in pounds sterling from 2012 to 2019. As will be apparent the rate has been fairly stable for some time at 0.011 pounds, in other words just over a penny per stream.⁸²

⁸² The figures in table 4.4 are calculated on the basis that the BPI's revenue figures are representative of the following revenue shares for recording rights holders: 55% 2012-2016; 52% 2017-2019. This figure is then used to calculate the publishing rights holder per-stream rate based on revenue shares of 12% 2012-2013; 13% 2014-2015; 14% 2016-2017; 15% 2018-2019. The DSP share constitutes the remainder once the recording rights holder and publishing rights holder shares have been subtracted.

Table 4.4: Average per-stream rate 2012-2019

	2012	2013	2014	2015	2016	2017	2018	2019
Average per-stream rate (total)	0.027	0.017	0.013	0.012	0.011	0.011	0.011	0.011
DSP share	0.009	0.005	0.004	0.004	0.003	0.004	0.004	0.004
Recording rights holder share	0.014	0.009	0.007	0.007	0.006	0.006	0.006	0.006
Publishing rights holder share	0.003	0.002	0.001	0.002	0.002	0.002	0.002	0.002

The per-stream figures indicated here may appear to be low, particularly when contrasted with the dealer prices of physical recordings or the revenue gained from a single radio broadcast of a recording, but these figures need to be treated cautiously, for example in making comparisons with broadcast and CD revenues. A single radio play on Britain's most popular radio show, BBC Radio 2's Breakfast Show, will generate around £150 in rights holder revenues; the show attracts eight million listeners. If the £150 is divided between the members of this audience, the unit value per listener is £0.00002 (Page 2021: 46). Meanwhile, equivalence with CDs is hard to establish. If a CD with 20 tracks purchased for £10 was played 100 times, the per-play rate would be £0.005 (£10 divided by 2000 plays, half a penny per play); the same-priced CD with 10 tracks played 5 times would equate to a per-play rate of £0.2 (20 pence per play).

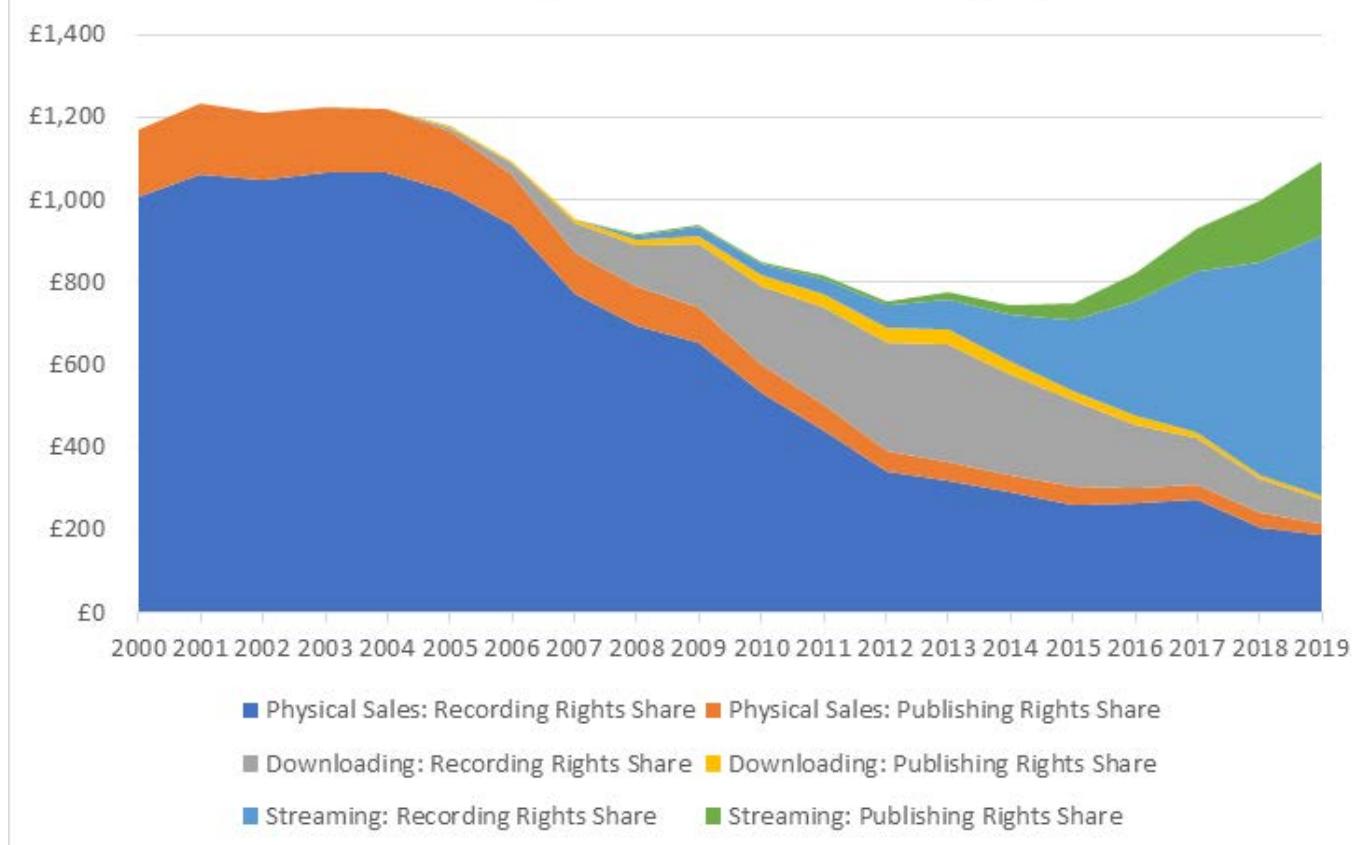
Although the per-stream rate has been fairly stable in recent years, it has declined considerably since figures were first collated in 2012. This is the result of three main factors. First, a decline in the ARPU rate due to increased take-up of free trials, family plans and student packages. The second, more impactful factor, is that the average user is increasing the amount of music they stream. Consequently, as long as ARPU rates remain consistent or are declining, the more popular a streaming service is, the lower its per stream rate will be. A third factor is that, at least according to some commentators, average track lengths are diminishing and/or there is more frequent skipping of tracks (Hesmondhalgh 2021). If this is the case, then these practices will result in a dilution of revenue as they provide consumers with more time to listen to more streams. This third factor has not been effectively analyzed, despite there being some evidence that recordings are becoming briefer (Sutherland 2019).

In relation to total revenues from on-demand streaming in the UK, the declining per stream rate has thus far been more than compensated for by the steady increase in users of streaming services and the money generated by them, either through subscription fees or advertising income. In short, there has been a considerable rise in overall revenue, but the money distributed for each play of a recording has fallen.

Trade revenues: physical sales, downloading and on-demand streaming (2000-2019)

It is possible to use BPI yearbook data to outline the trade value of recording rights holder and publishing rights holder shares in relation to the revenues from physical sales, downloading and on-demand streaming for the years 2000-2019.⁸³

Figure 4.6: Estimated UK Rights Holder Revenues for Physical Sales, Downloading and On-demand Streaming (£m)



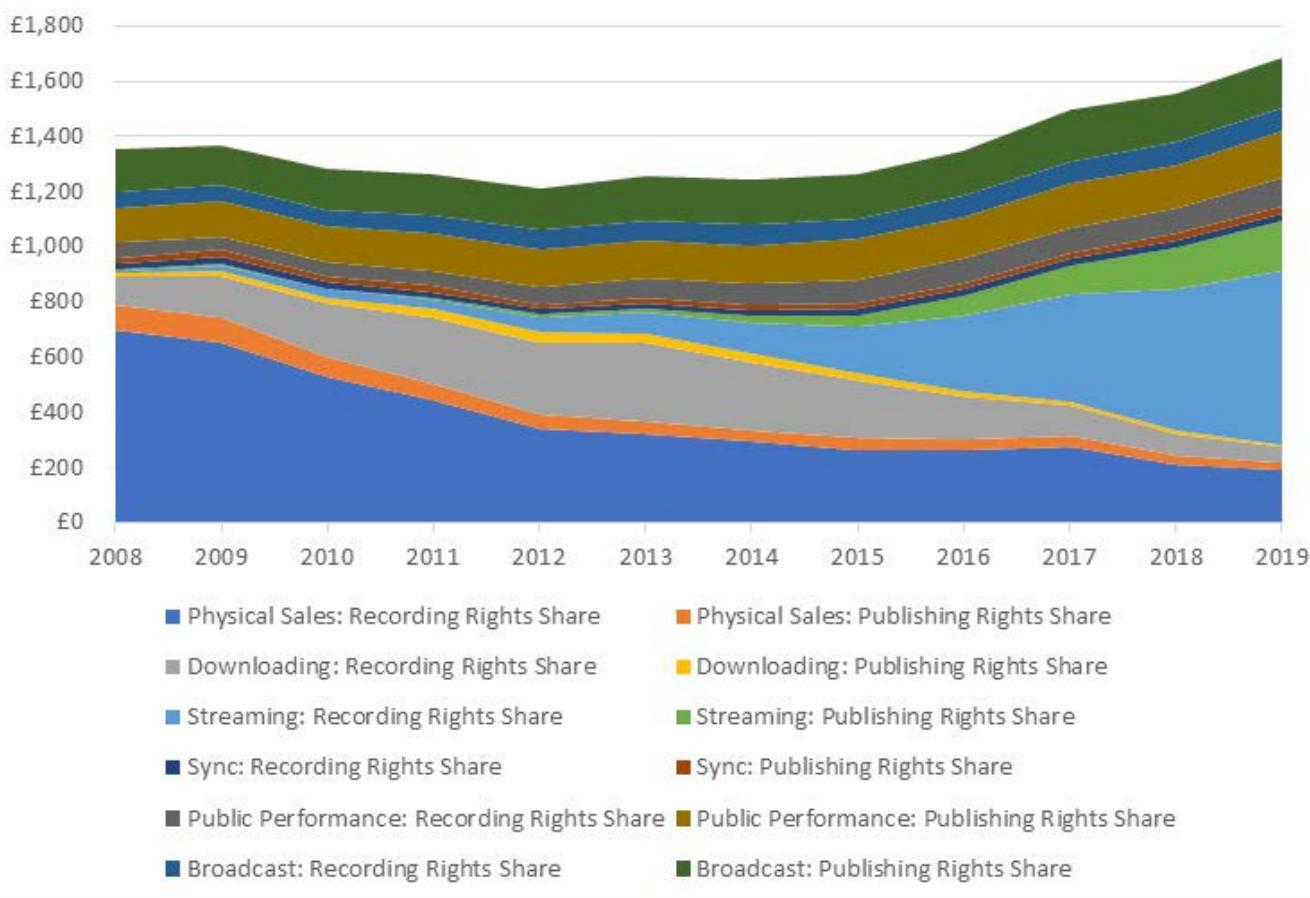
Overall, trade has still not recovered to the level it was at in 2000 (approximately £1,170m), but has nevertheless increased from a low-point of approximately £750m in 2014 to approximately £1,090m in 2019. In 2019, on-demand streaming made up 72% of the revenues for recording rights holders and approximately 84% of the revenues for music publishing rights holders. The difference between the two can be accounted for by the higher percentage of revenues achieved by publishing rights holders for streaming than for downloads and physical sales.

⁸³ The figures are calculated on the following basis: physical sales (publisher revenue calculated as 8% of the retail sales revenues for physical products, which is then subtracted from the recording industry income figure for physical products (see section 2.5.1, and Crutchley and Green 2020: 10, 64); downloading (shares based on a 62% share of revenue for recording rights and 8% share for publishing rights); streaming (shares based on the licensing agreements outlined in section 4.2.1).

Recorded music trade revenues (2008-2019)

For the years from 2008 to 2019, it is possible to expand further and provide an illustration of recording and music publishing rights holder revenues across the main uses of recorded music. This is achieved by incorporating UK revenue figures for sync licensing from BPI yearbooks; public performance and broadcast data for the recording rights from PPL's annual reports; broadcast data from MCPS's annual reports; and public performance and broadcast data for the publishing rights from PRS's annual reports:⁸⁴

Figure 4.7: Estimated UK Rights Holder Revenues for Recorded Music 2008-2019 (£m)



⁸⁴ The sync revenues for the years 2010-2020 are from Crutchley and Green (2020: 11). The years 2008-2010 are from Green (2011: 9), and are based on publishing rights holder revenues being equivalent to recording rights holder revenues. It should be noted, however, that this only holds true for certain sync licensing practices and that sync revenues are likely to be higher for publishing than for recording, particularly when international revenues are borne in mind. Unfortunately, the publishing sector does not provide data relating to direct licensing revenue. The PPL annual reviews for public performance and broadcast are available at PPL 'Reports and Statements' (<https://www.ppluk.com/about-us/reports-and-statements>). The PRS reports for public performance and broadcast are available at PRS 'Track Record'. (<https://www.prssformusic.com/about-us/track-record>). MCPS's reports for public performance and broadcast are not publicly available, but their accounting figures have been communicated to us. The public performance figure for the music publishing rights is arrived at by subtracting the PRS distribution for live music.

To summarise some of the key features of this diagram:

- Overall, trade has increased from approximately £1,350m in 2008 to approximately £1,685m in 2019.
- On-demand streaming is worth 1% of the total revenue in 2008; and has risen to 48% of the total revenue in 2019.
- In 2019, on-demand streaming makes up 58% of the revenues for recording rights holders and is clearly their main source of revenue. Physical sales is the next most valuable revenue stream, providing 17% of revenue, followed by broadcast with 8%.
- In 2019, on-demand streaming makes up approximately 30% of the reported revenues for music publishing rights holders, placing it even with broadcast (30%) and slightly ahead of public performance (28%).
- The difference between the two sets of rights holders can be accounted for by the fact that recording rights holders have a higher proportion of on-demand streaming revenues than they do of sync, public performance and broadcast revenues (see 4.2.3 below).

4.2.3 Rationales underlying the divisions of revenue

The division of recorded music revenue between recording rights holders and publishing rights holders differs between revenue streams:

- Physical sales: approximately 87.5:12.5 in favour of recording rights.
- Downloading: approximately 89:11 in favour of recording rights.
- On-demand streaming: approximately 77.6:22.4 in favour of the recording rights.
- Sync licensing: roughly 50:50 in certain licensing instances.
- Broadcast: roughly 50:50 for radio; weighted in favour of publishing rights for television (see section 2.5.1).
- Public performance: In 2019, UK collecting society revenue provides a ratio 63:37 in favour of publishing rights.

There are several justifications for these splits. In this sub-section, we will attempt to provide data for four of the most pertinent factors: primary and ancillary revenue streams, substitution, risks, and costs.

1. Primary and ancillary revenue streams

Recording rights holders have their largest revenue shares in relation to revenue streams they regard as ‘primary’: physical record sales, downloading and on-demand streaming. Their ‘ancillary’ revenue streams (such as broadcast, public performance and sync) are valuable in their own right but the labels do not regard them as providing the necessary funds to support their businesses. In addition, licensees for these secondary revenue streams have argued that they provide publicity that drives the sales of physical records and downloads, and increases the market for streams, which may provide one of the reasons why recording rights holders have lower revenue from broadcasting and public performance than for sales or on-demand streaming. Physical sales constituted the major share of British recording industry revenue until 2015; downloading at its peak in 2013, constituted a third of British recording industry revenue; on-demand streaming constituted 57.7% of UK recording industry revenues in 2019. In contrast, various ‘ancillary’ revenue streams provide the following trade percentages for UK recording industry in 2019: synchronization licensing (2.6%); public performance (9.1%); broadcast (7.8%).⁸⁵

The music publishing sector, in contrast, does not tend to divide revenue streams along primary and ancillary lines. Reflecting this, its revenue is more evenly spread between on-demand streaming (the primary source of revenue for recording rights holders) and revenue from public performance and broadcast (ancillary revenues for recording rights holders). Our figures for 2019 provide the following percentages:

- On-demand streaming: 30.4%
- Broadcast: 30.4%
- Public performance: 28.8%

Physical sales, downloading and synchronization licensing make up the remainder.⁸⁶

2. Substitution

Arguments about substitution have two strands. The first relates to the nature of on-demand streaming: does it have greatest affinity to record sales or is it more akin to radio broadcasting? The second strand relates to the displacement of revenues.

Recording rights holders have sought to maintain similar divisions of revenue for downloading and on-demand streaming as for physical sales, as they have regarded online delivery as substituting the physical trade. This substitution can be evidenced via the BPI’s trade figures: physical sales revenue declined from £1.2bn in 2000 (£2bn with inflation) to £216m in 2019. Downloading provided some compensation: at its height in 2013, it provided revenue of £284m (£328m with inflation). In 2019, on-demand streaming was worth £629m to the UK recording industry (Crutchley and Green 2020: 11).

Other stakeholders have argued that on-demand streaming is substituting radio broadcasting as a listener activity. Thus, in addition to legislative claims being made to classify streaming in a similar manner to radio (see section

⁸⁵ The calculations for recording rights holders are derived from the following sources: physical sales (minus publishing rights share), downloading, on-demand streaming and synchronization licensing from Crutchley and Green (2020: 11); public performance and broadcast from PPL annual reports.

⁸⁶ The calculations for publishing rights holders are derived from separate sources that have different methodologies, and thus are indicative rather than providing a true comparison. The figures for physical sales, downloading, on-demand streaming and synchronization licensing are derived from Crutchley and Green (2020: 11), the public performance figures are derived from PRS’s annual reports; the broadcast figures are derived from PRS and MCPS annual reports. Ideally for the purposes of research, the publishing sector would make available annual trade figures in a similar manner to the reporting of the recording sector.

3.7), the issue of substitution provides further justification for reorienting the divisions of revenue and the means of remuneration in line with this use of recorded music. To address substitution, we can first turn to collecting society data in respect of broadcast revenues:

Table 4.5: UK Broadcast revenues 2008-19 (£m)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
PRS radio	51.8	48.6	49.5	46.8	47.0	47.4	49.0	47.6	48.8	49.8	50.8	49.8
PRS television	105.1	96.1	96.1	101.6	106.0	113.0	116.0	76.6	75.3	84.8	76.9	81.0
MCPS radio and television	Incl. in PRS totals	?	39.0	51.6	50.7	53.8						
PPL radio	40.7	39.7	41.2	41.1	41.8	41.8	42.6	43.6	44.9	46.3	49.0	50.7
PPL television	17.4	19.4	20.5	25.1	27.6	31.2	31.4	32.3	32.5	33.6	34.6	34.6

Table 4.6: UK Broadcast revenues 2008-19 (£m) Adjusted for inflation

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
PRS radio	69.6	65.7	63.9	57.5	55.9	54.7	55.3	53.2	53.6	52.8	52.1	49.8
PRS television	141.3	130.0	124.1	124.8	126.1	130.5	130.9	85.6	82.7	89.9	78.9	81.0
MCPS radio and television	NA	?	42.8	54.7	52.0	53.8						
PPL radio	50.7	48.4	48.7	46.9	46.6	45.7	46.2	47.1	47.6	47.8	49.7	50.7
PPL television	21.6	23.7	24.3	28.6	30.8	34.2	34.1	34.9	34.5	34.7	35.0	34.6

When inflation is factored in, the PRS figures for radio broadcasting suggest decline, although it should be borne in mind that the figures from 2008-2014 are inclusive of MCPS revenues, while those for 2015-2019 are not. The figures for PPL decline from 2008 through to 2013, but return to earlier levels in 2019. For each of the societies, the figures for television broadcasting demonstrate growth. It should be noted, nonetheless, that broadcast revenue figures are not wholly indicative of audience figures. They are derived from licensing agreements, which are informed by but not wholly dependent on audience share (see section 2.5.1). In the UK, radio listenership is monitored by Radio Joint Audience Research (RAJAR), who have provided the following data in relation to audiences across the first quarters in the years 2013 to 2020. It indicates a slight decline in the proportion of the adult UK population that is regularly listening to the radio:

Table 4.7: Percentage of Adult (15+) UK Population that tunes in to the radio every week

	2013 Q1	2014 Q1	2015 Q1	2016 Q1	2017 Q1	2018 Q1	2019	2020 Q1
	Q1							
Percentage	90.3	90.3	89.3	89.3	89.3	80.2	89.4	88.8

Source: RAJAR Data release Quarter 1 2020

(https://www.rajar.co.uk/docs/news/RAJAR_DataRelease_InfographicQ12020.pdf)

3. Risks

One of the principal justifications for orientating revenue towards recording rights holders is that they have borne financial risks in bringing new music to market. There is general consensus on this point, but the precise impact of this risk is difficult to determine. Although some of the recording rights holders' costs may ultimately be borne by featured artists through the recoupment of royalty payments, the deficit of these costs is not repayable if the recording project fails to make a profit. The recording industry has regularly argued that only one-in-ten recording projects breaks even on the 'upfront label investment', a figure that relates to a broad estimate of the percentage of recorded music investments that are considered profitable by labels after accounting for all of their costs, including advances and featured artist royalties (BPI 2020: 13). We are not aware of clear evidence to support this figure, however, and it should be assessed by considering the extent to which the profits from the minority of successes compensate the losses of those who do not break even.

In the early 20th century, when the publishing sector was leading the market for music, it too promoted statistics outlining its poor financial chances of success (Osborne 2021: 57). This use of success ratios declined as the recording industry rose in prominence, and there has been assumption from recording industry stakeholders that the publishing sector does not bear the same levels of financial risk, and that it has the benefit of the fact that compositions can be covered by multiple artists over a period of time (see section 3.3). A counter argument from the Ivors Academy is that recording artists can solicit high performance fees and generate money from merchandise sales, whereas songwriters only get a minor share of the revenue from live music (Ivors Academy 2020: 11, 26).

While some stakeholders have indicated that there continues to be considerable financial risk for rights holders in the online environment, others have argued that creators are increasingly burdened with their own financial investments. In its written testimony to the DCMS Inquiry, the Ivors Academy noted that 'songwriters, composers and artists are now responsible for early prospective and development work, and shouldering the associated risk and cost' (Ivors Academy 2020: 8). In consequence, there have been calls for the revenue shares for recording and publishing to be more evenly balanced (see section 3.3). The Ivors Academy have provided useful data relating to a case study, which illustrates the financial input that is now demanded of a songwriter (2020: 26). However, as with assessment of the financial risks of rights holders, this is an area where further investigation is required.

4. Costs

A fundamental reason why the revenues for physical sales have been oriented towards record companies rather than music publishers is because record companies have borne most of the costs of production. The recording rights holders' expenditure on manufacture, distribution and packaging is reduced in the online world, however, providing one of the rationales for publishing rights holders to have a larger share of the revenue in relation to on-demand streaming than for physical sales. As indicated above and in section 3.3, there are some publishing rights holders and authors' representatives who suggest that the balance should be tipped further, although the sector is not unified on this subject. These arguments are countered by some, but not all, recording rights holders, who have suggested that while their costs of production might have declined in the online environment, those of marketing and A&R have increased. In return, publishing rights holders have argued that they have witnessed their own increase in A&R expenditure.

This is a difficult area to assess, as the relevant information is usually considered commercially confidential. Nevertheless, by looking at instances where costs have been reported, it is possible to provide some context.

Let us first outline information for the UK recording industry. This is comprised of:

- cost breakdowns from the BPI Yearbooks 1977-1990
- accounting information provided by Britain's major labels to the Monopolies and Mergers Commission (MMC) (a regulatory body replaced by the Competition Commission in 1999 and by the Competition and Markets Authority from 2014) for its 1994 inquiry into *The Supply of Recorded Music*
- accounting information for 2019, supplied by an independent record company to this research project
- Sony Music's 2020 illustration of the profit and loss for a release, which was submitted as evidence to the DCMS Inquiry into *The Economics of Music Streaming*

These sources are summarised in some depth in Appendix 1 to this Report, but we here provide a summary of recorded music costs and profits by percentage:

Table 4.8 Summary of UK recorded music costs and profits

	Manufacture and Distribution	Marketing	A&R and Recording Costs	Publishing royalties	Licence Fees	Other	Overheads	Net Profits
BPI Yearbooks 1977-1990	40.9%	10.3%	22.7% ⁸⁷	8.4%	-	-	14.3%	3.3%
MMC 1989-1993	18.9%	12.4%	41.2% ⁸⁸	5.6%	5.9%	1%	10% ⁸⁹	4.9%
Independent Record Company 2019	16.7%	6.2%	34% ⁹⁰	0.3%	-	-	35%	7.6%
Sony Music 2020	Included in overheads?	30%	35%	Included in overheads?	-	-	25%	10%

⁸⁷ This figure incorporates all featured artist royalty payments gross of recoupment

⁸⁸ This figure incorporates 'artists' royalties' (7.1%), which are the 'amounts payable to artists on the record companies' rosters arising in respect of sales of records in the UK, and are shown gross before any recoupments'; 'matching royalties and other costs' (21.6%), which 'includes royalties payable to artists in respect of the use of copyrights for which royalties etc. [licensing fees for use of copyrights by affiliated companies overseas and third parties in the UK and abroad, including fees for track licensing and synchronization, and PPL and VPL fees] are received by the record companies, together with associated marketing and selling, general and administrative costs'; and 'A&R written off' (12.5%), which 'comprises A&R costs (which include advances to artists, recording costs, video costs, costs of A&R staff, management costs and related expenditure and tour support) not expected to be recouped, and written off to profit and loss account' (MMC 1994: s. 8.15).

⁸⁹ Some overheads in the MMC report are addressed in its other costs categories.

⁹⁰ This figure incorporates featured artist advances and featured artist royalties.

When comparing the cost figures it should be noted that the data has been collated in different ways and includes different categories. Some patterns can nevertheless be discerned:

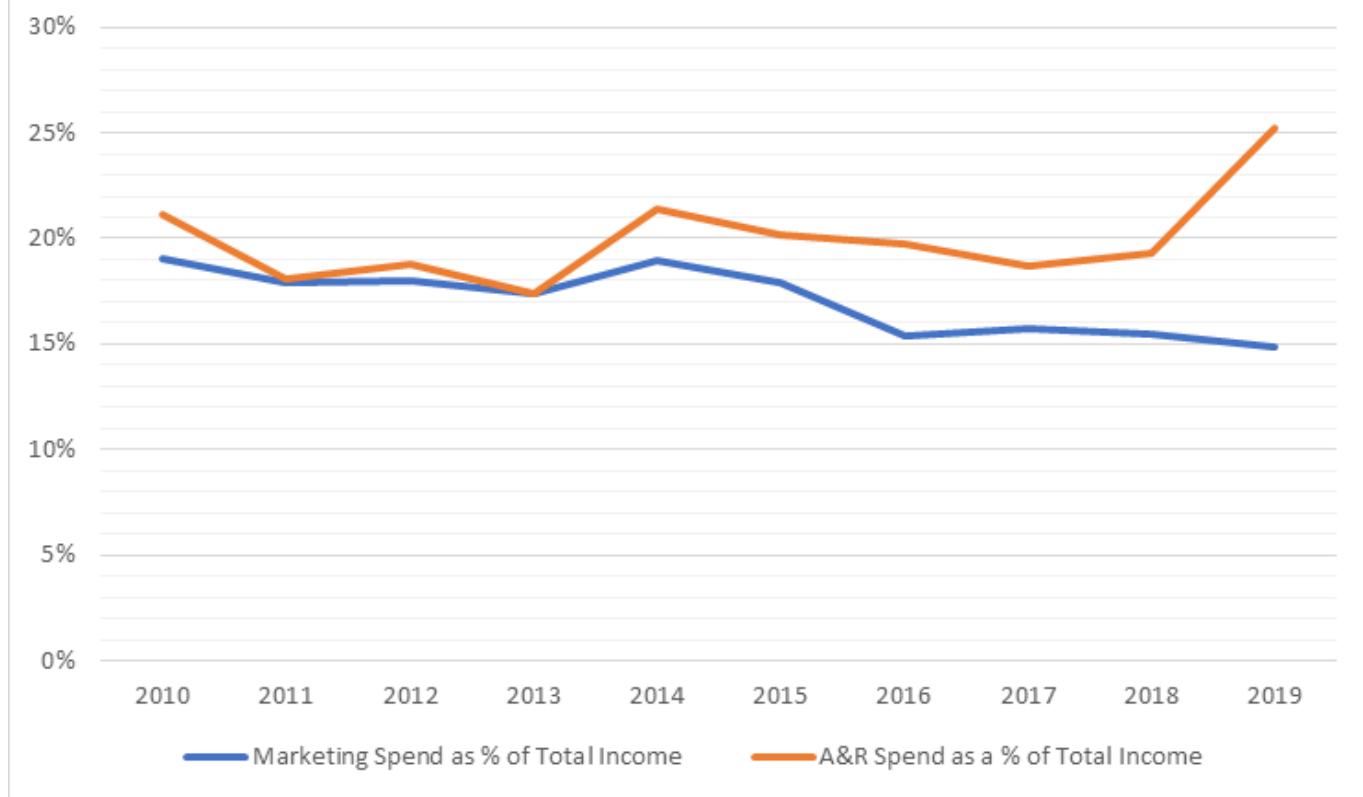
- Manufacture and distribution: these have been significant costs. On average, they were equivalent to 40% of UK record company revenues in the 1970s and 1980s, and 20% of revenues for the major record companies in the 1990s. It is worth noting, however, that the BPI yearbook figures for 1977-1990 are based on published dealer price and that dealer discounts are incorporated within the distribution figures, thus causing some increase in the percentage. The 2019 figures from the independent record company are indicative of its continuing commitment to produce physical products, but those from Sony Music are illustrative of the move from physical to streaming. They are focused on on-demand streaming only and have manufacture and distribution costs of 0%. This is not to say that distribution costs have completely disappeared in the online environment, as there is expense in digital delivery. In respect of Sony's figures, these costs are presumably located in their overheads.
- Publishing royalties: expenditure has decreased. This is primarily because in Britain it is the practice that record companies only pay publishing royalties in respect of physical sales. The publishing royalties for other uses of recorded music are paid by licensees.
- Marketing: the expenditure for major record companies appears to have increased since the 20th century, when it averaged between 10.3% and 12.4%, with the Sony data suggesting a marketing expenditure figure of 30%. It should be noted, however, that the Sony figure is calculated in relation to a hypothetical new release rather than in relation to the company's entire catalogue. In relation to overall spend, the BPI have calculated that marketing accounted for 14.8% of UK recording industry revenue in 2019 (2020: 27) (see figure 4.8 below).
- A&R: particular caution should be urged about comparing these figures side-by-side, as there are significant differences in their compilation. The BPI yearbook, independent record company and Sony figures are inclusive of both advances and royalties. They demonstrate an increase from average 22.7% costs in the period 1977-1990, to contemporary figures of over 30%. The MMC figures are comprised of featured artist royalties from both UK sales and licencing revenues from the UK and abroad, as well as A&R expenditure that has been written off.⁹¹ Contemporaneously, the BPI calculate UK record company A&R expenditure in a manner that includes unrecouped advances but not royalty payments to featured artists, and have indicated rising expenditure on A&R over the past decade, reaching 25.2% of industry revenue in 2019 (BPI 2020: 28) (see table 4.8 below).⁹²

⁹¹ In contrast, the BPI currently provide A&R data relating to UK revenues only. Nevertheless, a fairly accurate comparison between the MMC data and current BPI data can be drawn by comparing the MMC A&R expenditure figures as a percentage of net sales of UK records with the BPI's A&R expenditure figures as a percentage of UK revenues from physical sales, downloads and on-demand streaming. By this measure, the MMC A&R average for 1989-1993 is 37.7%; BPI's figure for 2019 is 30%.

⁹² The BPI has provided us with a breakdown of A&R expenditure figures for 2019. This has some similarity to the MMC's A&R expenditure figures for 1989-1993, detailed as follows:

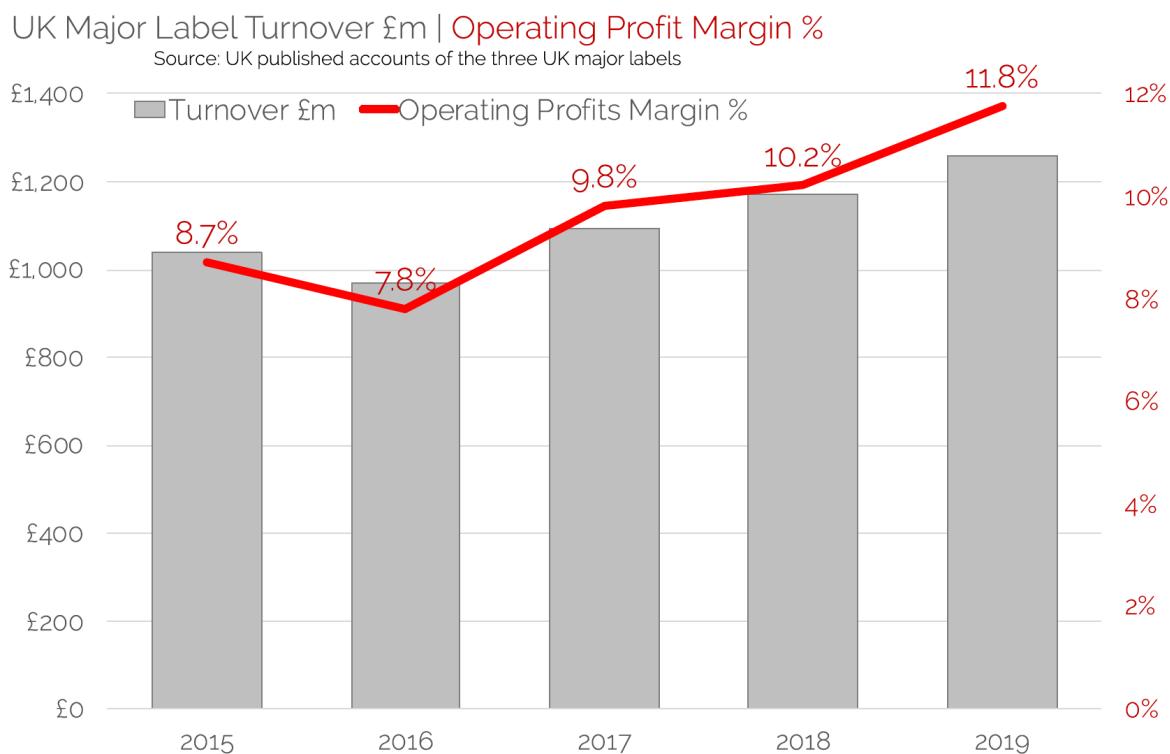
Advances: 56.8% of A&R costs/14.2% of revenues (MMC 13.4%)
 Recording and origination: 12% of A&R costs/3% of revenues (MMC 5.7%)
 Video costs: 16% of A&R costs/4% of revenues (MMC 1.1%)
 Staff overheads 8.4% of A&R costs/2.1% of revenues (MMC 1.8%)
 Tour support 1.6% of A&R costs/0.4% of revenues (MMC 0.4%)
 Other 5.2% of A&R costs/1.3% of revenues (MMC 1.4%)
 Total = 100% of A&R costs/25% of revenues (MMC 23.8%)

Figure 4.8: UK Record Company Marketing and A&R Spend
2010-2019 (BPI Data)



- Profits: for some record companies these appear to have witnessed a proportional increase.⁹³ The late twentieth century figures from the BPI and MMC indicate profits of 3.3%-4.9%, which can be contrasted with the independent record company's 7.6% profit in 2019. The written testimony provided by the BPI to the DCMS Inquiry into the Economics of Music Streaming suggests an average pre-tax UK record company profit in relation to streaming subscription revenues of 5.1% (2020: 26). In his written submission to the Inquiry, the economist Will Page calculates that the operating profit for the UK's three major labels has risen from 8.7% in 2015 to 11.8% in 2019 (Page 2020: 9-10). He also submitted the following chart, based on accounting information of the three major companies:

⁹³ Rob Stringer, CEO of Sony Music: 'The good news is that our [profit] margins are way better when compared to the last great era of profit 20 years ago; our margins are amazing now. Revenue, profit margin, market share, all of those things are a [balancing] act. At Sony [Corp], margin is really important and our margin is excellent. Are we perfect? Of course not, we have other areas to improve [in] — but the margin is not an issue' (Ingham 2019b)

Figure 4.9: UK major label turnover and operating profit margin, 2015-19

Source: Written evidence submitted by Will Page, DCMS Inquiry (2020: 10)

It is additionally possible to provide some global perspective on costs and profits, as the Warner Music Group (WMG) has provided accounting information in the periods when it has been a public company:

Table 4.9 Summary of WMG recorded music costs and profits

	Manufacture and Distribution	Marketing	A&R and Recording Costs	Publishing royalties	Licence Fees	Other	Overheads	Net Profits
WMG 2008-2010 ⁹⁴	24.2% ⁹⁵	18.4%	25.2% ⁹⁶	Included in A&R costs	2.8%	-	15.7%	13.6%
WMG 2018-2020	23.5% ⁹⁷	16%	30.7% ⁹⁸	Included in A&R costs	-	-	18%	12%

94 WMG's financial year runs from 1 October to 30 September

95 This figure incorporates costs associated with 360-degree deals

96 This figure incorporates featured artist advances, featured artist royalties, publishing royalties, studio producer royalties and artwork and liner notes for album releases

97 This figure incorporates royalty costs associated with distributing products of independent labels and costs related to WMG's artist services business

98 This figure incorporates featured artist advances, featured artist royalties and publishing royalties

- Manufacture and distribution: the WMG figures represent a decline in comparison with UK expenditure in the 1970s and 1980s, but an increase on UK data for the 1990s. They are problematic for comparative purposes, however, as they include royalty costs associated with its distribution activities for other labels, the costs relating to its artist services business, and/or the costs associated with 360 deals.
- Marketing: WMG's 21st century expenditure represents an advance on British companies' expenditure in the 20th century, but it nevertheless remains at less than 20% of revenue. Moreover, WMG's proportional expenditure on marketing has decreased from the physical/downloading era of 2008-2010 to the on-demand streaming era of 2018-2020. The IFPI have suggested a contemporary global average marketing spend of approximately 10% of revenues.⁹⁹
- A&R: WMG's figures demonstrate an increase from 2008-10 to 2018-20, as well as an increase on UK expenditure in the 20th century. The WMG figures are not directly comparable with UK data, however, as they include publisher royalties, as well as the advances and royalties for their recording artists. IFPI have suggested an average contemporary global A&R expenditure figure of 24%.¹⁰⁰
- Profits: WMG's global figures of 13.6% (2008-2010) and 12% (2018-2020) are similar to the contemporary operating profits of the major labels in the UK and are higher than UK record company profits in the 20th century.

Music publishing revenues, costs and profits

Having addressed the recording industry, we now turn to music publishing revenues, costs and profits. Figures published by UK Music in its annual reports suggest that, although Britain's music publishing sector has lower revenues than the recording sector, it has similar expenditure on A&R in monetary terms. In 2011, British record companies invested £162.9m ('almost 20% of record label revenues'), while in the following year British music publishers spent £132.6m on 'investment in new talent', amounting to around a third of their revenues (UK Music 2013: 19, 43). By 2014, the record companies' A&R expenditure had risen to £178m (representing 20.3% of BPI's reported revenues for that year) and the publishers' A&R expenditure was £162m (UK Music 2015: 5). For 2014, UK Music also provided marketing expenditure for the recording sector, which amounted to £157m (17.9% of revenue). The publishers' spend on marketing was not reported.

UK Music have not provided details for other years. Moreover, Britain's music publishing sector does not provide annual revenue data in the same manner that the BPI does for recorded music.¹⁰¹ As a result, there is a paucity of information. This makes it difficult to assess revenues, costs and profits for music publishing and how they have changed over time. We provide detail below of the global publishing accounting information for WMG, one of the few companies to make its accounting figures publicly available. In order to more fully assess the appropriateness of revenue shares for recording rights holders and publishing rights holders further accounting information is required. There is also a need to disaggregate on-demand streaming from other sources of revenue.

Annual Reports of WMG break down the company's global revenue into digital (streaming, downloading and other digital services), performance (broadcast and public performance, including live music), mechanical (physical products), sync, and other (sheet music and other uses). The company's publishing costs are broken down into A&R, marketing and administration:

⁹⁹ The IFPI has reported combined figures for A&R and marketing of 26% in 2011, 27% in 2013, 27% in 2015 and 33.8% in 2017. Tim Ingham has separated these figures to suggest that the marketing spend was 10% in 2011, 11.4% in 2013, 10.1% in 2015, and 10% in 2017 (2019a).

¹⁰⁰ Utilizing the IFPI's combined figures for A&R and marketing, Ingham has suggested that the A&R spend was 16% in 2011, 15.6% in 2013, 16.9% in 2015, and 23% in 2017 (2019a).

¹⁰¹ The UK Music reports do not provide detail on how the figures have been compiled. The BPI have indicated to us, however, that whereas the recording industry's A&R data includes unrecouped advances but not royalty payments, the music publishing information might include both advances and royalties.

Table 4.10: WMG: Publishing Revenues 2008-2010 and 2018-2020 (£m)¹⁰²

	2008	2009	2010	Average % of revenues 2008-10	2018	2019	2020	Average % of revenues 2018-20
Digital	£40	£54	£59	8.8%	£237	£183	£142	27.5%
Performance	£243	£226	£207	38.3%	£212	271	£337	43.2%
Mechanical	£225	£192	£177	33.6%	£72	£55	£48	9%
Sync	£99	£97	£102	16.9%	£119	£120	£119	18.3%
Other	£21	£13	£11	2.5%	£13	£14	£11	2%
Total Publishing	£628	£582	£556		£653	£643	£657	

Table 4.11: WMG: Publishing Costs and Profits 2018-2020 (£m)

	2008	2009	2010	Average % of revenues 2008-10	2018	2019	2020	Average % of revenues 2018-20
A&R Costs¹⁰³	£400	£359	£34	61.8%	£425	£404	£418	63.8%
Selling and Marketing Costs¹⁰⁴	£2	£2	£2	0.3%	£2	£2	£2	0.3%
General and administrative expenses	£63	£60	£67	10.8%	£74	£76	£85	12%
Net Profit	£163	£161	£153	27%	£152	£161	£152	23.8%

Here is a summary of the WMG data:

- In the 2008-2010 period WMG gained 82% of its music revenue from recording and 18% from music publishing; in the 2018-2020 period it gained 85% of its music revenue from recording and 15% from music publishing
- Publishing has witnessed a transformation in its sources of revenue: mechanical rights contributed 34% in 2008-10 and 9% in 2018-20; digital contributed 9% 2008-10 and 28% 2018-20. Despite this, the overall revenues for publishing have remained fairly consistent
- The A&R costs for recording constituted 25% of the total recording revenue in 2008-2010 and 31% of the total recording revenue in 2018-2020. In contrast, the A&R costs for publishing (made up of royalties and recoupable advances) constituted 62% of the total in 2008-10 and 64% of the total in 2018-20. The recording division's lower A&R percentage does not necessarily mean it is more profitable than publishing as a whole, as the publishing division does not have costs of production and distribution
- The music publishing division spends a considerably lower proportion of its revenue on marketing than the recording sector does: 0.3% in 2008-10 and 2018-20, as opposed to the recording division which devoted 18% (2008-10) and 16% (2018-20) of its costs to marketing.¹⁰⁵
- The publishing division in the WMG appears to have greater percentage operating profits than the recording division, but contributes less to the company financially.¹⁰⁶

102 WMG's financial year runs from 1 October to 30 September.

103 These are described as 'the costs associated with (i) paying royalties to songwriters, co-publishers and other copyright holders in connection with income generated from the uses of their works and (ii) signing and developing songwriters' (WMG 2021: 46)

104 These are described as 'the costs associated with selling and marketing, general overhead and other administrative expenses' (WMG 2021: 46)

105 There is nevertheless evidence that the streaming environment has led some publishers to increase their marketing spend (Forde 2021)

106 Will Page: 'For songwriters and publishers, PRSforMusic reported around 50% growth in total collections between 2015 and 2019, with online revenues up over 300% – both outpacing the equivalent growth rates in the recorded music sector many times over' (2020: 9)

4.2.4 Summary

Let us now summarise some key points from Section 4.2 as a whole. The information outlined above suggests that the recording industry has been correct in viewing on-demand streaming as substituting physical sales, and on these grounds the protection of its vested interests might be justified. There is also evidence that the publishing share of revenue for on-demand streaming has increased since 2008.

In relation to costs, the view of the recording industry could possibly be challenged, as there is some evidence that the decline in the costs of manufacture and distribution have not been offset by a matching increase in the costs of marketing and A&R. Nevertheless, further data is required to support this case. There is also a need for more data in relation to the other rationale that has been argued in respect of revenue shares.

The division of revenue between recording rights holders and music publishing rights holders clearly has a bearing on the earnings of music creators. Any change would recalibrate the shares going to recording artists and studio producers on the one hand, and those going to composers and lyricists on the other. It is the latter group that is desirous of change at this level, however, as it would provide the main means by which they could increase their proportional share. As detailed in the section below, composers and lyricists have a limited margin in which to increase their royalty rates. In contrast, the lower average royalty for featured artists provides them with greater room to increase this rate at contractual level. Consequently, while composers, lyricists and their representatives have raised arguments about costs and analogies in relation to rights holder shares, recording artists and their representatives have more commonly raised the arguments outlined above in relation to their royalty payments.

4.3 Division of revenue between rights holders/administrators and music creators

4.3.1 Divisions of revenue

It is possible to use BPI yearbook data as outlined in section 4.2 above to calculate the approximate divisions of revenue that record companies, featured artists, studio producers, music publishers, composers/lyricists, CMOs and DSPs receive. Some caveats need to be made before doing so, however:

- although it is possible to utilize industry information to establish the average royalty rates being offered in contemporary deals, the payments for music creators vary widely. This is particularly the case for featured recording artists, whose royalties can range from single digit percentages to 100% of the recording rights revenue;
- music creators with older contracts can have inferior terms to those with recently negotiated recording contracts. This can have an effect on median royalty rates, particularly in periods where sales or usage of back catalogue are strong;
- royalty payments can be subject to a number of reductions and deductions, such as monies withheld in lieu of faulty products and lower rates if the work is being advertised on television. Although some of these clauses have been removed from contemporary contracts, they remain present in many longer-term deals, though in some cases they may not be applied to income from on-demand streaming;
- the advances paid to music creators are commonly in excess of royalty payments, as the majority of creators do not recoup. As such, the share of revenue paid by rights holders to creators can often be higher than the royalty rate;¹⁰⁷
- revenue data might be inaccurate, incomplete or missing and therefore payments cannot be processed. Where ownership, authorship or performer details cannot be identified, collection society revenue is ultimately distributed on an analogy basis;¹⁰⁸
- the distribution of revenues is not always accurate. Moreover, the need for creators to audit their payments can be thwarted because the NDA agreements between DSPs and rights holders make it hard to access source data (Colin Young, oral testimony DCMS Inquiry);
- the non-featured performers' shares detailed in figures below are based on an assumption that most recordings feature some form of session work. There are, however, plenty of recordings that are made by featured artists alone. As such, in order to accurately gauge the division of public performance and broadcast revenue between featured artists and non-featured performers, data from PPL is required.

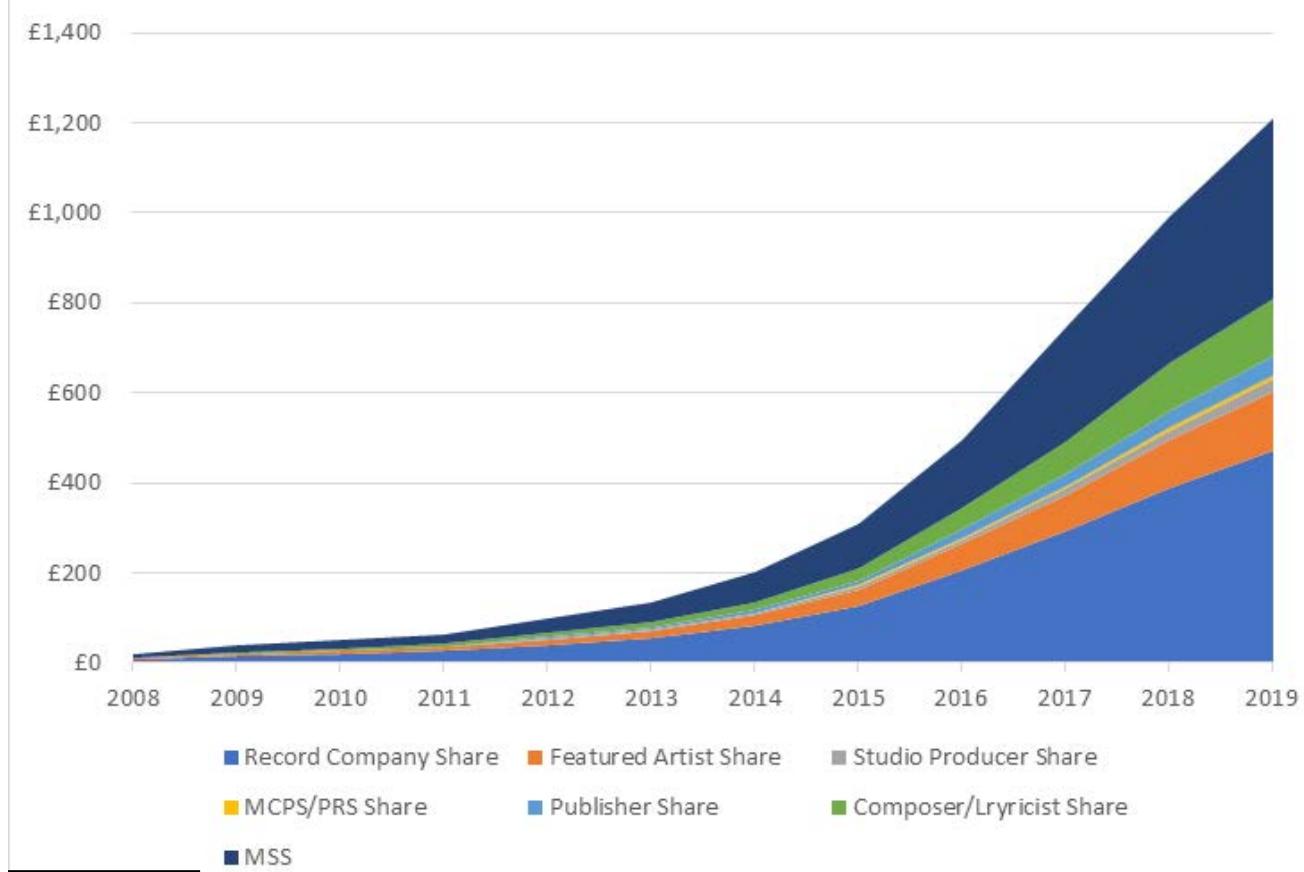
¹⁰⁷ To accommodate unrecouped advances in its own accounting of streaming revenue, the BPI has increased the royalty rate from an average 25% in the exclusive recording contract to the 31% of revenues that the organization calculates is paid out (BPI 2020: 25-6).

¹⁰⁸ Graham Davies of the Ivors Academy has estimated £100m worth of unallocated revenue in the publishing sector (Oral evidence, DCMS inquiry). Moreover, while this revenue is eventually distributed after a fixed period of time and in accordance with collecting societies' distribution rules, there are disputes about the justice of the allocation. It tends to be allocated, pro rata, to those who have already been accounted to, rather than being distributed to music creators whose data is mismatched.

Divisions of revenue: on-demand streaming (2008-2019)

The following chart is based on the rights holder revenues outlined in sections 2.5 and 4.2. Featured artists are regarded as having a 25% streaming royalty in respect of the recording rights share, which is reduced by 4% to account for the studio producer's royalty.¹⁰⁹ Songwriters and lyricists are regarded as having a 75% streaming royalty out of the publishing rights share, which is effective after PRS's administration rate has been deducted:¹¹⁰

Figure 4.10: Divisions of Revenue for On-demand Streaming 2008-2019
(£m)



¹⁰⁹ The 25% royalty has been described as the 'median' rate emerging from testimony to the DCMS Inquiry into The Economics of Music Streaming (Sony Music 2021: 1). It has also been reported as being the average royalty rate of the major record companies for their exclusive recording contracts (Ingham 2019c), although David Joseph, the Chairman and Chief Executive of Universal Music UK & Ireland, has suggested that the 'majority' of featured artists receive 'between 20% and 25%'. Tony Harlow, Chairman and Chief Executive Warner Music UK, has stated that the majority of contracts at his company offer a 'similar' average range to this (oral testimony, DCMS Inquiry). 25% is also the suggested base rate of some independent companies (oral testimony of Rupert Skellett, DCMS Inquiry). Music industry accountant Colin Young has indicated that the 'going rate' is 24% (oral testimony, DCMS Inquiry). A higher rate of 30% has been reported as being available for 'established artists' (CC Young 2020: 7). Conversely, featured artists with older recording contracts have been reported as receiving royalties in the region of 15%-20% (oral testimony of Tom Gray and Ed O'Brien, DCMS Inquiry). In addition, the 'digital deals comparison calculator' provided by the Music Managers Forum (MMF) suggests a lower average royalty rate for contemporary recording contracts: 17% for deals offered by major labels; 20% for those offered by independent companies (MMF n.d.). Although a variety of different recording agreements and royalty rates are available (see section 2.5.2.), the exclusive recording contract lies behind the majority of revenues generated by the recording industry. Mark Mulligan has indicated that 'masters artists' (i.e. those who assign or license their sound recording copyright to a record company), many of whom will have exclusive recording contracts, are responsible for 92% of industry revenues (2019a: 13). In the UK, the major record companies had a combined 75% market share in 2019 (Sutherland 2020: 26). The 4% royalty for studio producers is taken from Ann Harrison's industry guide, Music: The Business (2017: 153). It is also the figure quoted by CC Young in written testimony to the DCMS Inquiry (2020: 7). It should be noted, however, that there are featured artists who produce their own recordings and who therefore will not be subject to this percentage deduction. Moreover, the producers' royalty rate can be variable, depending on whether it is calculated as a percentage of the overall recording revenues or as a percentage of the share that the featured artists receive.

¹¹⁰ The average UK royalty for composers and lyricists (other than for some cover version and synchronization licences) has been 'at least' 70% since the late 1990s, and is now commonly in the region of 75%-80% (Harrison 2017: 141). In written evidence to the DCMS Inquiry into The Economics of Music Streaming, BMG suggested an average royalty of 75% (2020: 6), while AIM (2020: 8) and the Ivors Academy suggested 80% (2021: 2). In some instances, the royalty rate has now exceeded this. The overall share for composers and lyricists tends to amount to the same whether the payment is distributed to them directly by the publisher or whether part of the royalties come via PRS, whereby the 50% direct payment to the composer/lyricist is supplemented by a share of the publisher's payment (see section 2.5.2).

Divisions of revenue: physical sales, downloading, on-demand streaming (2000-2019)

It is possible to contextualize the information in the section above by adding the other ‘primary’ revenue streams for recorded music: physical sales and downloads. To do so, the streaming information for the preceding chart is supplemented by the following information:

- Physical sales: figures are based on featured artists receiving an 17.5% royalty from the total dealer price revenues (100% of net sales), from which 4% is deducted for the studio producer’s royalty;¹¹¹ publishing rights holders receive 12.5% of the recording revenues. This is subject to a 10% MCPS commission fee, after which the revenue is divided according to a common publishing deal in which the composer/lyricist has 75% of the remaining revenue and the publisher 25%.
- Downloading: figures are based on recording rights holders receiving 88.6% of the rights holders’ revenues, out of which featured artists have a 20% royalty,¹¹² which is reduced by 4% to account for the studio producer’s royalty; music publishing has 11.4% of the rights holders’ revenues,¹¹³ which is subject to a 10% administration rate/commission fee for PRS and MCPS (split 25:75), following which composers and lyricists receive 75% of the music publishing share.

Featured artists’ royalty rates for physical sales, downloading and streaming do not work from the same base. Therefore, further clarification is required to provide a comparison between the revenue streams:

- With physical sales, featured artists gain an average 17.5% of the total dealer price revenues, or 11.4% of the retail price, if the dealer price is regarded as being 65% of the retail price.
- With downloading, featured artists gain an average 20% of a 62% share of the retail price of the download, amounting to a 12.4% share overall.
- With streaming, featured artists are currently gaining approximately 25% of a 52% share of the subscription revenues, amounting to 13% overall.

Record companies are meanwhile retaining 70% of the dealer price revenues for physical sales (or 45.5% of the retail price for physical sales, based on the dealer price being 65%), based on the deduction of featured artist royalties and publishing royalties. For downloading they are retaining 49.6% of the sales revenues (factoring in featured artist royalties), and for on-demand streaming their share is 39% (factoring in featured artist royalties).

In contrast, a stable royalty percentage of 75% for composers and lyricists results in them receiving different percentages of the overall revenue.

- For physical sales, this equates to 8.4% of the dealer price revenues or 5.4% of the retail sales revenues
- For downloads, it equates to 5.4% of the sales revenues.
- For streaming, it is 10.7% of the subscription revenues.

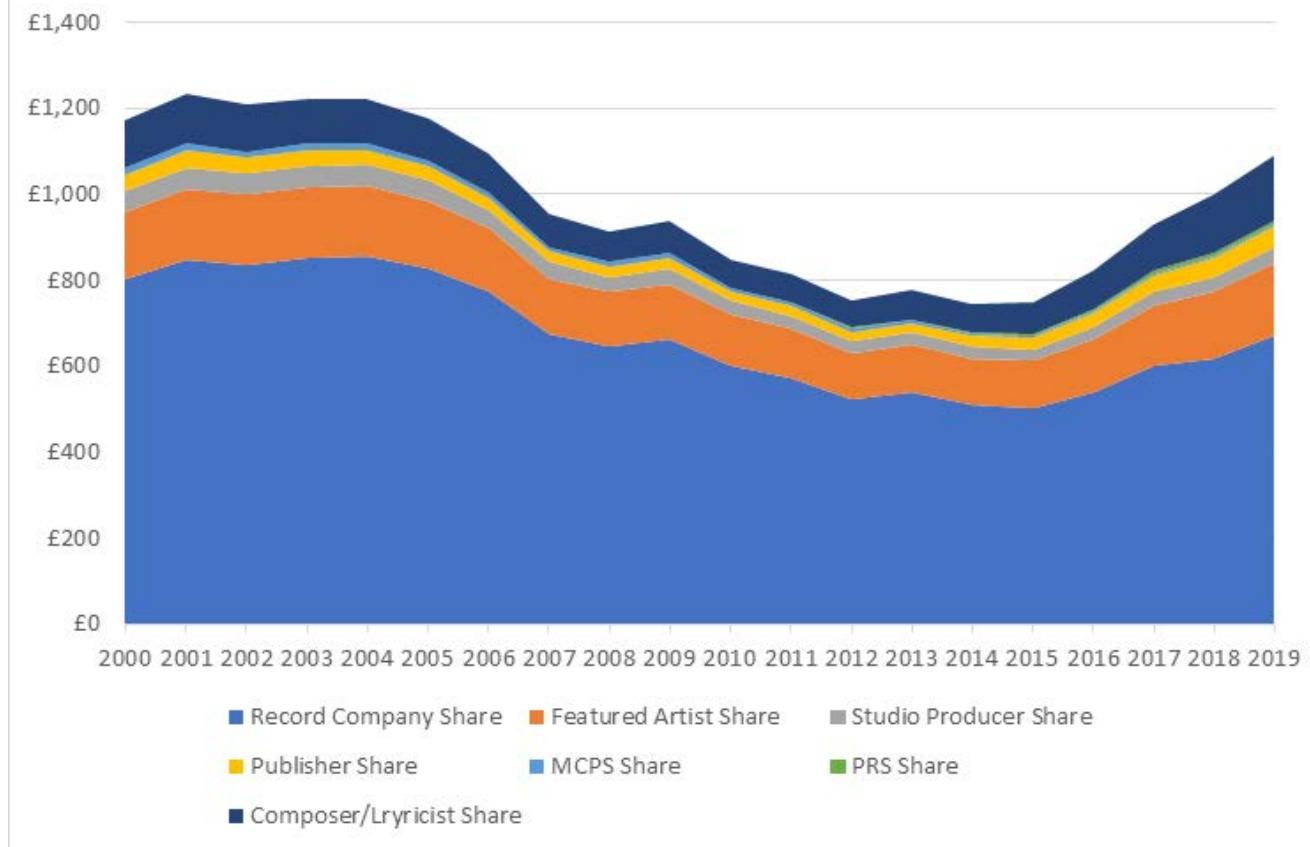
¹¹¹ This royalty rate is based on an exclusive record contract and is taken from Harrison (2017: 98)

¹¹² Although many featured artists have been allocated the same royalty rates for downloading as for physical sales, there is evidence that rates have been raised marginally. Complete Music Update reported that in response to legal challenges to royalty rates, which arose due to the fact that featured artists claimed that downloads should not be classified in the same manner as sales (see section 3.7), there were ‘nominal increases on download royalties for artists (no more than a few per cent)’ (2017). Mark Mulligan has indicated that the featured artist share of recorded income grew by 3% between 2000-2013, the period in which downloading rose to its height (Mulligan 2014: 5)

¹¹³ The split between recording and music publishing rights holders is based on revenue shares of 62% and 8% respectively

These figures are based on the publishing rights' share being 12.5% of the recording industry revenues for physical sales; 8% of the DSP revenues for downloads; and 15% of the DSPs revenues for on-demand streaming. The music publishers' 25% witnesses a proportional increase from 2.8% for physical sales (dealer price) and 1.8% for physical sales (retail price) and 1.8% of the sales revenues for downloads, to 3.6% of on-demand streaming subscription fees.

Figure 4.11: Estimated UK Combined Revenue for Physical Sales, Downloading and On-demand Streaming 2000-2019: Music Creator and Rights Holder Divisions of Revenue (£m)



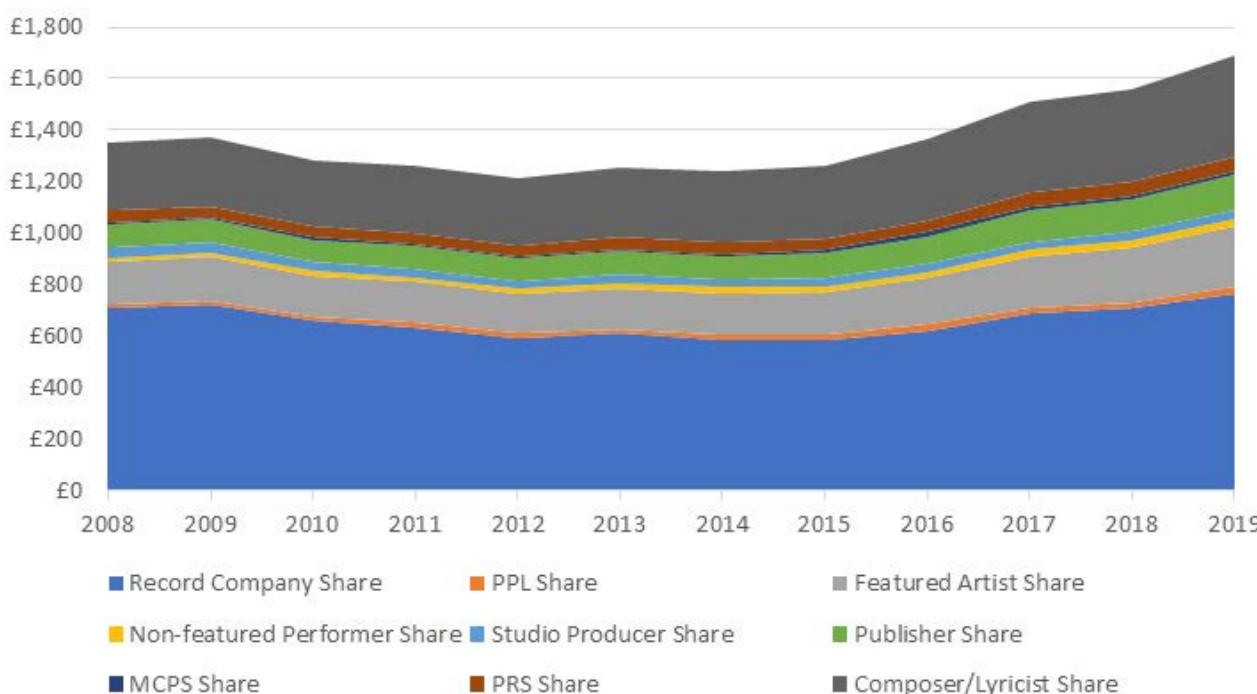
If the royalty rates of 17.5% for physical sales, 20% for downloads and 25% for on-demand streaming represent a realistic average, then we can draw the following conclusions:

- the total revenues for featured artists appear to have grown: from indicative figures of £160m in 2000 to £170m in 2019.
- If the 4% average royalty for studio producers has remained stable, their revenue has declined from indicative figures of £45m in 2000 to £35m in 2019.
- If the royalty rate of 75% represents a realistic average, the total revenues for composers and lyricists can be illustrated as having increased considerably from indicative figures of £110m in 2000 to £150m in 2019. This is because publishing rights have a higher revenue share for on-demand streaming than for physical sales and downloading.

Divisions of revenue: physical sales, downloading, on-demand streaming, sync, public performance and broadcast (2008-2019)

For the period from 2008-2019, the revenues for on-demand streaming can be contextualized further by adding the 'ancillary' revenues for recorded music (see section 4.2.3): sync licensing, public performance revenues and broadcast revenues:¹¹⁴

Figure 4.12: Estimated UK Revenue for Physical Sales, Downloading, On-demand Streaming, Sync, Public Performance and Broadcast : Music Creator Shares and Rights Holder Divisions of Revenue 2008-2019 (£m)



¹¹⁴ The figures for synchronization licensing, broadcasting and public performance are based on the following calculations:

- Sync licensing (derived from BPI yearbooks): 50:50 split between recording rights and music publishing rights (Cooke 2020b: 52). It should be noted that the BPI figures do not include sync deals that are entered into directly with featured artists and therefore the featured artist and studio producer share could be higher. Correspondingly, this means that the composer/publisher revenues could also increase. In addition the practice of using a cover version in place of an original recording (see section 2.5.1) might further raise the revenue attributable to publishers and composer/lyricists:
 - Featured artist royalty = 46% of recording rights revenue (50% royalty rate minus 4% studio producer royalty)
 - Studio producer royalty = 4% of recording rights revenue (subtracted from featured artist royalty)
 - Record company share = 50% of recording rights revenue
 - Composer/lyricist royalty = 65% of the music publishing rights revenue (Harrison 2017: 138)
 - Music publisher share = 35% of music publishing rights revenue
- Broadcast and Public Performance (derived from PRS, MCPS and PPL annual reports):
 - PPL administration rate = 14% of recording rights revenue
 - Featured artist royalty = 32.5% of recording rights revenue minus 14% PPL administration
 - Non-featured performer royalty = 17.5 of recording rights revenue minus 14% PPL administration
 - Record company share = 50% of recording rights revenue minus 14% PPL administration
 - MCPS/PRS administration rate = 15% of music publishing revenue
 - Composer/lyricist royalty = 75% of music publishing rights revenue minus 15% PRS administration
 - Music publisher share = 25% of music publishing rights revenue minus 15% PRS administration

This chart represents a picture of recovery and growth for rights holders, administrators and music creators: there is a dip between 2009 and 2012 when the physical market declines and downloading does not make up for this shortfall. After 2014, the overall market increases as on-demand streaming becomes dominant. In 2016, the revenue exceeds the figure for 2008, and it continues to rise thereafter. Overall, the revenue increases by approximately 25% between 2008 and 2019. Let us again compare developments for the different groups of music creators:

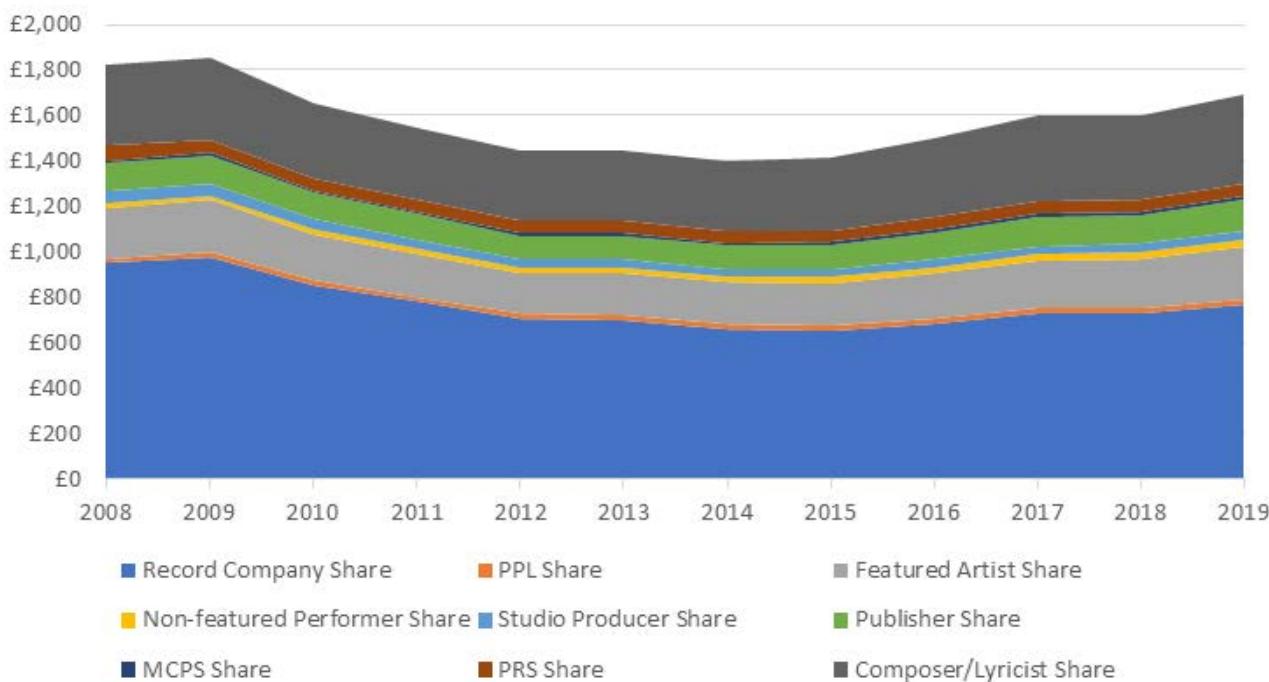
- If the royalty rates of 17.5% for physical sales, 20% for downloads and 25% for on-demand streaming represent a realistic average, the total revenue for featured artists has grown from indicative figures of £165m in 2008 to £235m in 2019, an increase of 42%. This is ahead of the overall increase in revenues, and is ahead of the record companies' revenue increase, which is 8% between 2008 and 2019.
- The total royalty revenue for non-featured performers has increased by 65%, due to the rise in PPL revenues (the revenue from session fees is not accounted for in this graph, but the agreed standard rate for a three-hour session has increased from £113.50 in 2008, to £120 in 2011, to £130 in 2019).
- If the 4% average royalty for studio producers has remained stable, their overall royalty revenue has increased by an indicative 1%.
- If the royalty rate of 75% represents a realistic average and the calculations of revenue divisions are broadly correct, the total revenue for composers and lyricists has grown from approximately £265m in 2008 to £395m in 2019, an increase of 49%. The revenue for music publishers has increased by a similar rate of 46%. These increases are reflective of the publishing rights share as a whole increasing by 46%, whereas the recording rights share has increased by 16%. This reflects a shift in distribution of revenues as the market has transitioned from physical sales to on-demand streaming.

4.3.2 Divisions of revenue adjusted for inflation

UK music industry revenue takes on a different hue once inflation is factored in.¹¹⁵

Inflation adjusted divisions of revenue for physical sales, downloading, on-demand streaming, sync, public performance and broadcast (2008-2019)

Figure 4.13: Estimated UK Revenue for Physical Sales, Downloading, On-demand Streaming, Sync, Public Performance and Broadcast: Music Creator Shares and Rights Holder Divisions of Revenue 2008-2019 (£m) Inflation Adjusted



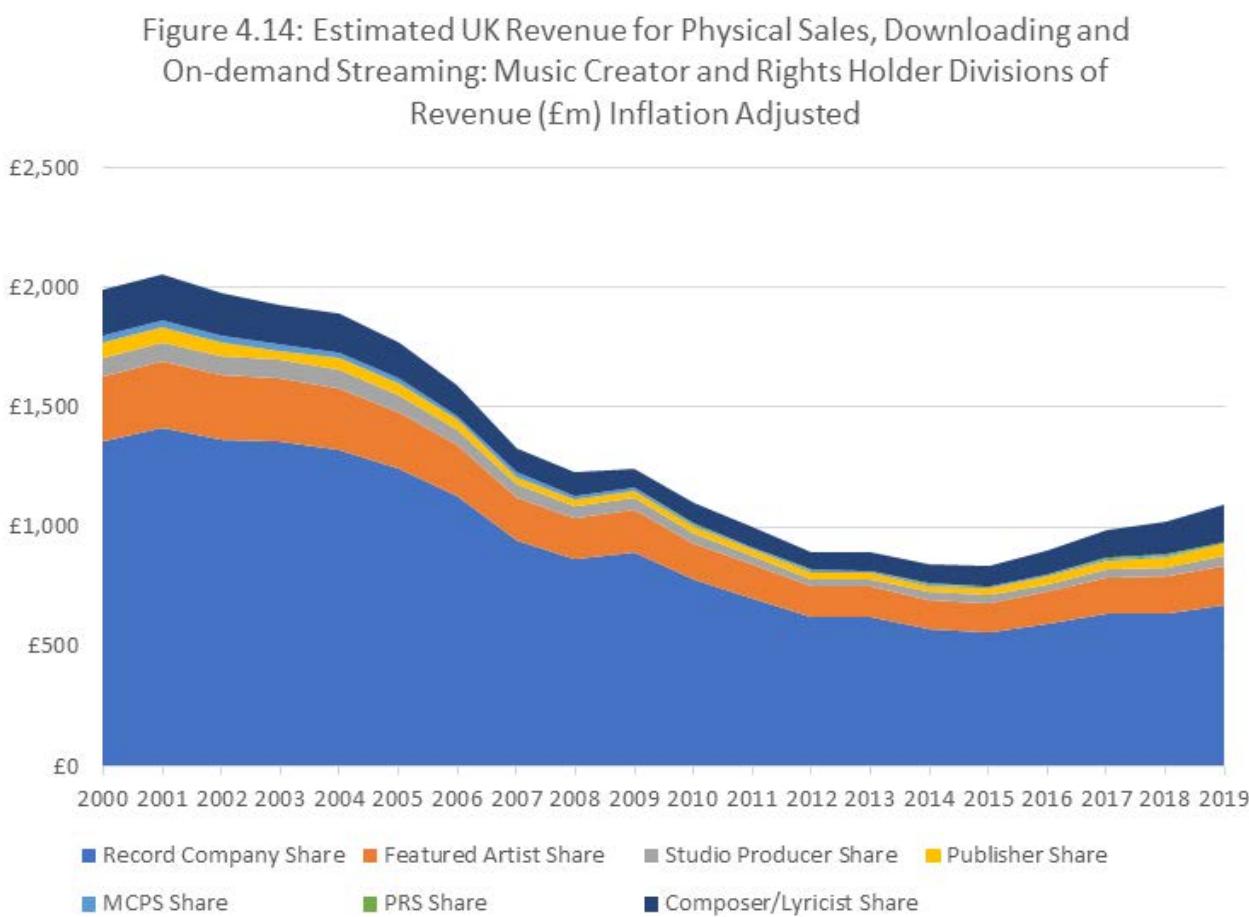
Rather than growing, as was the case before inflation is factored in, the total revenues for recorded music have declined from indicative figures of £1,825m in 2008 to £1,685m in 2019, a decrease of 8%. Music creators are affected in the following manner:

- If the royalty rates of 17.5% for physical sales, 20% for downloads and 25% for on-demand streaming represent realistic averages, the total revenue for featured artists has risen slightly from indicative figures of £225m in 2008 to £235m in 2019, an increase of 4%. In the same period, the revenue for record companies has decreased by approximately 19%, although this should be evaluated bearing in mind the decline in costs of manufacture and distribution with the transition to online delivery.
- The royalty revenue for non-featured performers has grown from £25m in 2008 to £30m in 2019, an increase of 20% (the revenue from session fees is not accounted for in this graph, but adjusted for inflation the 2008 fee would be worth £152.44 in 2019, and the 2011 fee would be worth £146.36, representing a decline in real terms when set against the £130 rate for 2019).

¹¹⁵ The inflation figures in this chapter have been calculated using the Bank of England's inflation calculator to find out what the figures from the years 2000-2018 are worth in relation to 2019 (<https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>).

- If the 4% average royalty for studio producers has remained stable, the royalty revenue for studio producers has declined from indicative figures of £50m in 2008 to £35m in 2019, a decrease of 30%.
- If the royalty rate of 75% represents a realistic average and the calculations of revenue divisions are broadly correct, the revenue for composers and lyricists has grown from indicative figures of £355m in 2008 to £395m in 2019, an increase of 11%. The revenue for music publishers has increased by approximately 10%.

Inflation adjusted divisions of revenue: physical sales, downloading, on-demand streaming (2000-2019)



Despite the growth in on-demand streaming revenues, with inflation taken into account the combined revenues for physical sales, downloading and on-demand streaming have almost halved since the beginning of the century, from £1,990m in 2000 to £1,090m in 2019.

- If the royalty rates of 17.5% for physical sales, 20% for downloads and 25% for on-demand streaming represent realistic averages, then the total revenues for featured artists have decreased rather than increased: declining from indicative figures of £270m in 2000 to £170m in 2019, a fall of 37%. In the same period, the revenue for record companies decreased by approximately 51%, although this should be evaluated bearing in mind the decline in costs of manufacture and distribution with the transition to online delivery.
- If the 4% average royalty for studio producers has remained stable, the royalty revenue for studio producers has declined considerably from indicative figures of £80m in 2000 to £35m in 2019, a decrease of 56% .

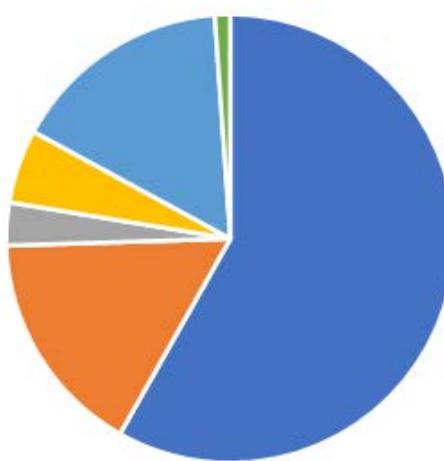
- If the royalty rate of 75% represents a realistic average and the calculations of revenue divisions are broadly correct, the total revenues for composers and lyricists have declined from indicative figures of £195m in 2000 to £150m in 2019, a fall of 23%. The revenue for music publishers has decreased by approximately 19%.

The inflation adjusted figures are contextualised further in chapter 6, where they are set against the growth in the numbers of creators and the numbers of recordings and compositions in the market.

4.3.3 Divisions of revenue: alternative scenarios

In the analysis above, the contemporary revenue shares for on-demand streaming are based on a 52% revenue share for the recording rights and a 15% revenue share for the publishing rights. This results in a 77.6:22.4 ratio of rights holders' revenues. Within the recording share, the featured artists' royalty is set at 25% (minus 4% for the studio producer). Within the publishing share, after the deduction of a 10% PRS administration fee relating to the performing rights' half of this activity, this revenue is divided 75% to the composer/lyricist and 25% to their publisher(s). One of the notable results of this division of revenue (subject to the caveats outlined in section 4.2.2), is that the shares accorded to featured artists and composers/lyricists are roughly the same. The overall divisions are as follows:

Figure 4.15: On-demand Streaming Division of Revenue
 Recording 52% revenue share (featured artist royalty 25%, minus 4% studio producer share); Publishing 15% revenue share (Composer/lyricist royalty 75%)

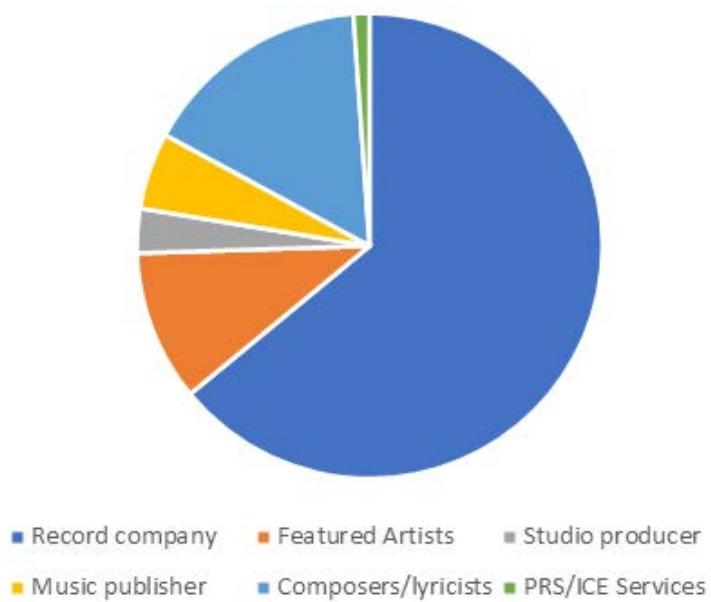


- | | | |
|-------------------|-----------------------|--------------------|
| ■ Record company | ■ Featured Artists | ■ Studio producer |
| ■ Music publisher | ■ Composers/lyricists | ■ PRS/ICE Services |

Legacy recording deals

Recording industry contracts have traditionally been structured so that a standard royalty rate will be applied to 'sales'. It has been record company practice to treat streaming as a sale (see section 3.7), as a result of which many 'heritage' featured artists will be on the same royalty rate for on-demand streaming as they were given for physical products. The exceptions to this are featured artists who have fulfilled their contractual recording commitments and/or have been able to renegotiate their contracts. In addition, it has been the policy of some labels, including BMG and the Beggars Group, to revise historical contracts and, where necessary, provide a higher royalty rate for streaming. For contracts stretching back to the mid-twentieth century, royalty rates as low as 1%-4% have been reported,¹¹⁶ but a recording contract from the turn of the millennium would more commonly have a royalty rate of around 17.5% (subject to the deduction of a 4% studio producer royalty).¹¹⁷ In this scenario, the record company would be in receipt of nearly two-thirds of the licensing revenue from streaming and the featured artists' share would be two-thirds of that gained by composers/lyricists:

Figure 4.16: On-demand Streaming - Legacy Deal
 Recording 52% revenue share (featured artist royalty 17.5%, minus 4% studio producer share); Publishing 15% revenue share (Composer/lyricist royalty 75%)



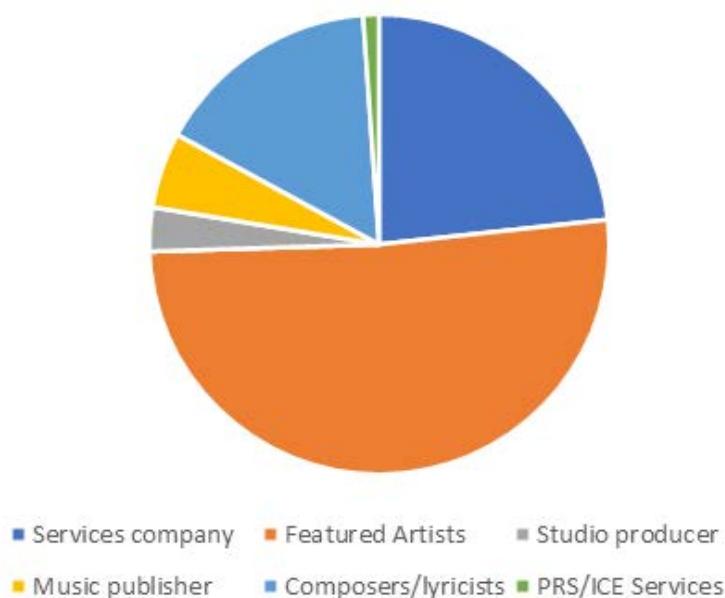
¹¹⁶ Oral testimony of Tom Frederikse and Tom Gray, DCMS Inquiry into the Economics of Music Streaming; written testimony of Jon Webster (2020: 2).

¹¹⁷ See Cooke (2020b: 44). In addition, State51's written testimony to the DCMS inquiry refers to legacy featured artists who receive 10%-20% (2020: 3). Ed O'Brien of Radiohead meanwhile revealed that his group 'signed in 1991 and we signed what was a very traditional deal at the time that put us essentially on about 12% royalty' (oral evidence, DCMS Inquiry).

Services deals

With an artist services or label services deal, the featured artist will be in receipt of approximately 70% of the recording rights revenue (out of which they will pay the studio producer) (see section 2.5.2). This provides the following divisions of revenue, with the featured artist gaining a significantly higher amount than the composer/lyricist receives:

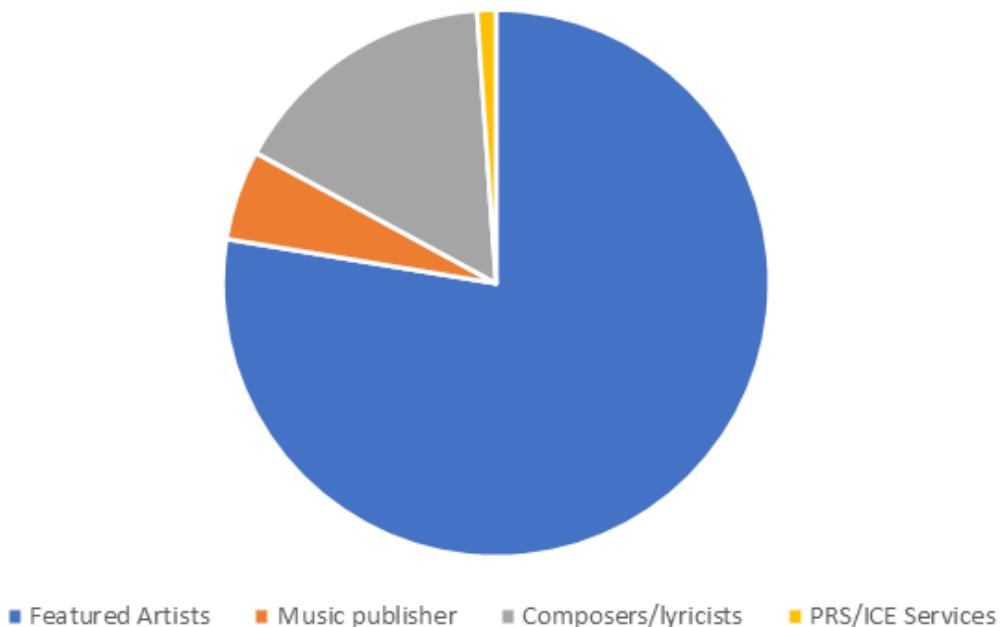
Figure 4.17: On-demand streaming - Services Deal
Recording 52% revenue share (featured artist retains 70%, minus 4% studio producer share); Publishing 15% revenue share (Composer/lyricist royalty 75%)



DIY distribution deal

With a DIY distribution deal, featured artists will be in receipt of between 85%-100% of the recording rights revenue (see section 2.5.2), which will usually constitute a major share of the overall rights holder revenue and would be significantly higher than the amount that composers and lyricists would receive. The following table illustrates a 100% deal with no studio producer expenses:

Figure 4.18: On-demand streaming - DIY Distribution
Recording 52% revenue share (featured artist retains 100%); Publishing 15%
revenue share (Composer/lyricist royalty 75%)



4.3.4 Contracts

The royalty rates used above are derived from testimony at the DCMS Inquiry into *The Economics of Music Streaming*, as well as from existing research about creators' contracts (see Chapter 1) including the figures indicated in the 'Digital Deals Comparison Calculator' created by the Music Managers' Forum (MMF n.d.). As indicated above, there is a wide variety of rates available, particularly in respect of recording agreements. It is important to consider, however, that royalties are only one aspect of music industry contracts. They need to be balanced against other features, such as advance payments, marketing expenditure, the duration of the agreement, creator commitments and the transfer of copyright.

Rights holders are aware that their total expenditure on advances is rarely recouped. Therefore, in calculating their expenditure on A&R, they will factor this unrecouped element when setting contractual terms. A&R expenditure is also calibrated in relation to the costs of marketing and promotion (which in exclusive contracts are generally not recoupable): how much money needs to be spent in order to get the work noticed? In most instances, rights holders will determine their investment over a series of creative works, hence the importance of the duration of the agreement and the number of works that it secures. Also crucial is the term of rights holding, as it will set the period in which investment can be reaped and recouped.

Creators should receive specialist legal advice on signing contracts and need to be aware that recoupmment can involve costs of production as well as living expenses. This is most notable in relation to recording contracts, where under a standard exclusive deal the costs of recording, tour expenses and half of the video costs are expected to be recouped from royalties. The creator will therefore need to calculate which combination of advance payments and royalty rates will best accommodate this expenditure. They will also need to factor in their desire for marketing support, as it can be worth exchanging increased investment in promotion for a lower royalty rate. In addition to seeking commitment from their contractual partners, creators will also desire limits on their agreements, both in relation to their duration and to the transfer of copyright (favouring licensing over assignment and ideally avoiding life of copyright deals). It is when they have enjoyed success and are free from contractual commitments that artists/creators are best positioned to negotiate their terms.

Contributions to the DCMS Inquiry revealed a consensus among industry stakeholders that, as well as there being a greater variety of contracts on offer, the terms for creators are generally improving (see sections 3.4 and 3.5). Over the last twenty years some creators have benefitted from one or more of the following: higher royalty rates; increased advance payments; greater marketing expenditure. There are also creators who have attained a stronger position in respect of copyright: rights might be licensed rather than assigned and the period of transfer can be reduced. Most of the testimony in respect of these contractual terms is anecdotal, however. Therefore, in order to provide an assessment of the extent to which terms are changing, we have undertaken a survey of contracts held by the Musicians' Union, which we now report.

As discussed in Chapter 1, gaining access to details of contracts for research purposes is challenging given the commercially and personally sensitive nature of the content. Rights holders and music creators are understandably reluctant to share such information. For this reason, much of what is known about the detail of music publishing and recording agreements is gleaned from cases where contracts are challenged in court. These are useful sources in providing insights into the workings of what are often very complex agreements. However, the costs involved in testing the enforceability of a music publishing or record contract are such that it is generally a very small number that are ever brought before the courts (Evans 2003; Greenfield and Osborn 2007; Stahl 2013). Those contracts that do enter the public domain often pertain to very successful works or those by very successful music creators, often signed before they became successful.

Going some way to remedying this gap in existing research, the Musicians' Union (MU) provided us with a significant number of fully anonymised music publishing and recording contracts. The total sample of 591 is a mix of music publishing ($n = 375$) and record contracts ($n = 214$) of varying types. Of these, 146 contracts were coded in detail: 83 recording contracts; and 63 music publishing contracts. This represents 25% of the overall sample provided by the MU.¹¹⁸

To the best of our knowledge, this is the largest sample of publishing and recording contracts of this kind to feature in any published research. An important caveat to note is that these contracts are examples of deals about which members have sought the advice of the MU. Legal advice is one of the key services the Union offers its members. This may involve providing contract advice to music creators considering a proposed deal but unable or unwilling to engage the services of a specialist music industry lawyer. It also seems reasonable to suggest that it is those creators who have entered into deals that they are unhappy with who will tend to seek assistance from the MU. It is not known how many of these deals were subsequently signed. Indeed, some of the documents are annotated with the recommendation that creators should not sign the contracts.

These documents nevertheless provide a rich perspective on the types of deals being offered to music creators over the period 1989-2019. The contracts examined contain only a small number involving major record labels, major publishers or high-profile independent companies. The majority were offered by smaller independent companies. While certain aspects of contracts recur frequently, the sample indicates the considerable variability of deals being offered to music creators by music companies. Although there is little evidence of an 'industry standard' contract, a majority of the deals examined offer front-end and back-end commitments and rewards that fall into three main categories: (1) advances and costs; (2) royalty and profit share deals, and (3) territorial and temporal scope of the agreement.

It is important to note that while many elements are common to recording contracts and music publishing contracts, there are aspects of each that can be significantly different. For example, royalty rates in publishing deals are often very different to those of record deals. A publishing deal may see writers receive an 80% royalty, where a recording deal a 20% royalty for recording artists may be more common. However, it would be incorrect to conclude that such apparent disparities necessarily suggest publishing and record deals are inherently more favourable to rightsholders or music creators respectively. As discussed throughout this chapter, a great many factors dictate how revenues from recorded music are split and how deals are structured, including: A&R costs, risks involved in the activity, authorship of the underlying copyright work, bargaining power of contracting parties, territorial and temporal scope of deals, and innumerable other contributory factors. Therefore, direct comparisons between such elements of recording and publishing deals are potentially unhelpful and misleading without a considerable degree of qualification. With this cautionary note in mind, the discussion that follows examines features common to music publishing and recording contracts examined while identifying aspects of these deals that are particular to each sector.

¹¹⁸ In addition, a further 69 music publishing contracts relating to media commissions were examined. Analysis of these contracts is featured in the AV Commissions Report that forms part of the broader Music Creators' Earnings project (see Introduction).

Front-end and back-end commitments and rewards

In essence, music publishing contracts and recording contracts are agreements between parties that contain front-end and back-end obligations and rewards for contracting parties (Caves 2000, Harrison 2008, Barr 2016). The negotiation of a contract will typically involve trade-offs between these various dimensions of the deal. For example, a greater front-end investment by the record company or publisher might result in creators agreeing to a lesser share in the back-end rewards. As illustrated in the analysis of interview material and DCMS Inquiry submissions in Chapter 3, these factors are governed, to a large extent, by the expectations and relative bargaining power of contracting parties. It should be noted that in some cases there appears to be little observable relationship between the commitments and rewards in some of these deals.

While the contracts surveyed reveal none of the detail of negotiations that might have taken place around the deal, some inferences can be drawn about the power relationships of contracting parties from the content and character of the agreements. Even if, as we have acknowledged throughout this report, it is now increasingly possible to have music distributed without such deals, signing a deal has historically held considerable symbolic appeal and practical benefits for many music creators. Aside from the prestige that signing with a record company or music publisher can confer on an artist, financial investment along with access to industry expertise and market intelligence holds obvious attractions for music creators. But it is well-known that the number of creators seeking such deals far exceeds the opportunities available. Many of the contracts surveyed here reflect the relative bargaining position of music creators and the intermediaries offering the contract. This can be seen in various aspects of the front-end and back-end commitments and rewards attached to a deal.

There is variance in the nature of these agreements which can be fundamental. For example, some contracts cover all aspects of a creator's musical activity on an exclusive basis. In other cases, the contract will pertain to exploitation of a single work or bundle of works on a non-exclusive basis. The record contracts examined were of two main types: the royalty percentage deal where creators receive royalties once agreed costs are 'recouped', and the 50/50 profit share agreement, or some variation thereof. Within the deals, apparently subtle clauses in contracts can have significant ramifications for music creators' earnings. These include deductions on royalty rates for international exploitation or 'new technology' deductions that see creators receive a lesser royalty from certain formats. This demonstrates the importance of developing a better understanding of the complex trade-offs that are a feature of these contracts.

Advances, other costs and options

At the front-end of the deal, the majority of the contracts offer personal advances. This is in some respects an incentive to sign the deal but the term advance indicates that these payments are not largesse on the part of publishers and record companies. They are advances against income as yet unearned. In the context of a market characterised by high failure rates, where rewards generated by the work routinely fail to cover the costs of production, the advance represents risk-bearing on the part of the publisher or record company.

The personal advances attached to deals are, in the main, explicitly stated in the contracts along with a schedule for these payments, usually linked to key stages in the production process: a proportion of the advance paid upon signing and the balance paid upon delivery of the works for example.

The record deals also contain other costs paid in advance against future royalties. Chief among these are the costs of recording the music. In some cases, budgets for these costs are set out in the contract but in others the wording is vaguer and stipulates an unspecified ‘mutually agreed’ budget. A feature of many of the deals examined, particularly the smaller deals, is that the music creator is required to deliver finished recordings to the record company at their own expense. Tour support is another recoupable cost that record companies will in some cases cover in order to promote the recordings. Video costs, where explicitly mentioned, are usually 50% recoupable.

The upfront costs detailed above generally relate to one cycle of activity but another feature common among many of the agreements examined is the ‘option deal’. In most cases, the option referred to is the option to activate another phase of the agreement subject to the commitments of the previous agreement being delivered. In some cases, but not all, the advances involved in each subsequent option increase, presumably to reflect the success of the previous endeavours. An example from a contract offered by an independent record label in 1996 includes personal advances of: option one £5,000, option two £8,000, option three £12,000. As outlined below, some aspects of contracting have changed in the digital age, but this type of option deal remains a common feature of recording contracts up to and including the 2019 sample. The decision to exercise this option is almost always at the discretion of the record company. None of the contracts examined represents a so-called ‘firm’ deal where the company makes a firm commitment to multiple release cycles with new advances and production costs.

The front-end costs are invariably set against future royalties, and creators will not receive royalties until agreed costs are recouped. This aspect is among the most contentious elements of music industry contracts. A crucial aspect of these advances that is sometimes, but not always, explicitly stated in the contract is that they are recoupable but non-returnable payments. What this means is that, after receiving the advance, the creator will repay this money from revenue generated from the exploitation of the works, with the label withholding royalty payments until such times as the advance is recouped. Crucially, however, unlike a loan from a bank to invest in a business, in the event that the project fails, the music company will not pursue or ask the creators to repay unrecouped balance. Moreover, in the event that the project is a success and recoups the upfront costs borne by the music company, the creator will receive royalty payments and, in many instances, funding for subsequent releases.

Royalty rates

The contracts examined here show considerable disparity between publishing contracts and recordings contracts, as well as variations of royalty rates within deals depending on the type of usage.

In the main, the royalty rates for music publishing deals are in excess of 50% in the creator's favour with headline rates of 75% to 80% commonplace (thus conforming with the industry figure used in sections 4.3.1 to 4.3.3 above). In the record contracts surveyed there are two principal approaches to paying creators. The first is the more conventional royalty percentage rate. The majority of these tend to gravitate towards 15%-20% as a main rate, as suggested in some music industry research. Table 4.12 reveals an observation from the 39 royalty deals surveyed consistent with anecdotal accounts and industry information (cited in section 4.3.1) that there has been an increase in royalty rates paid by record companies to artists in recent years.

Table 4.12: Record Contract Royalty Rates

Period	Median Royalty Rate	Number of Royalty Contracts
1993-2014	20%	30
2015 onwards	25%	9

As with advances, royalty rates in some cases increase with each option or will increase upon reaching a particular sales threshold.

The other approach is the so-called 50-50 deal where investor and artist share the profits on a 50% split. Of the 83 recording contracts surveyed, 41 were some variation on this 50-50 deal. While it may intuitively appear to represent a better option for creators than a royalty deal, in practice, this type of approach can mean the creator is less likely or will take longer to recoup. This is largely due to the more expansive way in which costs are shared between rightsholders and creators in such deals. In effect, a music creator with a 50/50 deal may receive a greater share of a smaller overall 'pie' than those who are signed to a royalty deal of a lesser percentage royalty rate, but with a more limited set of recoupable costs. Again, making direct comparisons between different types of contracts is far from straightforward. In short, creators and rightsholders must weigh up costs and benefits contingent in each of these main types of recording contract.

In some, but by no means all, of the record contracts a producer royalty will be stipulated. In much of the literature and also from contributions to this research, a producer royalty rate of 4% is reported. Unlike artist royalty rates, this is paid on gross sales from 'record one' so the producer will be paid irrespective of whether the recording is a commercial success. As with many aspects of the contracts examined, there is variation in this rate.

The headline royalty rate of a contract does not apply to all uses of the works. It is commonplace for deals to have multiple royalty rates based on various calculations and deductions that can reflect how active the company is in achieving the use in question, or the perceived risk involved in the activity. For example, sync licensing is often given a different rate other revenue streams, with a 50% royalty being common. While this can represent a much higher rate than the headline rate, in other instances certain uses will attract a reduced royalty rate. A feature of a number of record contracts is the presence of clauses such as 'the royalty rate on any new media will be 75% of the otherwise applicable rate'.

In the publishing deals there is considerable variation of rates for different types of use of works. For example, it is common to see clauses that stipulate sync licences achieved by the publisher will attract a greater percentage for the publisher than those secured by the creator by their own endeavours.

Among the exclusive recording contracts examined, there is an indication that creator royalty rates have increased during the period under study. The music publishing contract royalties are consistently higher than those of record deals, but there is no observed trend among the sample of royalty rates altering significantly over time.

Territorial and temporal scope of the agreement

The record contracts are, in the main, exclusive in the sense that during the term of the deal the artist is permitted only to record for the contracting company. There are exceptions to this where the deal is project-specific, allowing the artist to work on a non-exclusive basis. A common feature of the record contracts is they also prohibit the artist from re-recording the work for another company within a specified time frame, often five years. The publishing contracts offer more variety. Some are exclusive writer deals where all of the writer's works are covered in the deal, while others are non-exclusive and cover only specific works such as albums or single songs.

The majority of the publishing and record contracts are global or universal in terms of their scope. The territorial reach of the deal has consequences in terms of the deductions and reductions to royalty rates, which are in many cases applied to international exploitation of the works.

One of the elements that is most consistent among the recording contract sample is the companies' retention of copyright for sound recordings. In the vast majority of cases this is for the full term of copyright, currently 70 years in the UK. These so-called 'life of copyright' deals are often associated with major record companies but the evidence here indicates that they remain common in deals involving independent labels, large and small. In deals where the retention period could be ascertained, 61% were for the full term of copyright.

Although record companies are typically identified as the authors of copyright in sound recordings, shorter term assignment and licence agreements for recordings do appear, albeit less frequently at 24% of the sample examined. In such deals the record company will be the rights holder of the recordings, or 'the masters' to use industry parlance, for an agreed period that is shorter than the full term of copyright. After this point the artist will become the owner of these master recordings and will be free to exploit these as they choose. These agreements vary considerably in duration but it is not untypical for the retention period to be of the order of five to ten years in the deals surveyed with the average for recording contracts of 9.25 years. An observation from the more recent recording contracts is the increased prevalence of assignments and licenses of copyright less than the full term of copyright as shown in Table 4.13.

Table 4.13: Retention of Copyright

Period	Total Contracts	Total < Life of Copyright	% < LoC
1993-2014	58	10	17%
2015-onwards	25	10	40%

This type of arrangement, where control of copyright passes or reverts to music creators, is known to be far more common in music publishing agreements. As authors of the underlying copyright work music creators have the exclusive right to assign or license these rights to third parties, including music publishers. In many of these deals the rights are transferred to the publisher for periods of 10 or 20 years or even shorter. Nevertheless, a surprising finding from the music publishing contracts is the number of life of copyright assignments found in contemporary music publishing deals. Previous research (Barr 2016) and interviews with stakeholders has suggested that this is uncommon in today's UK music publishing market. However, given the prominence accorded to the sheet music

royalty rate in many of these deals, it may be the case that these particular agreements are for writers composing orchestral works as opposed to popular music writers.

The term of the agreement is generally tied to a schedule of releases and the number of options. In popular music, this would in many instances still represent a series of albums. As discussed, the contract sample shows that the 'option' deal is common, giving the publisher or record company the option to renew the contract, usually for a new work or set of works. This is typically within a relatively short time frame of a number of months triggered by the release of a works covered in the previous agreement or option. Crucially, even if the option for new works is not exercised, the copyright that subsists in any previous works usually remains with the record company for the remainder of the term stipulated in the agreement, potentially for 'life of copyright'.

Our examination of the contracts provided gives us a picture of a wide range of features in contracts offered to music creators over the last two decades. We now turn to examine the important issue of recoupable costs in greater detail, before concluding this section with a consideration of 'legacy' contracts.

4.3.5 Recoupable costs

One aspect of music industry accounting that is difficult to calculate is what proportion of A&R costs consists of advances and what proportion consists of royalty payments. In respect of featured artists, it can also be difficult to calculate what proportion of the advances is deemed 'personal' (i.e. covering living expenses) and what proportion is covering other expenses, such as recording costs, tour support and studio producer royalties.¹¹⁹ What can be discerned, however, is that even with higher royalty rates, many featured artists will fail to recoup. Overall, the recoupable A&R costs are consistently in excess of average royalty rates. Between 1978 and 1990, BPI's yearbooks calculated the average royalty rate for record sales as being in the region of 20% (pre-deductions and studio producer royalties); the average A&R costs were 22.5%. WMG has indicated that its average royalty rate for on-demand streaming (pre-deductions and studio producer costs) is currently in the region of 25% (*Music Business Worldwide 2018*); its average A&R costs for the period 2018-2020 were 30.7%.¹²⁰ Recordings can nevertheless still be profitable for record companies in many cases. This is because the company retains the majority share of the recording rights revenue (the BPI Yearbooks indicate that for physical sales this was in the region of 75% for the period 1977-1990;¹²¹ for WMG in respect of on-demand streaming the company share remains around 75%), as well as the recoupable proportion of the A&R costs.

The margins for UK music publishers work differently. They receive a minority share of the publishing rights revenue (on average this is approximately 25%, in comparison to the 75% that goes to composers and lyricists) and A&R makes up the majority of their costs. To remain profitable, publishers therefore need to ensure that their total costs can be covered out of their 25%, plus the recoupable share of the A&R costs.

The recording and publishing sectors also differ in respect of non-recoupable creator revenues. For record companies, this consists of the featured artists' share of the equitable remuneration for public performance and broadcast. For music publishers, it consists of the direct 50% payment that composers and lyricists receive for

¹¹⁹ Some information is available. MMC data from 1989-1993 indicates that, on average 66% of advance payments consisted of personal advances, and 34% of recording and origination costs, tour support and half the video expenses. BPI data from 2019 indicates that 72% of advance payments consisted of personal advances and 28% of recording and origination costs, tour support and half the video expenses. In addition, we have received accounting information from an independent company for their major releases in the period 2016-2018. The total costs (prior to overheads) can be broken down as follows: production 20.44%; distribution 8.11%; marketing 31.3%; publisher royalties 4.67%; featured artist royalties 15.33%; recoupable costs 20.15%. The recoupable costs can be broken down into: personal advances 56.25%; recording costs 9.59%; studio producer royalties 7.33%; tour support 13.87%; video 12.97%. Consequently, 11.33% of the overall costs (minus overheads) consists of personal advances, and 8.82% of the overall costs (minus overheads) consists of recoupable costs other than personal advances.

¹²⁰ It should be noted that this includes music publishing royalties and trade union costs. These will take up a minor proportion of the expenses, however.

¹²¹ This figure is arrived at by subtracting a 20% royalty rate for featured artists and 8% paid in music publishing royalties.

public performance and broadcast. However, while the source of the revenue is similar, the proportionality is different. Our calculations suggest that featured artists' UK revenues from physical sales, downloading, on-demand streaming, sync, public performance and broadcast amounted to £236m in 2019. From this, around a fifth (£52m) was exempt from recoulement. Composers' and lyricists' revenues from the same sources were approximately £395m, out of which £170m (more than two-fifths) was non-recoupable.

4.3.6 Contract revision

One of the debates in relation to creators' earnings is whether legacy recording contracts should be revised to reflect differences between the on-demand streaming of music and physical sales. On the one hand, rights holders can point to certainty of contract and the fact that the profits from catalogue are required to support new investment. On the other hand, arguments that costs of manufacture and distribution have been exchanged for costs of marketing hold less traction in relation to these contracts, as the majority of back catalogue items are placed on streaming sites without being accorded marketing expenditure (some specific items are marketed, however). Back catalogue is nevertheless generating significant plays: according to BPI/Official Chart Company figures, over sixty per cent of streaming activity in the UK in 2019 related to tracks that were more than two years old (Crutchley and Green 2020: 28).

Given these circumstances, some parties have suggested that legacy contracts should be revised so they have parallel royalty rates to contemporary contracts (see section 3.7). Rupert Skellett of the Beggars Group has urged the major companies to adopt his companies' policy of having a minimum digital royalty rate and wiping out unrecouped royalties after a set period of time (oral testimony, DCMS Inquiry). In addition, BMG have suggested that other companies should follow their own lead in revising contracts for their 'historic inequities' (Cooke 2020a). The Council of Music Makers (comprising the Featured Artists Coalition (FAC), the Ivors Academy, MMF, the Music Producers Guild and the MU) has stated that 'Labels and publishers should be encouraged to adopt progressive policies that write-off old contracts to pay streaming royalties and promote fairer deals between artists and labels' (2020: 1). The MMF and FAC have also supported this cause (MMF and FAC 2020: 6). The State51 Music Group has argued, in contrast, that 'Legacy artists who receive 10%-20% of the royalties rather than 80-90% have benefited from investment by record companies often in the hundreds of thousands of pounds. Their contracts should not be retrospectively undermined by Government, as this would signal a very high risk to today's investors in artists and their careers' (2020: 3).

In addition, it has been argued that featured artists' un-recouped costs should be waived after a set period of time. IMPALA, the independent record companies association, has also called for legacy artists to receive 'a fair contemporary digital royalty rate' (2021). Some companies are implementing this as policy. AIM have reported that 73% of their members have a policy of updating their pre-digital contracts and that 19% have a policy of removing unrecouped advances after a set period of time (the average period being ten years) (2020: 14). In addition, Sony Music no longer applies unrecouped balances to the earnings of artists who signed with the company prior to the year 2000 and have not received an advance since then. The difficulty for some record companies, however, is whether such revision is affordable.¹²² The industry has worked on a model whereby the risks involved in investing in new releases are compensated for by the returns of successful back catalogue recordings.

The accounting information we received from an independent record company suggests that in some instances, at least, this model can work. This company has revised its legacy contracts so that all artists receive a minimum royalty rate of 25%. Recoulement is waived 15 years after a recording is released. The following information is based on the criteria that 'new release' applies to recordings released in 2019, while 'catalogue' refers to recordings from all years before that.

¹²² There are a number of different business models in the recording industry. Revision of terms might not be suitable for a label that is primarily oriented towards older releases, and for other types of company it could also prompt financial jeopardy.

Table 4.14: Independent Record Company: New Release and Catalogue Share of Revenues (2019)

	New Release	Catalogue
Total Share of Revenues	19.7%	80.3%
Share of Profits (prior to the deduction of overheads)	7.6%	92.4%

Table 4.15: Independent Record Company: 2019 Margin Analysis

	New Release	Catalogue
Costs		
Cost of goods sold	4.1%	6.5%
Distribution	2%	4%
Marketing	4.1%	2.1%
Recoupable costs	5.1%	4%
Featured artist royalties	0.6%	24.2%
Publishing royalties	0.4%	-0.1%
Margin prior to the deduction of overheads	3.2%	39.6%
Overheads		
Profit before tax, exchange gains and losses (PBT&X)		7.6%

The figures suggest the following:

- This company, like many established record companies, is reliant on back catalogue in order to make a profit and fund new releases.
- Back catalogue generates fourth-fifths of the sales, but only 38% of the marketing costs.
- Royalty payments make up 60% of all back catalogue costs.
- Despite the revised royalty rates for legacy contracts and the waiving of recoupment, catalogue still accounts for 92.4% of the record company's profits (prior to the deduction of overheads); new releases contribute 7.6%.¹²³
- This company's high success ratio helps this model to work: in separate documentation they have indicated that, within two years of release, over 75% of significant releases for the period 2016-2018 were generating a profit (taking into account both recoupable and non-recoupable costs) and that more than 50% of these releases had recouped the artists' advances and were therefore generating royalty payments.

¹²³ This can be contrasted with the MMC's 1994 investigation, which documented that 'Except for classical recordings, most recoupments from artists arise in the months immediately following a new release, with any remaining amounts (the recoupable tail) being collected over a much longer period' (MMC 1994: s. 8.28)

4.4 Division of music creators' revenues

A great deal of musical work is collaborative. In such cases, the revenue that any group of music creators receives will be further divided as it is shared amongst the collaborators.

4.4.1 Division of creators' share of recording rights

As detailed above, it is common practice that featured artists will pay studio producers a royalty, which is deducted from their own royalty payments. Featured artists will also usually pay a revenue share to a manager. This is typically 20% of their royalties (Harrison 2017: 53; MMF 2019). Further division is then predicated on the numbers of featured artists on each recording. One practice amongst bands and groups is to divide revenue shares equally. It is also contractually possible to divide shares so that group members are allocated different amounts. Non-featured performers are currently paid set fees for on-demand streaming, rather than any royalties. These payments make up part of the recording budget and are recoupable from featured artists' royalties. Nevertheless, if a recording gains a lot of activity on streaming services, the featured artists who work as solo performers or in small teams (and therefore other contributors are cast as non-featured performers) will be better off than those who work in larger groups, as there will be fewer people to split the royalties between.

In order to provide an indication of the numbers of featured artists on each recording, as well as some understanding of how collaborative trends have changed over time, the table below draws on our own analysis of Official Chart Company data for the Top 100 UK singles for the years 1999, 2004, 2009, 2014 and 2019.¹²⁴ Unfortunately, it has not been possible to monitor the number of non-featured performers on each recording, as this data is not publicly available.¹²⁵

Table 4.16: UK Singles Chart Annual Top 100: Numbers of Featured Artists

	1999	2004	2009	2014	2019
Average number of featured artists per recording	2.68	2.28	2.07	2.16	1.93

In addition to a decrease in the number of featured artists per hit recording, the type of successful act has also witnessed some transformation. Solo singers are perennially the most common form of successful singles act. In financial terms, these performers thus have the advantage of not having to divide the royalties with other featured artists. The period from 2009 to 2019 has witnessed a decline in the number of groups (both vocal and vocal/instrumental) and also a significant rise in collaborations between featured artists. These collaborations have the advantage of attracting different audiences to a recording, but they also result in a reduction in royalties. The guest featured artist's royalties are paid out of the lead featured artist's royalties: commonly a payment of between 7%-9% of the recording rights revenues (CC Young 2020: 7). The guest featured artist will receive half of this payment, with the remainder going to their record company.¹²⁶

124 This data has been compiled removing anomalies such as charity records, which can contain dozens of featured artists. The number of featured artists per track is based on the named performers for each of the recordings. It should be noted that there are some acts that appear to be made up of featured artists, but only some of them will be listed as such on the recording contract.

125 In the UK, it is PPL who hold the best database of recording information. However, this database is private. Also, because there are multiple versions of each recording, it takes specialist knowledge to know which of these versions is being accessed by consumers and therefore feeds in to chart data.

126 The IFPI have promoted the ability to foster inter-company collaborations as being one of the virtues of signing with a record label (2016: 10). However, while these collaborations can benefit nascent artists, they are also of financial benefit to the record company. Based on a 25% royalty contract, the company will retain 75% of the recording rights revenues for the lead featured artist. They will also get a cut of the guest featured artists' share, amounting to a further 4%-5%.

Table 4.17: UK Singles Chart Annual Top 100: Types of Act

	1999	2004	2009	2014	2019
Solo singer	34	47	46	36	48
Vocal duo/group	26	21	11	7	2
Vocal/instrumental Group	19	20	15	15	6
Solo	12	1	3	7	1
Producer-performer					
Collaboration between featured artists	9	11	25	35	43

4.4.2 Division of creators' share of publishing rights

In some respects, composers and lyricists have fewer divisions of revenues than featured artists: they do not pay studio producers royalties and it is less common for them to have managers (unless they are writer-performers). There has however been a tendency for the number of contributors to a composition to increase. While it was common throughout the twentieth century for writers to compose individually or in pairs, there are now cases in which a work can have ten or more writers. Recent examples include 'Hold Up' by Beyoncé, 'Uptown Funk' by Mark Ronson featuring Bruno Mars, 'Havana' by Camila Cabello featuring Young Thug, and 'Strip That Down' by Liam Payne featuring Quavo. The sizes of shares given to each author can vary a great deal, with splits varying from 100% to less than 1%. The increase in the average number of writers is most noticeable in respect of successful works, as detailed in the table below. This table provides an analysis of the average numbers of writers for the Top 100 UK Singles in the years 1999, 2004, 2009, 2014 and 2019:¹²⁷

Table 4.18: UK Singles Chart Annual Top 100: Composers and Lyricists

	1999	2004	2009	2014	2019
Average number of composers and lyricists per recording	2.95	3.48	3.45	3.92	4.77

As can be seen by comparing the chart information table in section 4.4.1 with the table above, the number of composers and lyricists per work is increasing, while the number of featured artists per recording is declining. The two activities have also traded places: there were more featured artists than composers/lyricists per Top 100 record in 1999; by 2019 composers and lyricists were outnumbering performers by nearly two to one.

The pattern amongst the top 100 singles is not mirrored elsewhere. PRS and MCPS have provided us with data detailing the number of works that were registered in 2009, 2014 and 2019, which they have quantified to detail the average numbers of writers per work.¹²⁸ This data has also been used to calculate indicative figures of the average writer's share. It should be noted, however, that the large number of works registered leads to a flattening out of the results, making them perhaps less incisive than is desired.

¹²⁷ This chart discounts anomalies such as medleys, which will have multiple authors for each component of the work.

¹²⁸ This data is for published works only. It excludes works with incomplete registrations and works that are in dispute. The high number of works registered in 2009 is due to the fact that the registration platform that PRS for Music currently use was created in that year and so all extant works had 2009 as their registration year.

Table 4.19: PRS data: average number of writers per registered work

	2009	2014	2019
Number of works registered	9,892,092	2,507,364	3,556,614
Average number of writers per work	1.75	1.71	1.76
Average share	37%	39%	42%

Table 4.20: MCPS data: average number of writers per registered work

	2009	2014	2019
Number of works registered	6,414,345	1,345,662	2,110,237
Average number of writers per work	2.04	1.80	1.60

There are number of reasons why the averages differ between the top 100 singles and registrations as a whole. First, the streaming market is reflective of an attention economy: the idea is to get consumers engaged and then re-engaged with each record. In order to do so, the most commercial songs come laden with hooks, each of which might have been contributed by different composers and lyricists or by combinations of composers and lyricists (Mulligan 2019b). Second, in the physical era the writers of each track on an album would be rewarded with royalties each time a record was sold. In the streaming era, the focus is on the individual track. As such, there is an increased desire among writers to obtain a share of a hit (Mulligan 2019b). Third, it has been argued that this focus on individual tracks has encouraged creators who have not had a hand in the writing to falsely claim compositional shares (Pact 2021). Fourth, there is litigation. Successful recordings are more likely to be sued for plagiarism, with the result that credits expand in order to accommodate the works that have inspired the hit recording (Barr 2016: 43). Sampling also has an effect: authors of sampled works are more likely to press for songwriting shares in instances where the song using the sample is a hit.

4.5. Concluding comments

Here we draw out a number of key points from the data presented above.

First, on-demand streaming provides the main source of revenue for recorded music:

- The BPI first registered UK revenues from on-demand streaming in 2008, at which point it was worth £11m to recording rights holders. Utilizing this data, it can be calculated as being worth approximately £1.7m to publishing rights holders. When set against the revenues for physical sales, downloading, sync licensing, public performance and broadcast, this constitutes 1.2% of recording rights holder revenues and approximately 0.4% of publishing rights holder revenues.
- In 2019, the UK revenue from on-demand streaming was worth £629m to recording rights holders (according to BPI data) and approximately £181m to publishing rights holders (according to our calculations from the BPI data). Set against the revenues for physical sales, downloading, sync licensing, public performance and broadcast, this constitutes 58% of recording rights holder revenues and approximately 30% of the publishing rights holder revenues that we have tabulated.

Second, despite the considerable growth in on-demand streaming revenues, the market for recorded music has not returned to pre-digital levels:

- In 2000, UK revenues from physical sales were worth £1,171m. In 2019, the combined UK revenues from on-demand streaming, downloading, physical sales were worth approximately £1,090m.
- When inflation is factored in, the physical sales figure for 2000 rises to £1,990m. In 2019, the combined UK revenues from on-demand streaming, downloading, physical sales, synchronization licensing, public performance and broadcast did not equal this figure, being worth approximately £1,685m.

Third, the revenue that publishing rights gain from recorded music remains lower than the revenue that the recording rights gain, but it is rising:

- If our calculations are broadly correct, the publishing rights revenue from physical sales was worth approximately £164m in 2000 (14% of the revenue), and the recording rights revenue was worth approximately £1,007m (86% of the revenue).
- According to BPI figures, 2012 represented a low-point in twenty-first century revenues from recorded music (as well as being the year in which the BPI tabulated the total number of recorded music streams for the first time) (Crutchley and Green 2020: 11, 18). In this year, our calculations indicate that the publishing rights revenue from physical sales, downloading, on-demand streaming, sync licensing, public performance and broadcast was approximately £403m (33% of the revenue) and the recording rights revenue from these sources was approximately £811m (67% of the revenue). In 2019, the publishing rights revenue from the same sources was approximately £600m (35% of the revenue) and the recording rights revenue was £1,090m (65% of the revenue).

Fourth, revenues for on-demand streaming, physical sales, downloading, sync, public performance and broadcast have risen since 2008, but this had different effects on music creators and rights holders in the recording and publishing sectors:

- Based on the average royalty rates outlined in this report, the earnings that featured artists, non-featured performers and studio producers made from the recording rights revenues amounted to £220m in 2008. Adjusted for inflation this would have been worth £296m in 2019. Their earnings from these sources reached a low-point in 2012 of approximately £200m (£238m with inflation). In 2019, their revenue from these sources was £300m (similar to the inflation-adjusted figure of 2008). In the same period, the remainder that went to record companies from the recording rights revenues declined from inflation-adjusted figures of approximately £950m in 2008 to approximately £765m in 2019 (a 19% decline).
- Based on the average royalty rates and calculations outlined in this report, the earnings that composers and lyricists gained from the publishing rights revenues amounted to approximately £265m in 2008. Adjusted for inflation this would have been worth £356m in 2019. Their earnings from these sources reached a low-point in 2010 of approximately £255m (£329m with inflation). In 2019, their revenue from these sources was approximately £395m (an 11% increase on the inflation-adjusted 2008 figure). In the same period, the remainder that went to music publishers from the publishing rights revenues rose from inflation-adjusted figures of approximately £125m in 2008 to approximately £135m in 2019 (an 8% increase).

Fifth, revenues for physical sales, downloading and on-demand streaming in 2019 are lower than those for physical sales in 2000, but this has had different effects on music creators and rights holders in the recording and publishing sectors:

- Based on the average royalty rates outlined in this report, the revenue that featured artists and studio producers gained from physical sales amounted to approximately £205m in 2000. Adjusted for inflation this would have been worth the equivalent of £348m in 2019. In 2019 itself, their revenue from physical sales, downloading and on-demand streaming equalled the pre-inflation adjusted figure of 2000: approximately £205m, representing a 41% decline in revenue in real terms. In the same period, record company revenues for these sources declined from inflation-adjusted figures of approximately £1,360m in 2000 to approximately £670m in 2019 (a 51% decline).
- Based on the average royalty rates and calculations outlined in this report, the revenue that composers and lyricists gained from physical sales amounted to approximately £110m in 2000. Adjusted for inflation this would have been worth £187m in 2019. In 2019 itself, their revenue from physical sales, downloading and on-demand streaming amounted to approximately £150m (a 20% decline on the inflation-adjusted 2000 figure). In the same period, music publisher revenues for these sources declined from inflation-adjusted figures of approximately £60m in 2000 to approximately £50m in 2019 (an 17% decline).

Sixth, any decline in the recording rights' division of revenue and the revenue retained by record companies needs to be set against costs and risks:

- There is evidence that the record companies' costs of manufacture and physical distribution have declined and that this loss has not been matched by the costs of digital distribution.
- As a proportion of revenue, record companies costs of A&R have shown some increase in recent years, while the costs of marketing have fluctuated. There is less evidence that either of these costs have increased markedly since the pre-digital era.
- As is documented in Chapter 1, there is evidence in existing research that music creators are providing or sourcing more of the up-front financing for their careers, and that some featured artists are reasonably established before being contracted by a record company.

Seventh, the total revenue figures for music creators needs to be set against what is happening at an individual level:

- As indicated in section 4.4, the royalties for the top hit songs are being shared among an increasing number of composers and lyricists per work; in contrast, the revenues for top hit recordings are being shared among a declining number of featured artists per recording.
- Featured artists have more leeway than composers and lyricists to gain higher royalty rates as they are starting from a lower average rate. However, they might not be able to do so if they are tied to a legacy contract.
- Studio producers' royalties are generally tied to the overall rights holder revenues and will therefore rise and fall along with the market.
- Non-featured performers revenues from PPL are tied to the fortunes of public performance and broadcasting and are therefore liable to decline if on-demand streaming replaces radio as a medium of choice (the revenue that non-featured performers are gaining from session fees warrants separate research).

- All creators are affected by the fact that the total number of recordings and works has increased considerably, as has the number of ‘active’ recordings and works, given the increased popularity and availability of back catalogue occasioned by streaming – an issue that we address in Chapter 6.

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Oral evidence: Economics of music streaming, HC 868, Thursday 4 February 2021

Oral evidence: Economics of music streaming, HC 868, Wednesday 10 February 2021

Oral evidence: Economics of music streaming, HC 868, Tuesday 23 February 2021

Chapter 5

A Survey of UK Music Creators' Earnings

This chapter reports findings of the survey of music creators' earnings conducted for this study. As we showed in Chapter 1, musicians' earnings from on-demand streaming have been the focus of considerable attention in industry, policymaking and popular media discourse. Central to these debates is the extent to which music creators can derive a sustainable living from music as a whole and the contribution streaming makes to creators' income.

For these and other reasons, The survey conducted for this project seeks to correct the data deficits that are a characteristic of these debates, by placing streaming income in the larger context of musicians' income from other music and non-music sources.

5.1 Sample and methodology

No comprehensive data exists on what UK musicians earn, and from what sources (see Chapter 1). UK tax return data is not accessible to researchers, and so a statistically significant survey is the best available way in which information can be obtained regarding what musicians earn – though surveys inevitably have limitations, which we reflect upon below.

To repeat what we pointed out in our Introduction, not all musicians are music creators in the way we define them in this report (those involved in the creation of musical works that are protected by copyright), but in our view all music creators can be considered musicians; we would even include lyricists, though some would demur. Just as importantly, many music creators will earn income and revenue from sources other than copyright works.

We were encouraged by our commissioners and our Industry Steering Group (see Introduction) to conduct a survey, in order to provide up-to-date information about UK music creators' earnings from copyright works, and to put such earnings in the context of information about UK musicians' earnings from all sources.

Using support provided to the University of Leeds from Research England's Quality-related Research Strategic Priorities Funding (QR SPF), we commissioned a survey from the market research company AudienceNet. Respondents were aged 16+ and had all earned money from music at some point in their career. A range of music creators were included: songwriters/composers; vocalists; instrumentalists; producers; DJs; rappers/MCs; and engineers.

The survey was open from 10 March to 25 March 2021, took around ten minutes to complete, and largely consisted of pre-coded quantitative measures. One free-text, open-ended response was included, giving respondents the opportunity to add more 'in their own words'. A copy of the survey is included in this Report as Appendix 3.

As discussed in Chapter 1, there are a wide range of estimates as to how many music creators are currently active at any given time. According to the UK Office for National Statistics' 2020 Annual Population Survey, 45,200 people living in the UK state their occupation as 'musician' (full, part-time, permanent or freelance). Assuming a 95% confidence level and +/- 5% margin of error, a sample size of n=381 would therefore be sufficient to obtain statistically significant data.

When including other music creators as part of this population (e.g. producers, engineers, songwriters and composers), UK Music puts the total number of music creators in the UK at 142,000 in their 2020 Music by Numbers report. Assuming a 95% confidence level and a 5% margin of error, a sample size of n=384 would be sufficient to obtain statistically significant data for a population of this size, and n=660 at 99% confidence level. The achieved sample size of n=708 allowed us to surpass this number by some way in the case of both the lower ONS estimate and the higher UK Music estimate.

Respondents were sourced via two recruitment methods:

1. *An online research panel: to ensure that the distribution of the sample was as representative of the wider music creator population as possible, n=400 were sourced via AudienceNet's network of professionally managed consumer panels. These are reflective of the UK population and therefore also have sufficient representation of music creators. The panels used are fully accredited and operating within the guidelines of the ESOMAR 28 rules and guidelines for professional consumer panel management.¹²⁹ Panel respondents were offered a financial incentive for their time.*
2. *Social media and online networks: the survey was shared by stakeholders, notably members of the Steering Group, among their networks to give a wider pool of music creators an opportunity to feedback. A further n=308 completions were achieved in this way. These Steering Group stakeholders included the Featured Artists' Coalition (FAC), Association of Independent Music (AIM), the Musicians' Union (MU), the Ivors Academy, British Phonographic Industry Ltd. (BPI), and the Creative Industries Policy and Evidence Research Centre. Respondents from these sources did not receive an incentive for participation.*

The profile, distribution and experiences of the two samples were broadly similar. AudienceNet were therefore able to merge the two and report on the total sample of n=708. Due to the unusual circumstances presented by the Covid-19 pandemic and the potential impact this may have had on music creators' finances in 2020, questions were designed to form a picture of music creators' recent careers using 2019 as a baseline.

As we explained in Chapters 1 and 3, a significant controversy in recent discussions about musicians' earnings concerns whether the rise of streaming has made it more difficult than before for musicians to earn a living from music. Any effort to provide information relevant to this issue requires information about the situation 'before the streaming era' and 'during the streaming era' – though of course it is not possible to draw clear causal links between the rise of streaming on the one hand and any change in the patterns of music earnings, as there are potentially so many other variables involved.

To ensure all respondents had the same reference point when answering questions about changes in their earnings, and to be transparent about the emphasis on 'before' and 'after' streaming in the debates that motivated the commissioning of the research, we used the year 2015 to indicate the point at which audio streaming became mainstream. We used 2015 as this was the first year since 2001 that the international recording industry reported annual sectoral growth and also the first year that digital revenue overtook that of physical formats. 2015 was also the first year that audio subscription streaming accounted for more than 20% of the UK market for recorded music. This rationale was explained to respondents to provide clarity as to why this year was being referenced in two of the questions.

This chapter focuses on results across the total sample size of n=708. Where there are differences across key subgroups, and sample sizes allow comparisons to be made with validity, these are highlighted in the text. In some instances, reported percentages may add up to 99 or 101, due to rounding.

¹²⁹ ESOMAR is the European Society for Opinion and Marketing Research, the main European trade association, which oversees standards and professional practices in market research, including surveys.

5.2 Participant profile

There is existing UK Office for National Statistics data on the demographic profile of 'musicians', but it is not clear how comprehensively it covers those who identify as musicians.¹³⁰ AudienceNet, our survey company, therefore allowed this 'to fall out naturally', as they put it, 'with a view to applying corrections (e.g. through weighting) if needed'.

The achieved sample was relatively well distributed in terms of demographics and types of music creator. The main area of concern was the gender split, with considerably fewer women taking part. However, the gender split among the respondents is broadly in-line with data on the gender composition of musicians, where women tend to be under-represented, and therefore no sample corrections were applied.¹³¹ 84 per cent of our sample identified as white (versus 86 per cent in the 2011 census), and 16 per cent as Black, Asian and of mixed/multiple ethnic origin backgrounds. 17.8% of respondents to UK Music's Diversity Report survey of 2018 identified as Black, Asian or ethnic minority background, 22.3 % in 2020.¹³²

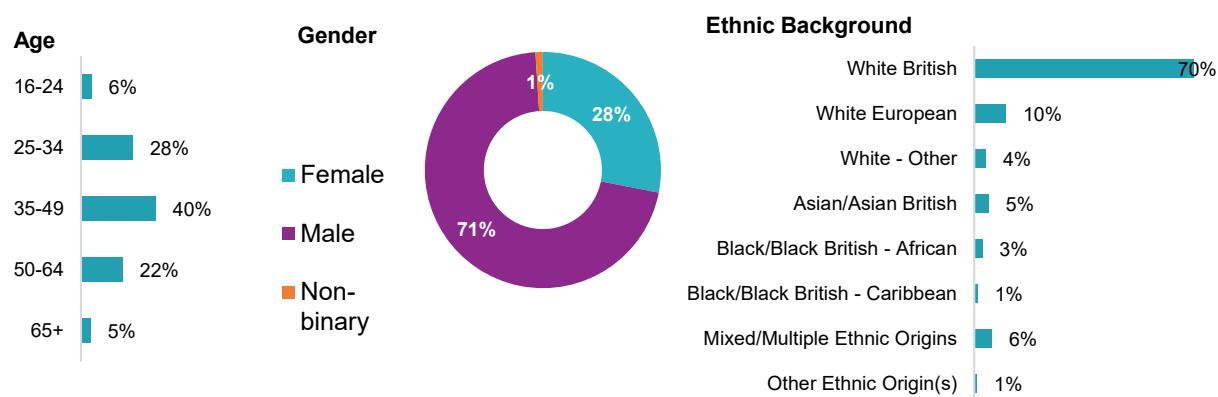


Figure 5.1: Music creator survey demographics

The sample had the following characteristics:

- Gender: male (71%); female (28%); non-binary (1%)
- Age: 16-24 (6%); 25-34 (28%); 35-49 (40%); 50-64 (22%); 65+ (5%)
- There was a wide geographical spread of respondents but as some people might expect, London was relatively dominant, accounting for 32 per cent, with the South East accounting for another 12 per cent. Northern Ireland and Wales were somewhat under-represented, with 2 and 3% respectively (as against 2.8% and 4.7% of the UK population as a whole) but Scotland accounted for 10% (as against 8.2% of the population)

¹³⁰ As is the case with many government statistics about musicians, ONS data is not detailed. It may exclude musicians working part-time below a certain level of hours, or who have another main job, and musical roles such as producer and engineer.

¹³¹ See the following sources, among others: <https://www.theguardian.com/music/2020/mar/06/number-of-female-uk-songwriters-jumps-by-60> <https://prsfoundation.com/partnerships/international-partnerships/keychange/> <https://www.keychange.eu/> https://www.huffingtonpost.co.uk/lara-baker/women-in-the-music-business_b_3472612.html <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.01760/full> <https://annenberg.usc.edu/news/research-and-impact/popular-music-still-missing-female-voices>

¹³² https://www.ukmusic.org/wp-content/uploads/2020/11/UK_Music_Diversity_Report_2020.pdf
This report covers the music industries, as opposed to music creators so it is difficult to be sure how comparable the populations are.

Figure 5.2 shows the activity respondents consider to be their principal roles in music.

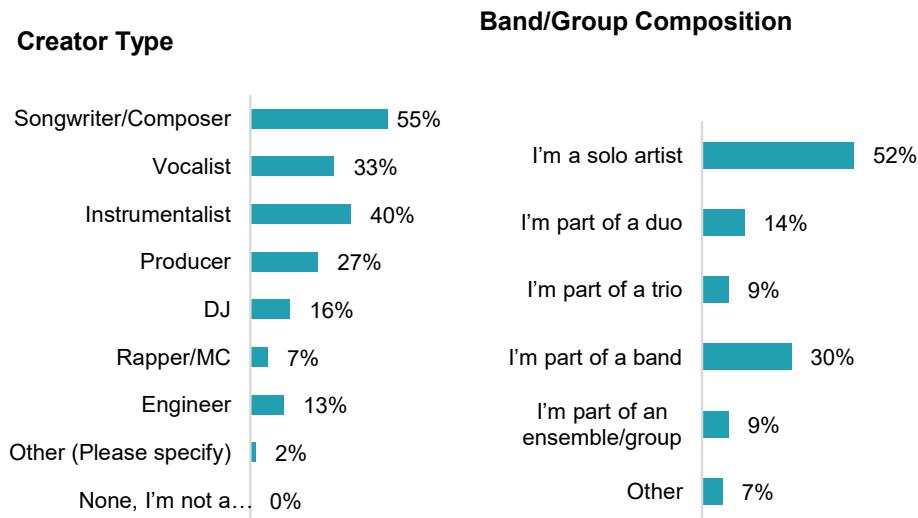


Figure 5.2: Creator type

- The majority of respondents were vocal or instrumental performers (73%)
- More than half identified as songwriter/composer (55%)
- This was followed by instrumentalists (40%), vocalists (33%), producers (27%), DJs (16%), engineers (13%) and rappers/MCs (7%).

Many musicians (41%) indicated they had multiple roles as a music creator and this is significant in terms of understanding earnings from music in general:

- One third (34%) of songwriters/composers had two or more roles, 24% of vocalists, 28% of instrumentalists, 22% of producers, 10% of DJs, 5% of rappers/MCs and 10% of engineers.
- Of music creators with multiple roles, the three most common combinations were songwriter/composer and instrumentalist (24%), songwriter/composer and vocalist (21%), songwriter/composer and producer (18%).
- Top combinations of three or more roles included; songwriter/composer, vocalist and instrumentalist (5%), songwriter/composer, vocalist, instrumentalist and producer (3%), songwriter/composer, vocalist, instrumentalist, producer and engineer (2%) and songwriter/composer, instrumentalist and producer (2%).
- While over 52% of respondents worked as solo artists, more worked as members of groups of musicians, and as the fact that the numbers in Figure 5.2 add up to more than 100 indicate, many musicians combine roles as soloists with work in groups.

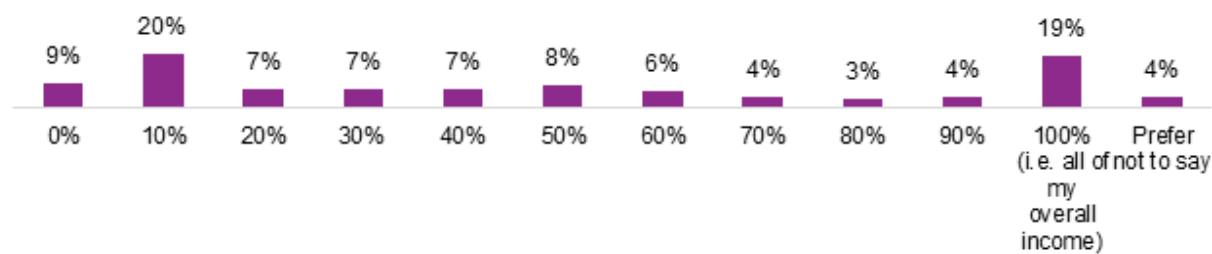
The sample consisted of musicians from a wide variety of genres (respondents could choose more than one genre). Some of the most common included pop (30%), rock (24%) indie (19%), jazz (15%), hip Hop (14%) and R&B (11%)

5.2.1 Characteristics of creators' music careers

A particularly important issue is the extent to which music creators might be able to make a living out of music alone, and some of the survey results cast light on the extent to which musical activities contribute to music creators' earnings, and how much they depend on other types of work. Respondents were asked what percentage of their overall earnings came from music in 2019:

- Around a quarter (27%) had earned most (i.e. 80-100%) of their income from music.
- A third (33%) had earned some (i.e. 30-70%) of their income from music with just over a third (36%) earning nothing or a small amount (i.e. 0-20%).

Percentage of Overall Income Earned From Music (2019)
Base: 708 (total sample)

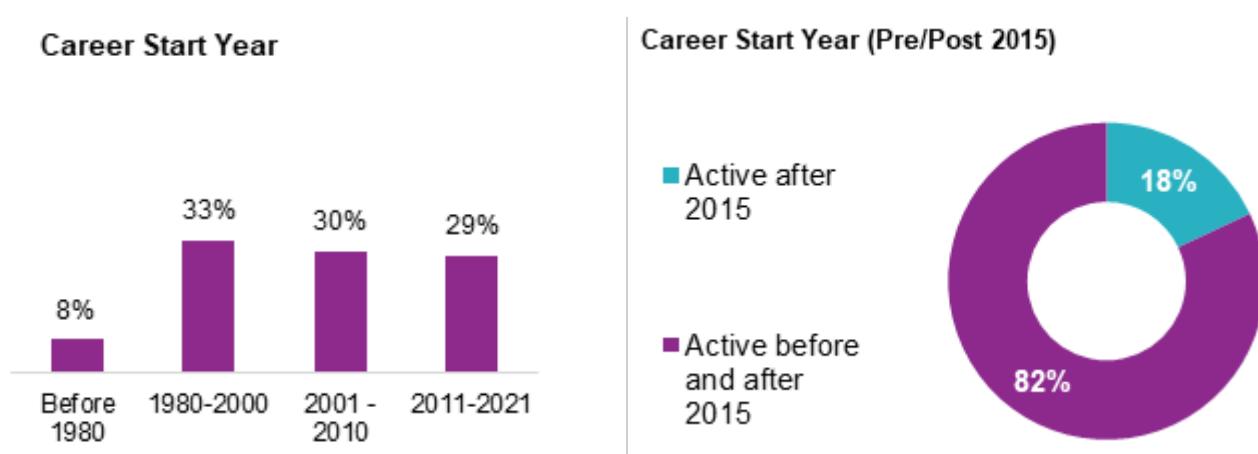


What percentage of your overall income did you earn from your music career in 2019? Base: 708 (total sample)

Figure 5.3: Percentage of overall income earned from music (2019)

We also asked a number of questions that sought to understand the careers of creators in terms of income, how those careers had changed (or not) over time, and about whether they were currently signed, or had been signed in the past, to a record label or publishing company.

Most respondents (82%) had started their career before 2015 and 71% began before 2011.

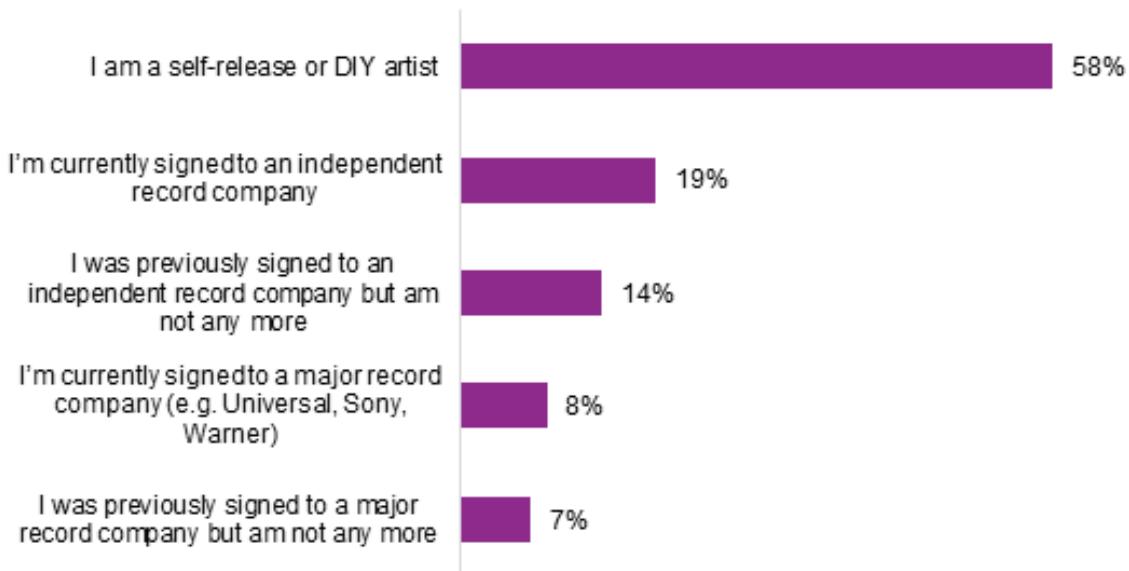


Roughly what year did you start your music career? Base: 708 (total sample)

Figure 5.4: Career start year

More than a quarter of our respondents (27%) were currently signed to a record label (independent or major company), while 14% had been but no longer were. Over half (58%) considered themselves to be self-release or DIY musicians.

Relationship to record companies



Which of the following describe you in relation to record companies? Base: 477 (music performers)

Figure 5.5: Relationship to record companies

Our sample was relatively evenly split between those for whom music was their only source of income (28%), those for whom it contributed a large part (26%) or those for whom it contributed some of their income (30%). A smaller proportion used to earn an income from music but no longer did (17%). 8 per cent of the 477 performers responding to the survey said they are signed to major labels (38 performers). BPI statistics report that 640 acts were signed to UK major labels in 2019 but no information is available about the number of individuals. Our survey was of musicians living in the UK. Presumably quite a few musicians signed to UK major labels are not based in the UK. So even if that 640 roster figure translates into 1500 individual UK-based musicians, that is still only 3.3 per cent of the ONS figure of 45,000 UK musicians in 2019 (see Chapter 1). Consequently, it seems likely that artists signed to major labels are over-represented in the survey.

Music sources as a proportion of all income

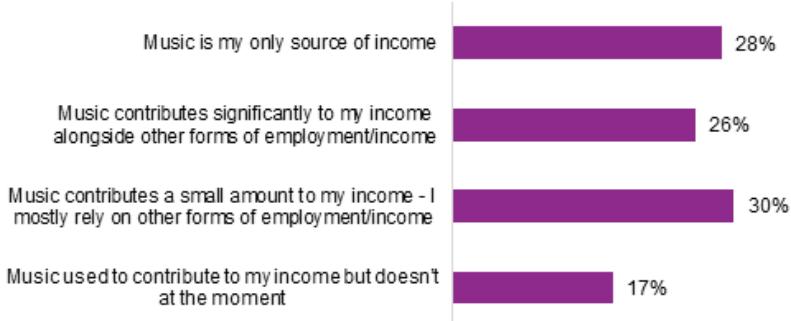


Figure 5.6: Music sources as a proportion of all income

We recognise that the Covid-19 pandemic has impacted many creators and their careers. If the pandemic has affected you, please answer about the time before (i.e. 2019) below. Which of the following **best describes you** in relation to your music work usually... Base: 708 (total sample)

We now further discuss the results of the survey, highlighting key insights at a total sample level and providing commentary where there are any significant differences across demographic groups or between different categories of music creators (e.g. those gaining all of their earnings from music versus those earning a significant or small amount).

5.3 What music creators earn

Across the sample the survey revealed that the majority of music creators earn income from music below £20k. This is consistent with earlier research on music creators' earnings cited in Chapter 1 of the report (MU 2012).

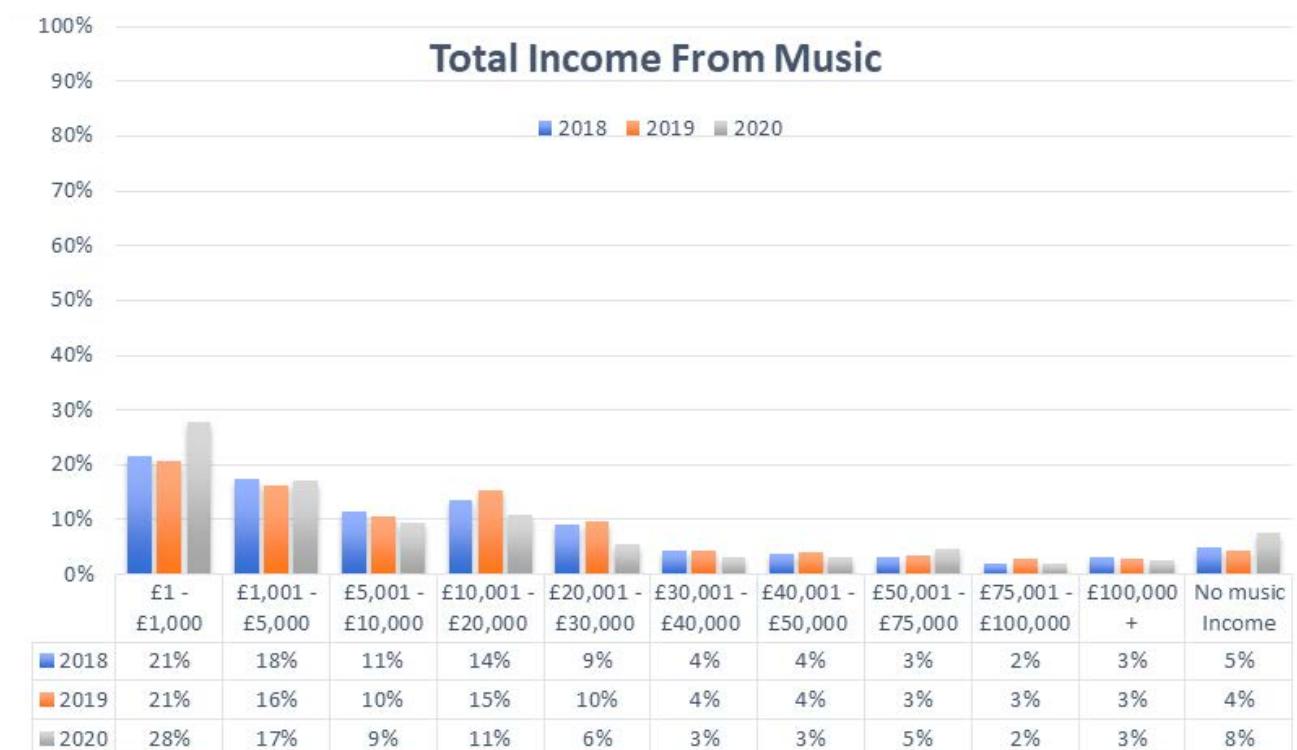
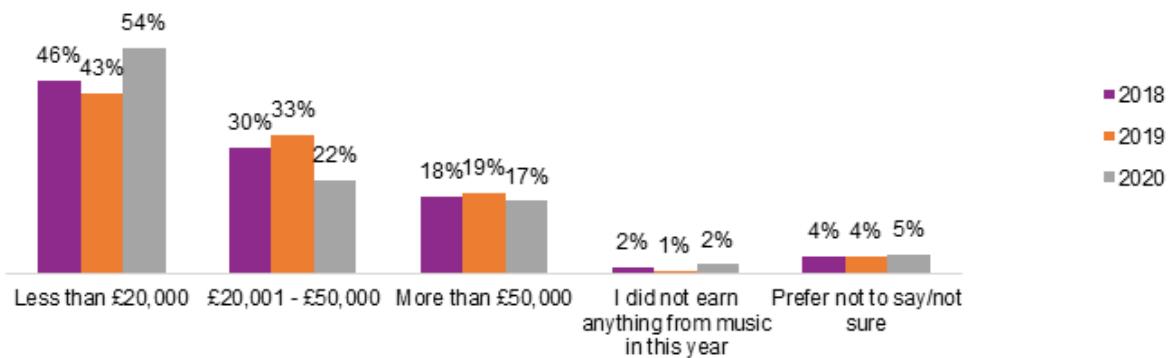


Figure 5.7: Total income from music

Q: Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: 708

- More than a third (37%) earned £5,000 or less from music in 2019 and nearly half (47%) earned less than £10,000.
- 62% earned £20,000 or less from music in 2019.
- 9% reported earning more than £50,000 in 2019.
- The proportion of musicians earning nothing from music doubled between 2019 and the first pandemic year of 2020, from 4% to 8%.

It is worth homing in on those who say that music is their only source of income.



Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: 197 (those for whom music is their only source of income)

Figure 5.8: Income from music of those for whom music is their only source of income

In this category, 43% of musicians earn less £20,000 a year or less (as against 62% of those who combine musical income with other income).

The £20,000 figure is potentially significant in terms of debates about minimum and living wages. The national minimum wage in 2019 (for workers over 25) was £8.21. Assuming a ‘normal’ working year of 2080 hours (52 weeks at 40 hours per week), including annual leave, this equates to an annual salary of £17,076. Although we cannot assume that all those who reported that music was their main source of income worked for 2080 hours (or that figure, minus holiday time), **this nonetheless suggests many musicians who gain all their earnings from music were working at around or below the minimum wage.**

Another benchmark is that the UK Office for National Statistics considers the median annual salary for full-time workers in the UK in April 2020 to be 31,461 pounds per year (ONS 2020). While we cannot reliably deduce a median figure from our survey figures, we can use the £30,000 threshold as a marker. **72% of all respondents and 64% of those whose earnings came entirely from music were earning £30,000 or less.**

It is intriguing that 17% of respondents reported that they were still earning more than 50,000 pounds from music in 2020, hardly down at all from the 2018 and 2019 figures. This may suggest that the highest earners tend to draw more than others on sources that were relatively resilient to the pandemic – for example, recorded rather than live music, or from sync rights and broadcasting.

Similar patterns could be discerned among respondents for whom music contributed significantly to their income. Here too there were minimal changes between 2018 and 2019 (i.e. 1-4% increases or decreases), and an even more dramatic drop among ‘middle earners’ (the 20K to 50K bracket) in 2020. The music income of high music-related earners was, again, resilient, unchanged at 13%. And Figure 5.10 suggests that a small number of people (3% of 214 respondents) who earned a small amount of their income from music, nevertheless still earned more than 50K from music – their seeming success perhaps allowing them to gain money from other sources such as property ownership.

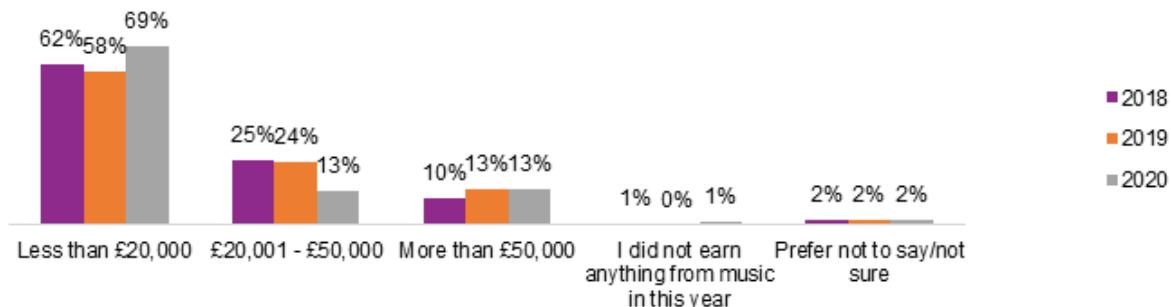


Figure 5.9: Income from music of those for whom music contributes significantly to their income

Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: 179 (those for whom music contributes significantly to their income)

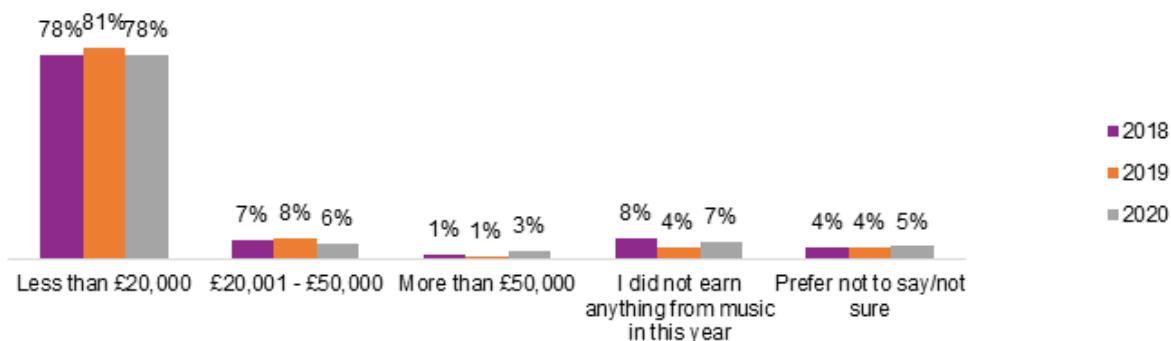


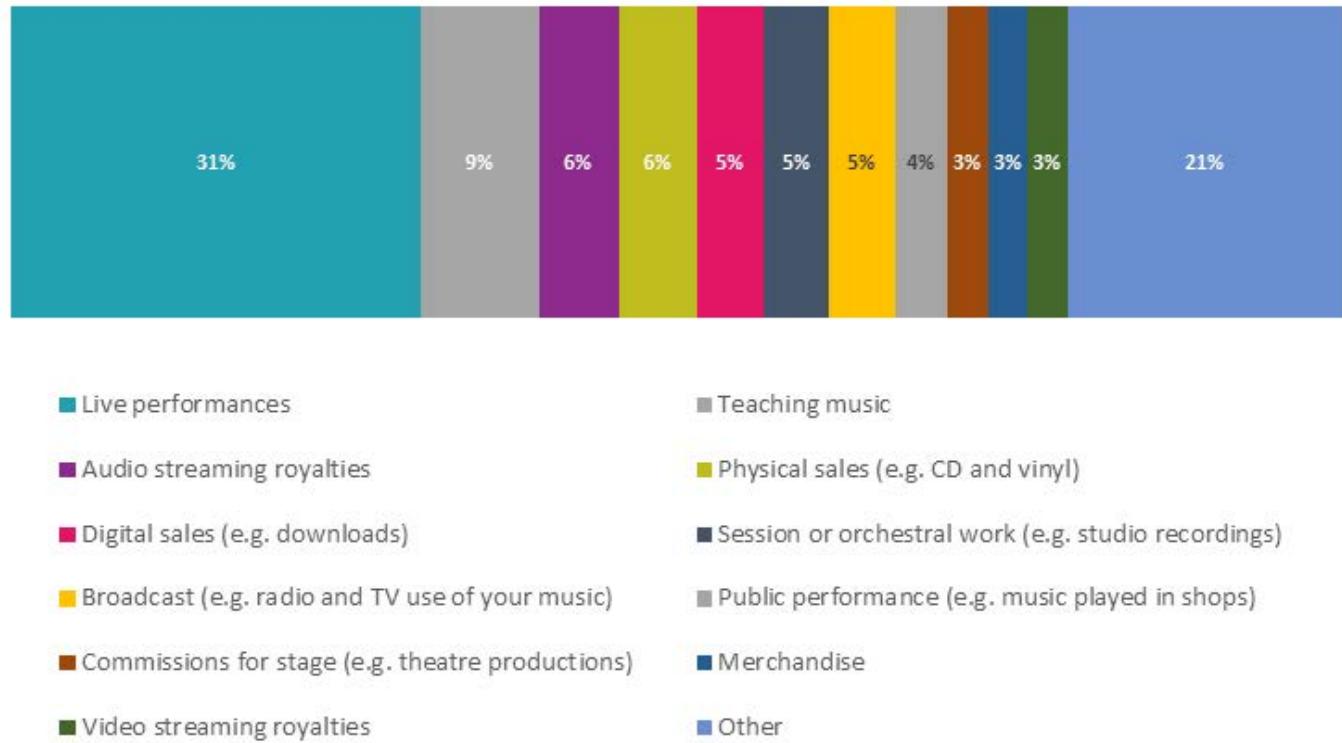
Figure 5.10: Income from music of those for whom music is a small amount of their income

Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: 214 (those for whom music is a small amount of their income)

5.4 Sources of earnings

The survey asked creators to detail the sources that contributed to overall music earnings. The profile of creators' earnings in Figure 5.11 shows that income tends to be composed of a wide range of sources each making a small proportional contribution to the whole.

- Prior to the Covid-19 pandemic, live performances were by far the single greatest source of income on average, generating nearly one third (31%) of respondents' music related income.
- No other source, including individual 'other' sources, accounted for more than 9% of music related income.
- Audio streaming royalties accounted, on average, for 6% of income - the same as physical sales.
- Digital sources combined accounted, on average, for 14% of income (6% audio streaming, 3% video streaming and 5% downloads).
- 'Other' in the below chart includes sources that accounted for less than 3% includes (when rounded up) advances (3%), media commissions (3%), mechanical royalties (2.9%), direct licensing (2.8%).

Music Income Split Across Sources**Figure 5.11a: Music income split across sources**

How did the income you generated from your music career split across the following sources? Base: 637 (earned money from music in 2019)

As discussed in Chapter 1, previous academic and industry surveys (MU 2012, DiCola 2013, Live Music Census 2018) show that income from recorded music tends to make only a small contribution to creators' total earnings, something that is seldom acknowledged in music streaming debates. This was also borne out by the Survey. Royalties from audio streaming formed a small part (6%) of most music creators' earnings, with another 3% from video streaming. When earnings from royalties or direct sales of 'physical' music (CDs, vinyl, cassettes) (6%) and digital downloads (5%) are added, we can say that recorded music accounted directly for an average 20% of income across our respondents. In addition, there were earnings from various rights associated with copyright works, such as the public performance right and sync licensing. One of the challenges of conducting a survey in this area is that the means to earn money from music are complex, multifaceted and overlapping, and it is therefore difficult to construct a thorough survey that would not be so time-consuming and complex for respondents that it would limit participation.

As shown later in the chapter, the contribution of audio streaming to our respondents' earnings doubled between 2015 and 2019. Section 5.7 of this chapter investigates creator attitudes to streaming as a means of disseminating music in terms of finance and other factors that indirectly contribute to their music careers.

A factor that clearly needs to be taken into account is assessing the capacity of music creators to make a living from their earnings is how much of those earnings music creators spend on their music careers. We did not ask about net earnings, we asked about total earnings, and so responses about expenditure need to be taken into account when considering net earnings.

Respondents reported that in 2019, 44% of them spent more on their music careers than they earned, with 21% spending a lot more. One third (34%) earned more from music than they spent, with 12% earning a lot more. 20% reported that they broke even.

- 54% of creators whose only source of income was music earned more than they spent on their careers, 22% higher than those for whom music contributed significantly to their income (32%)
- One third (33%) of those for whom music was the only source of income spent more on their career than they earned (16% 'significantly more', 17% 'a bit more')

Money Spent vs Money Made (2019)

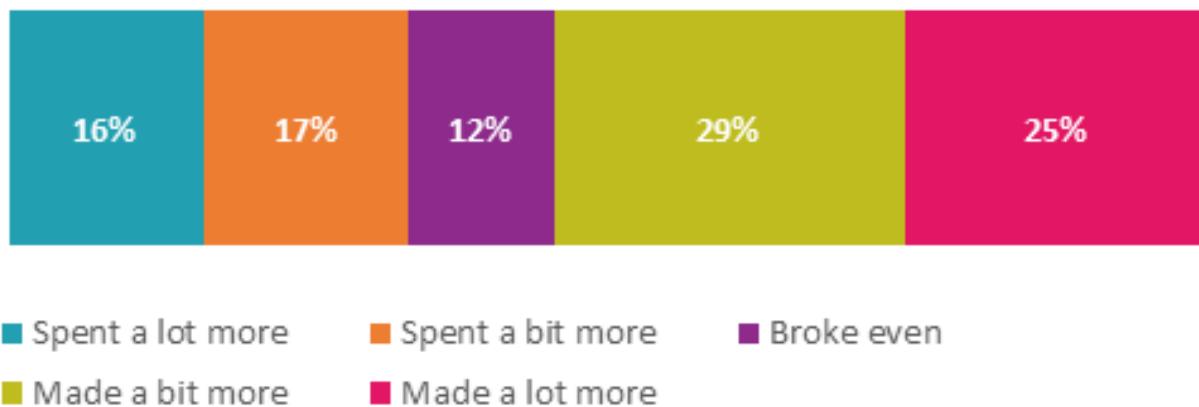


Figure 5.11: Money spent vs money made (2019)

Which statement best describes you in terms of the **money spent vs made** on your music career in 2019? Base: 704 (those active in 2019)

Respondents were also asked about the relationship between music spent on their music career and music earnings in 2019 and in the years before 2015, before streaming began to increase the amount of revenue from recorded music flowing to rights-holders. Results indicated a slight increase (+4%) in the proportion spending more money on music than they had earned from it (40% before 2015 and 44% in 2019) and a slight decrease (-4%) in those earning more than they spent (38% before 2015 and 34% in 2019).

Songwriters were also asked to provide some additional details about how they worked with others, and who they generally wrote for. This is important because songwriting royalties (like performer royalties) need to be split between those who are due payments. There is a sense among some songwriters that there has been a move towards bigger numbers of songwriters receiving song credits, thus potentially diluting the royalties that any individual songwriter might earn (see also Chapter 4). But only 10% of songwriters in our survey actually work with more than one other writer, and the vast majority of our songwriting/composing respondents usually work alone. 18% of our composing/songwriting respondents wrote mainly for others, while nearly half wrote for themselves, implying that they would be in a position to earn performing income as well as song-writing royalties.

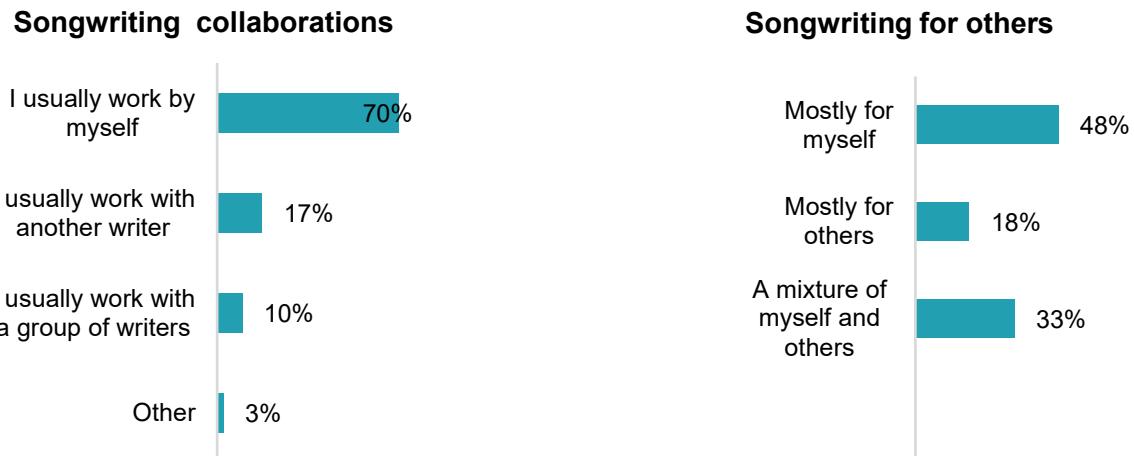


Figure 5.12: Songwriters individual and collaborative work

When working on songwriting or composing, do you usually work alone or with others? Base: 482 (songwriters)

While the sample sizes for each individual income bracket are too small to draw any firm conclusions from the below graph, they do suggest that in all cases, except the 75K to 100K bracket, a majority of song-writers usually work by themselves – meaning that concerns that increasing splits between song-writing credits may be ‘diluting’ song-writing royalties. Data concerning actual co-credits would help to illuminate this.

Songwriting collaborations

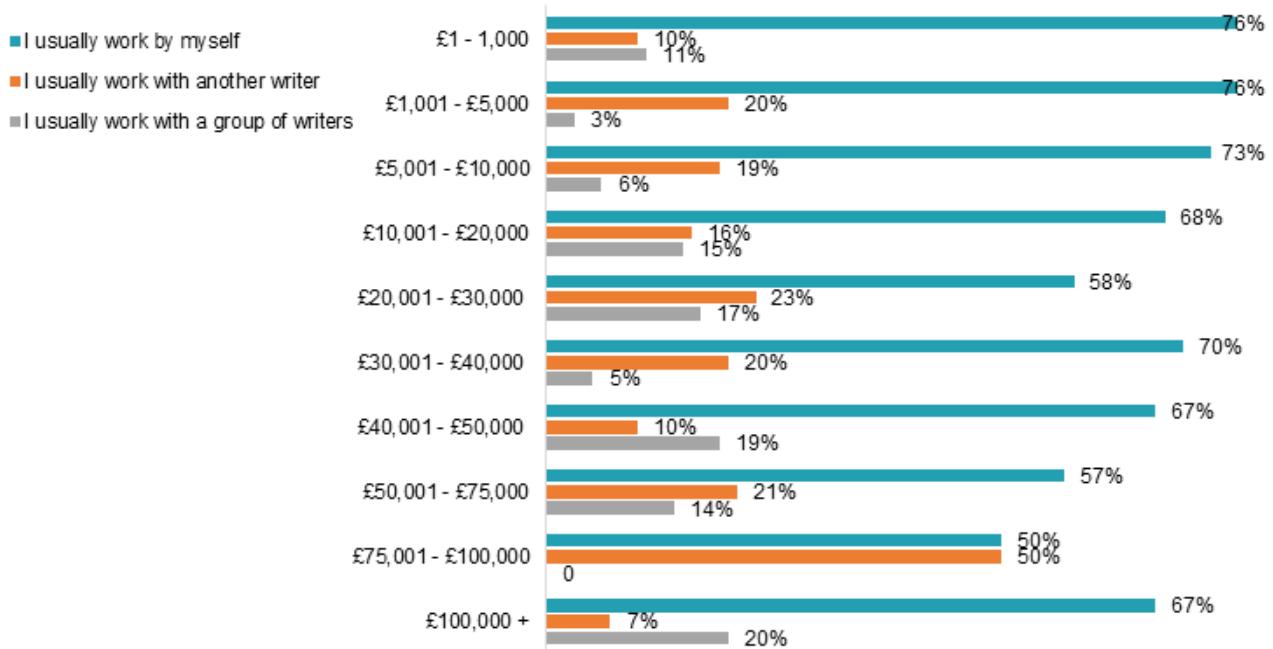


Figure 5.13: Individual vs collaborative writing by income level

As shown in section 4.4.2, while the average number of writers for the Top 100 UK singles increased between 1999 and 2019, the average number of writers for all works added to the repertoires of PRS for Music remained flat.

5.5 Income disparities: gender, ethnicity, education level and age

Our survey offers evidence of disparity in earnings among music creators related to gender. This is clearly apparent from a calculation of median earnings by gender in 2018 and 2019 (Figure 5.14).¹³³

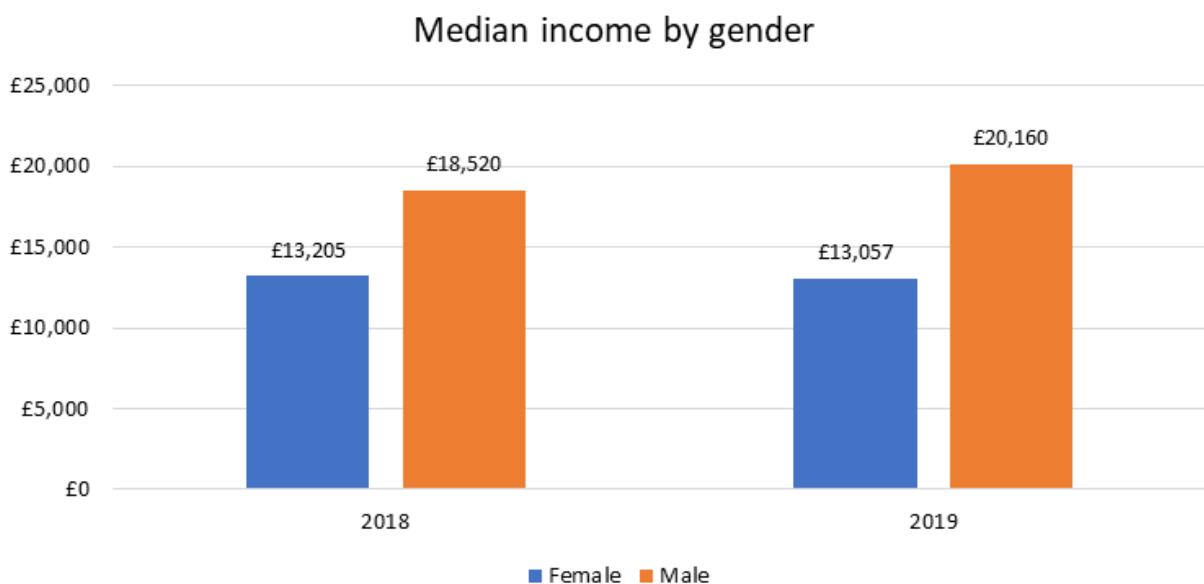


Figure 5.14: Median income by gender

The consistently high proportion of female respondents earning less than £20,000 is notable here and the very low number earning more than £50,000 in each of our three years is also striking.

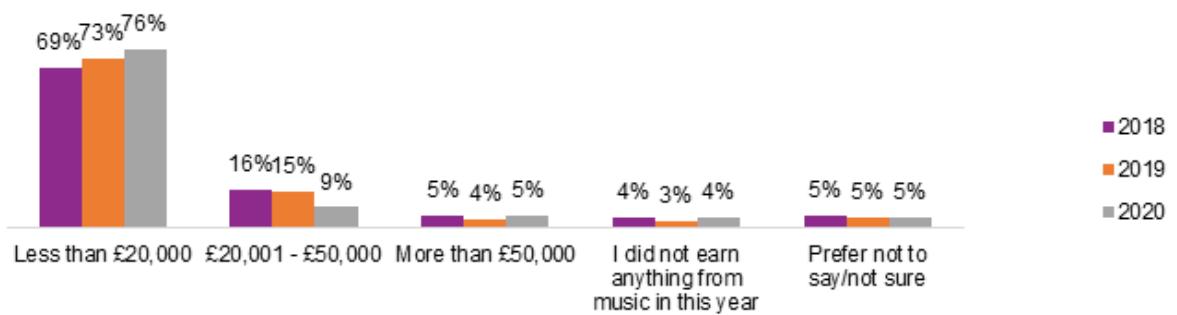


Figure 5.15: Overall earnings from music female respondents

Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: 194 (female respondents)

¹³³ Non-binary, Prefer not to say and Prefer to self-define sample sizes are too small to comment on.

The proportion of male respondents earning less than £20,000 was considerably lower than that of female respondents, in the 59% to 62% range across the three years, and the proportion of men with high music earnings was consistently higher than the proportion of women (9-11% of men as opposed to 4-5% of women).

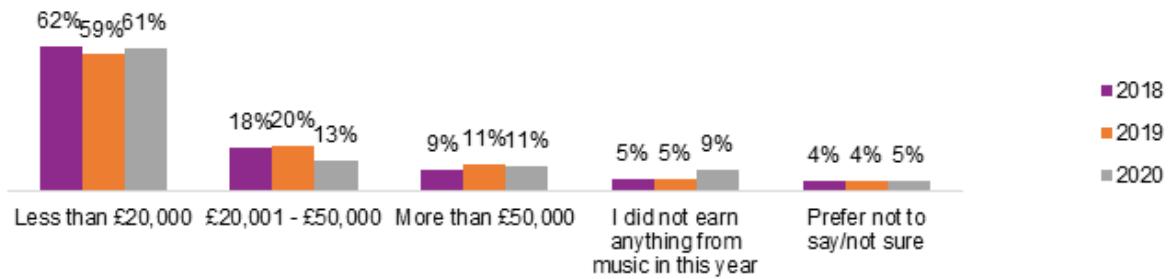


Figure 5.16: Overall earnings from music male respondents

Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: 500 (male respondents)

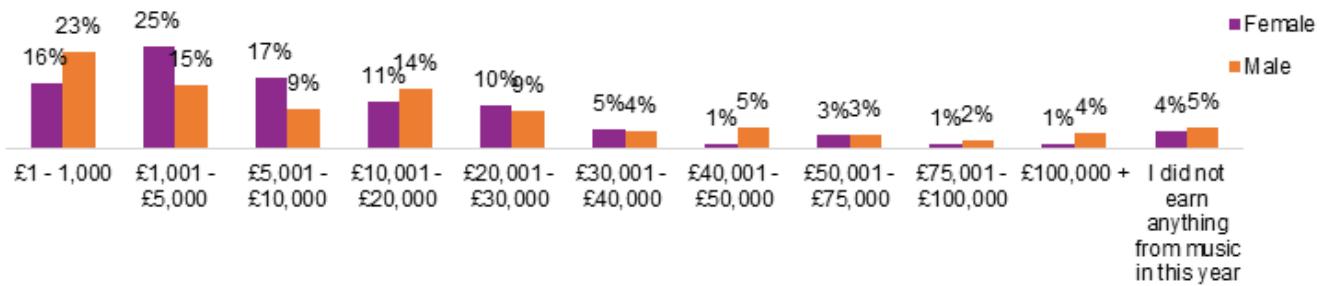


Figure 5.17: Overall earnings from music female and male

Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? (2019) Base: 708

In 2019, 79% of female respondents and 71% of male respondents earned £30,000 or less – significant because of its proximity to the UK median wage (see earlier footnote). 14% of males reported earning £40,000 or more compared to 6% of female respondents.

In terms of ethnicity, the survey findings are less clear.¹³⁴

- A larger proportion of those from ethnic minority backgrounds (excluding white minorities) earned £30,000 or less compared to white respondents (81% compared with 76%).
- While earnings were more similar across ethnicity for those earning amounts over £40,000, there were some differences among the lower income brackets.

¹³⁴ Unfortunately, our sample size was not large enough to generate statistically significant findings on ethnicity ($p=0.627$ and 0.223): the largest group is those who declared as white, but other groups are relatively small. The dispersion is also likely to be higher in these groups. Hence, any disparity may be hidden in the sample distribution. These issues may be pursued in future surveys with even larger samples.

- Lower proportions of those from ethnic minority backgrounds (excluding white minorities) earned £1,000 or less in 2019 compared to white respondents, while a greater portion of ethnic minority respondents earned between £1,001 and £5,000 (26% and 16% respectively).



Figure 5.18: Overall earnings from music by ethnicity

Approximately how much did you personally earn overall from your music career (before taxes) in each of the past 3 years? Base: total = 708

The survey also asked respondents about age and educational attainment level. The relationship of education level to earnings is shown in Figure 5.19.

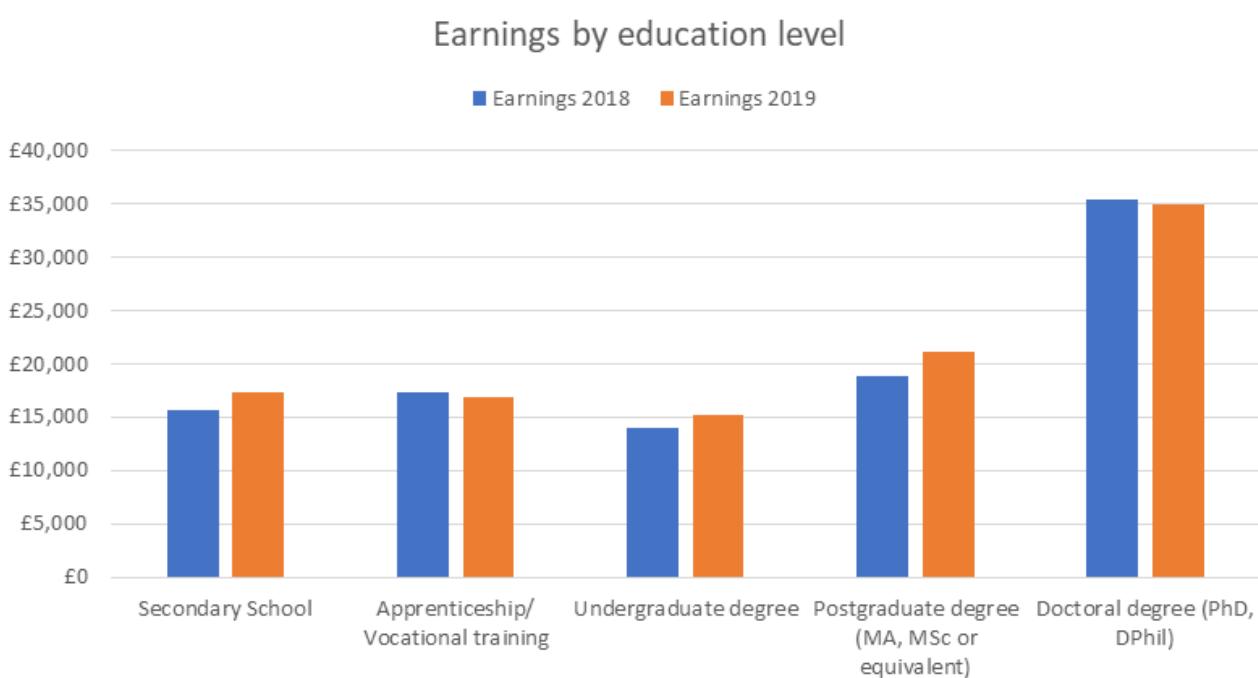


Figure 5.19: Earnings and level of education

The pattern here is different from that found across different occupations, where income tends to rise more steeply with level of education. While, as already pointed out, income levels are low, nevertheless those with only secondary school or vocational-apprentice education earn more on average than those with undergraduate degrees. The high earnings of those with doctorates is gratifying for university academics like ourselves; it may reflect the granting of honorary doctoral degrees to successful performers and songwriters.

When the earnings are analysed by age of music creator in Figure 5.20, it is clear that younger music creators in the 16-24 age range earn considerably less than their counterparts aged 25-49 years old, with the highest earnings being between the ages of 35 and 49. Beyond 50 years of age the reported earnings are lower, and lower again for those at or approaching UK state pension age in 2019.

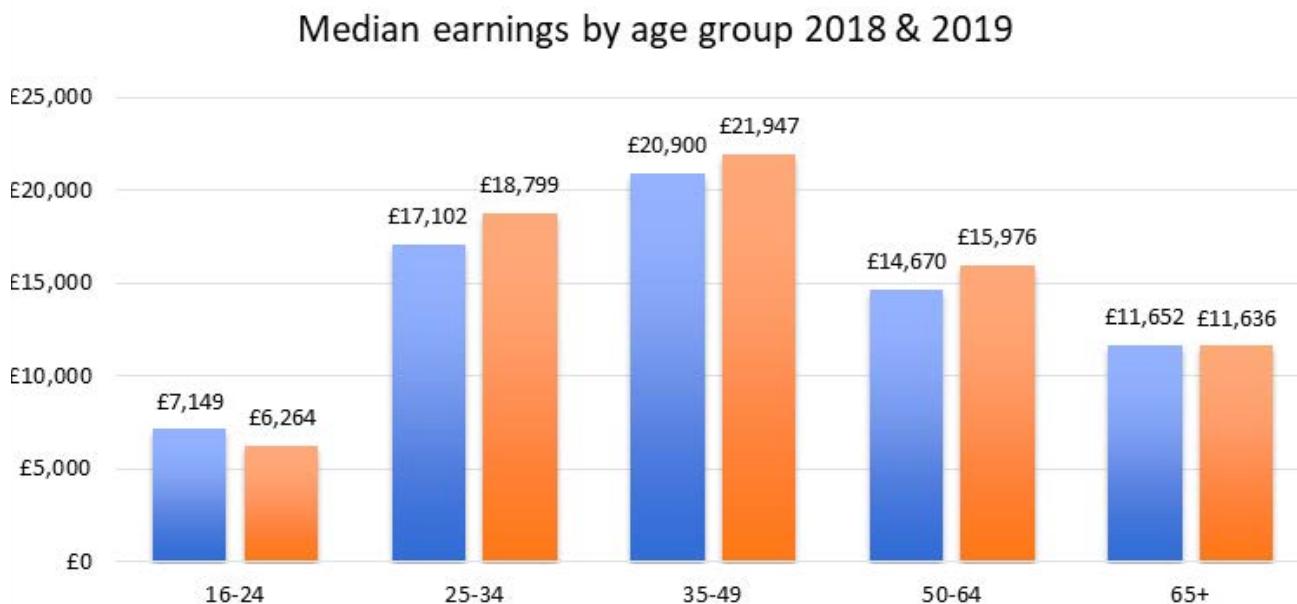


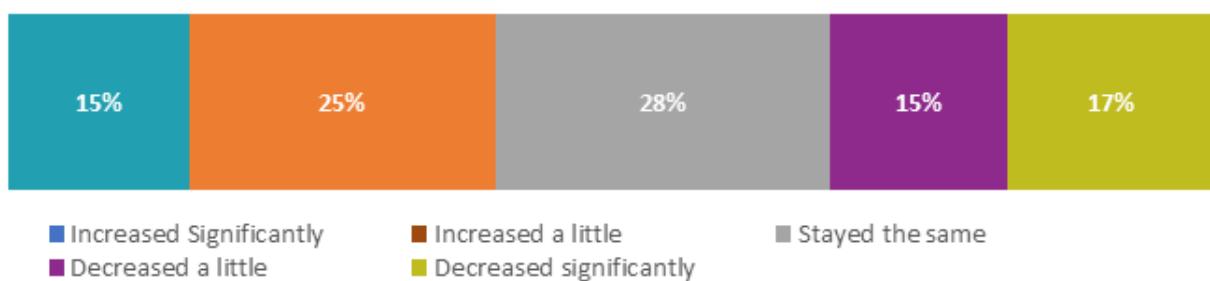
Figure 5.20: Median earnings by age group 2018 & 2019

The data shows that creators in the middle ranges earn more than those at either end of the scale.

5.6 Before and after 2015

Respondents who had earned money prior to 2015, i.e. what we are defining, for the purposes of this research, as 'the pre-streaming era', were asked questions comparing their income before the rise of music streaming with their income afterwards. (We made clear that our questions related to the period up to and including 2019, so that results were not distorted by the results of the pandemic). Of those who were active before 2015, 40% said their overall income had since increased, 32% that it had decreased and 28% that it had stayed the same. 15% of respondents noted significant increases, while 17% noted significant decreases. The number of music creators reporting significant decreases in earnings is not far behind those who report significant increases. However, it should be noted that respondents were not asked to adjust earnings for inflation.

Changes in Income (Post-Streaming)



How has your overall income from music changed since the growth of music streaming? Base: 471 (those who earned money from music before streaming's rise in 2015)

Figure 5.21: Changes in income post-streaming

These figures are at odds with suggestions that streaming has had a strongly negative impact on earnings found in much of the contemporary debate introduced at the start of the Report. Of course, there are many other factors besides the rise of streaming itself that might influence change or stasis in music creators' earnings, perhaps especially the career trajectories and work input of the creators themselves. It may be inevitable, in a labour market where earnings are determined by success in unpredictable markets (as opposed to the relatively stable earnings of salaried professionals on long-term contracts), that some creators will be experiencing increasing success and prosperity, while the fortunes of others will decline. However, these reported changes do not necessarily mean that streaming is significantly enhancing earnings for music creators, for as we have already seen, earnings based on rights associated with streaming account for a small but growing proportion of music creators' earnings as a whole.

In Section 5.4, we explained how earnings were distributed across different sources. How did our respondents believe that this had changed for them since 2015? Obviously, there is an issue of memory here, but in the absence of being able to examine the historical tax records of a wide range of music creators, there seem to be few options other than asking music creators.

Figure 5.22 provides a comparison of respondents' reported income split by source in 2015 and 2019.

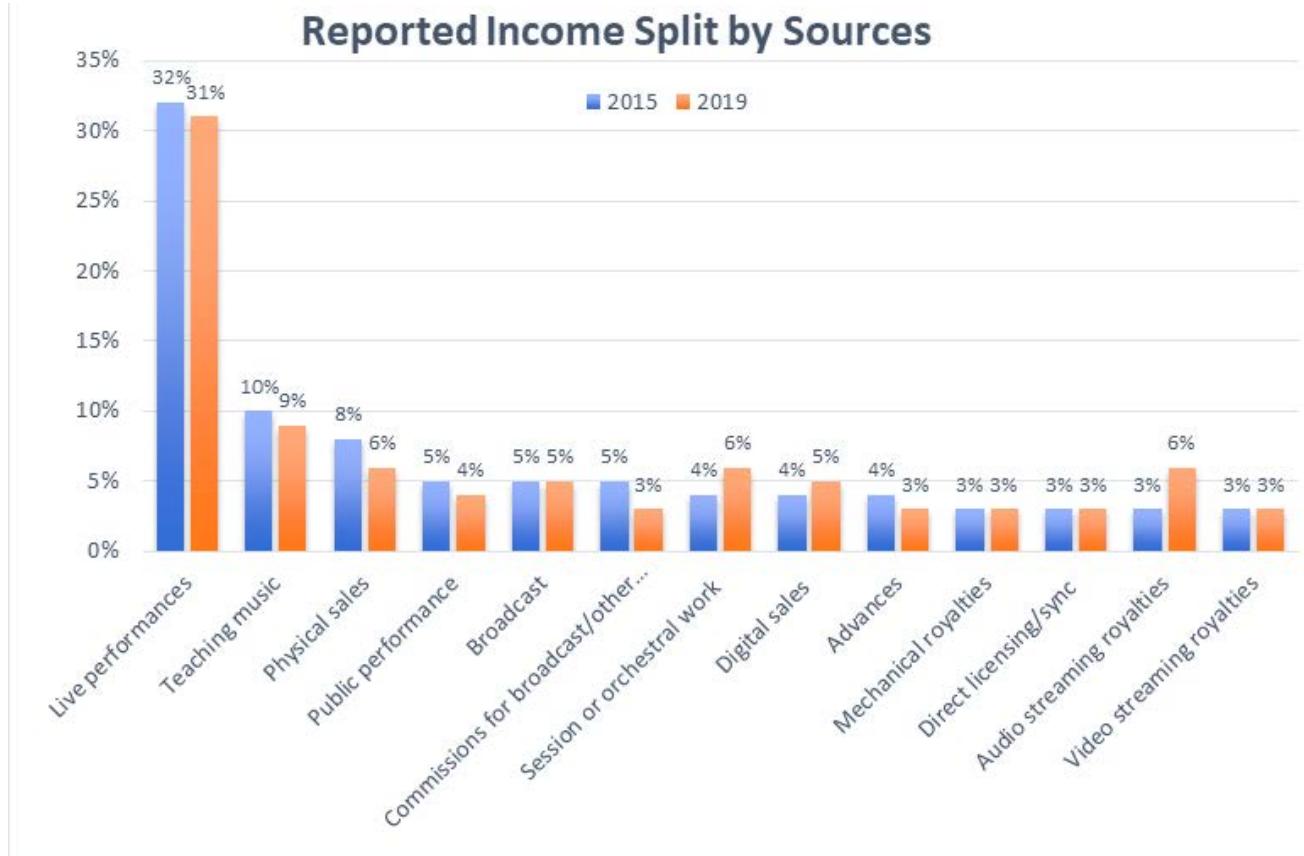


Figure 5.22: income split by source

How did the income you generated from your music career split across the following sources? 2015 Base: 410 (those working in music prior to the rise of streaming in 2015) 2019 Base: 637 (those who earned money from music in 2019)

Respondents reported that the contribution of streaming income had doubled from 3% to 6% of their total reported music income in the period under consideration. This increase exceeds that of any other income source, the majority of which had stayed the same or declined.

5.7 'Input' factors potentially influencing earnings

To put the above data about music creators' earnings into context, account needs to be taken of a number of factors concerning the money and effort invested by music creators, including the time music creators spend working on music-related activity, how much money they spend on their musical careers, and how they obtain funding.

A major issue is how much time music creators spend on music-related work. Obviously, any worker would hope, and perhaps even expect, that when they spend more time on an activity that provides them with income, they would earn more money from it. Yet, as our results show, nearly half of our respondents (45%) spend less than half of their working time on music. This may be because of choice, with some people choosing to combine music with other activities. Or it may be because of necessity – that some music creators cannot find sufficient gainful employment to fill their working time, even if they would prefer to do so. Future surveys may ask questions clarifying this issue of choice or compulsion.

Some people are in the seemingly fortunate position of earning money from music while not undertaking music-related work (4 per cent). It may be that royalties from older recordings and songs account for at least some of this.

We can make some correlations between time spent and the degree to which music acts as a sole or main source of income.

- Those for whom music was their only source of income spent more time on it than any other group, with two thirds (67%) spending all of their working time on music.
- The amount of work time spent on music was more varied among those for whom music was not the sole source of income. Two thirds (66%) of this 'music as a significant source of income' group spent at least half their time on music, while the remaining third (33%) spent less than this.
- Almost half (48%) of those for whom music made up only a small proportion of their income spent 20% of their working time or less on it.
- Among those who did not make any money from music in 2019, 18% spent no time on music in that year.

Total sample

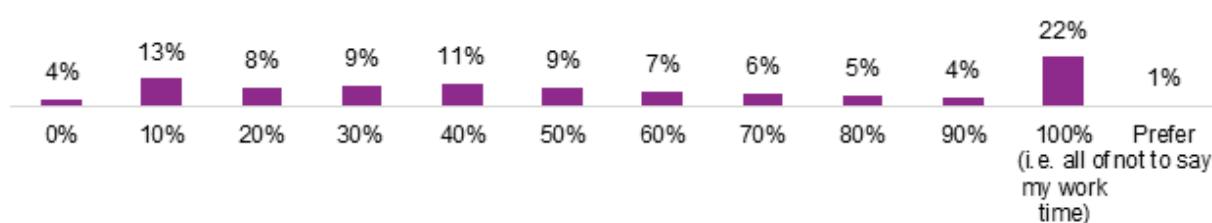
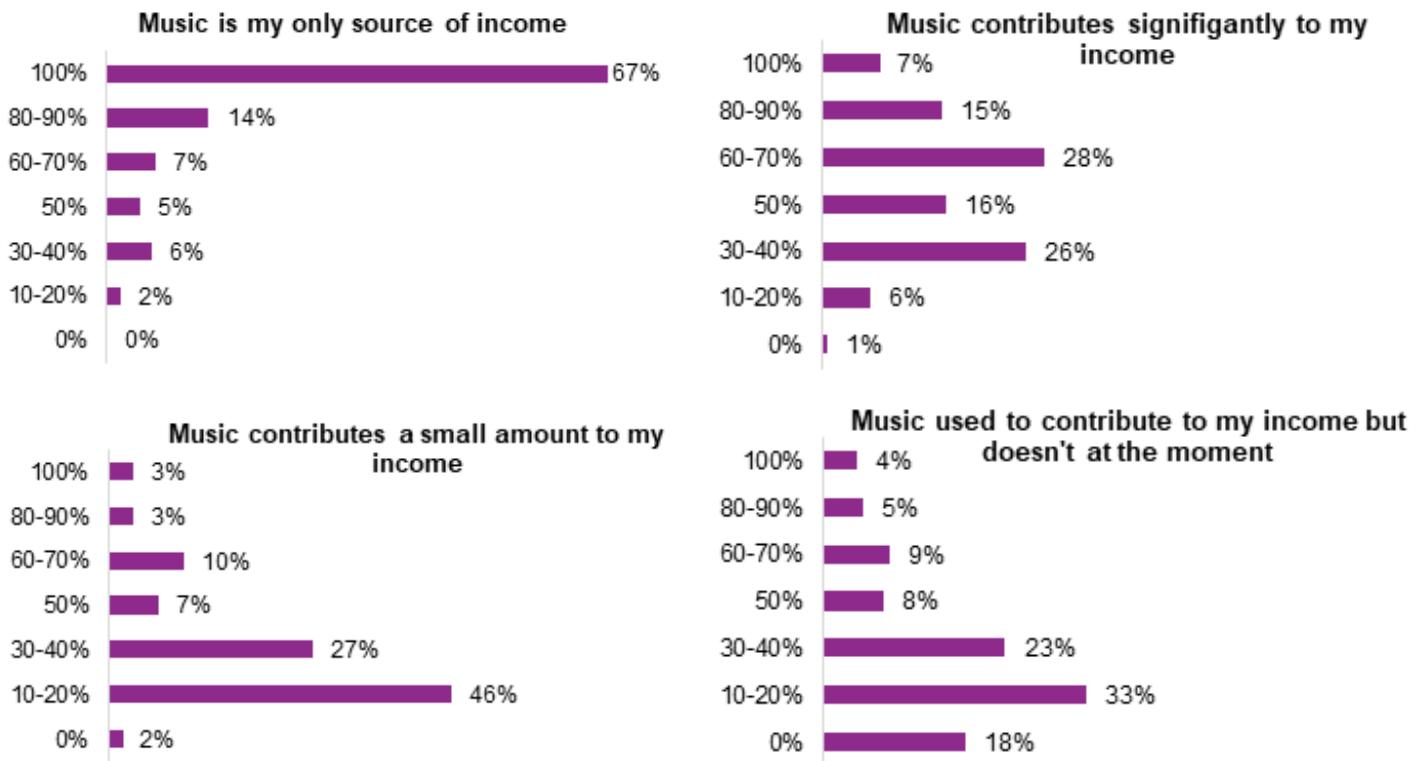
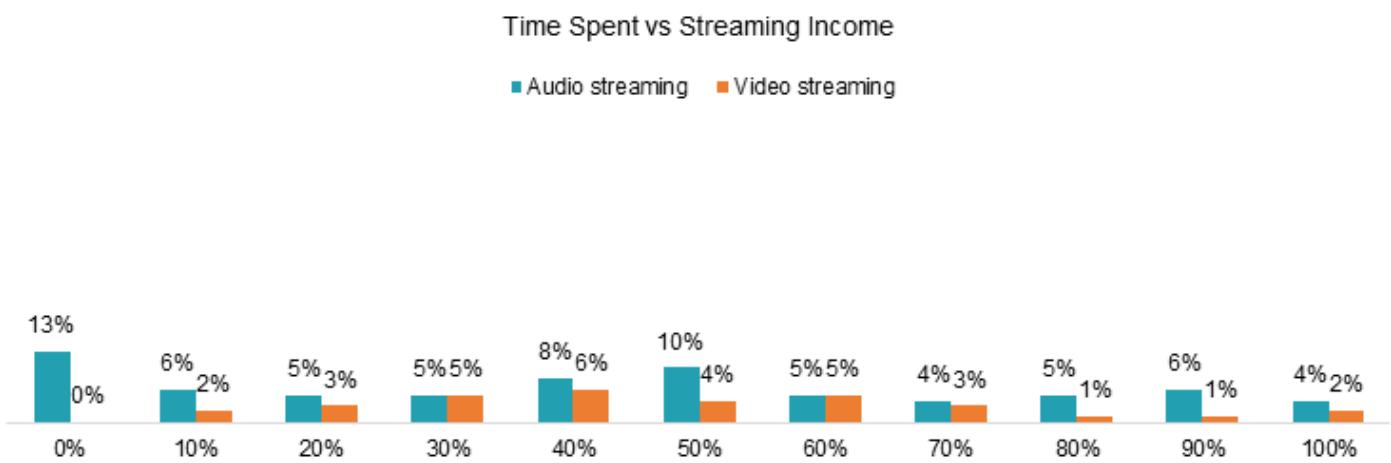


Figure 5.23: Time spent on music career 2019**Figure 5.24: Time spent on music career by significance of music as contribution to income**

Approximately what **percentage** of your **working time** did you spend on activities **relating to your music career in 2019?** Base: 708 (total sample)

Given the focus on streaming in recent debates, we analysed the contribution of streaming to overall income relative to time spent working on music. In Figure 5.25,



Base: n=636

Figure 5.25: Time spent vs streaming income 2019

- The proportion of overall 2019 income earned from audio streaming was highest (13% of overall earnings) among those who spent no time on their music career that year. Streaming appears to be the most likely way now for non-active musicians to gain income from old recordings and songs.
- Otherwise, audio streaming royalties represented a larger proportion of income for those who spent around half their time on their music career (40-50%). We can offer no likely explanation for this result.

How did music creators fund their musical activity? The two most common methods of paying for music production were self-funding with non-music income (42%) and self-funding with music income (41%).

Funding Sources

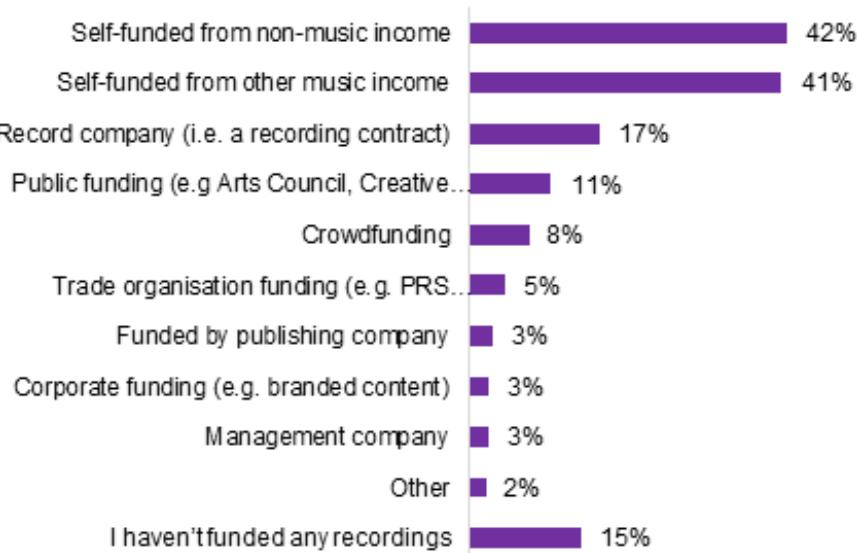


Figure 5.26: Funding sources for recordings

There were marked differences by gender and ethnicity here. Half (50%) of the female respondents reported self-funding with non-music income, compared to 38% of males. Conversely, a higher proportion of men (45%) self-funded from music income than women (33%).

Similarly, 56% of those from ethnic minority backgrounds self-funded from non-music income, compared to 40% of white respondents. Differences by ethnicity were smaller among those who self-funded from music income, with 38% of ethnic minority respondents funding this way compared to 42% of white respondents.

5.8 Ways of disseminating music: streaming behaviour and attitudes

Half (52%) of the sample usually self-released their recordings, reflecting the increased possibilities for this route in an era when digital distribution companies make it easy and inexpensive for musicians to upload their music.

18% went through record companies for releases while 23% reported a mix of the two.

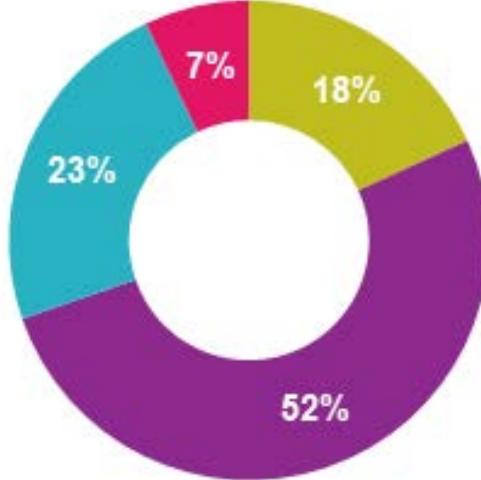
Ways of Releasing Recordings

■ Record company

■ Self-released

■ Some are through record companies and some are self-released

■ I don't play/write on any commercially available recordings

**Figure 5.27: Ways of releasing recordings**

How are the recordings that you have performed on or written usually released? Base: 407 (those who have funded recordings)

Generally, higher proportions of those reporting lower earnings (£10,000 or under) in 2019 only self-released compared with the total sample. While the number who released via a record company was higher among certain income brackets, the correlation between record company releases and 2019 earnings was less consistent.

■ Through a record company (i.e. a recording contract) ■ Self-released ■ Some are through record companies and some are self-released

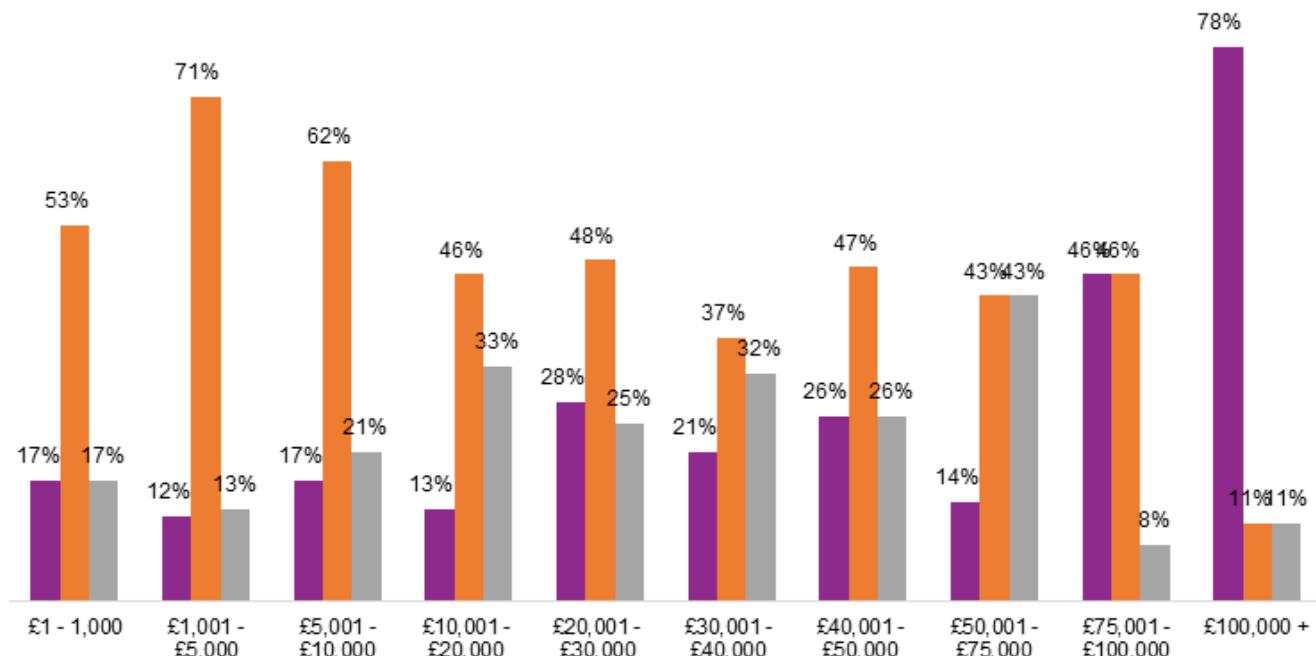


Figure 5.28: Reported earnings by method of recording release

How are the recordings that you have performed on or written usually released? Base: 407 (those who have funded recordings)

The median reported earnings of music creators' according to relationship to record companies is shown in Figure 5.29. It should be noted that creators were able to select more than one option in respect of their relationship to labels. For example, some respondents may previously have been signed to major labels and are currently independent or self-release creators. It should also be noted that the reported income here is from all music sources, as opposed to income derived solely from recorded music.

Income by relationship to record companies

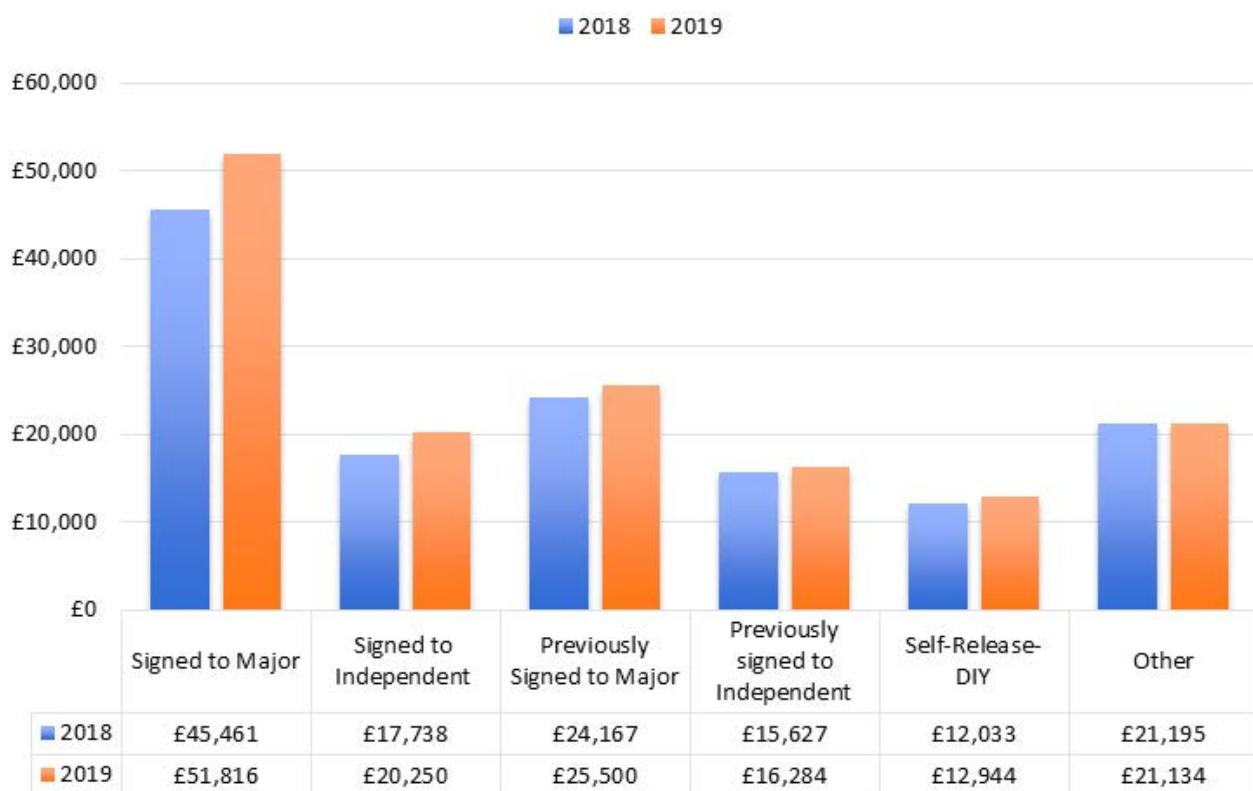
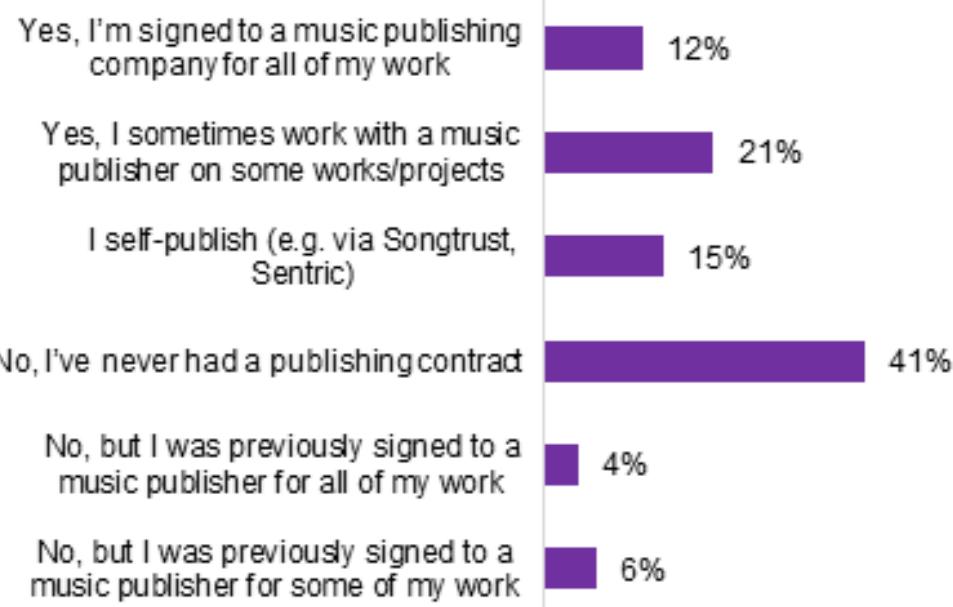


Figure 5.29: Earnings by relationship to record companies

When each category is viewed in isolation against overall earnings, figures show those currently signed to a major earn considerably more than any other group and considerably more than the overall sample average. Indeed, the next highest category of earners are those ‘previously signed to a major’. Those ‘previously signed’ and ‘signed to an independent label’ were the next highest earners, followed by ‘DIY/Self-release’ artists. The ‘other’ category invited respondents to enter free text responses. These responses included ‘session musician’, ‘producer’, ‘unsigned’ and various other roles. With the exception of the ‘other’ category, all other categories saw an increase in overall income from music in 2019.

44% of our respondents reported that they had worked with a music publishing company. Around a third (33%) currently worked with publishing companies for some or all of their work (21% and 12% respectively). 10% had previously worked with a music publishing company but were no longer doing so. 15% of the total sample opted to self-publish their music and use a third party rights administration service. 41% had never had a publishing contract or self-published through a third party.

Relationship to music publishing companies



Do you have a music publishing contract? Base: 708 (total sample)

Figure 5.30: Relationship to music publishing companies

Publishing company membership for some or all work was noticeably higher among those reporting higher 2019 earnings (£40,000 plus).

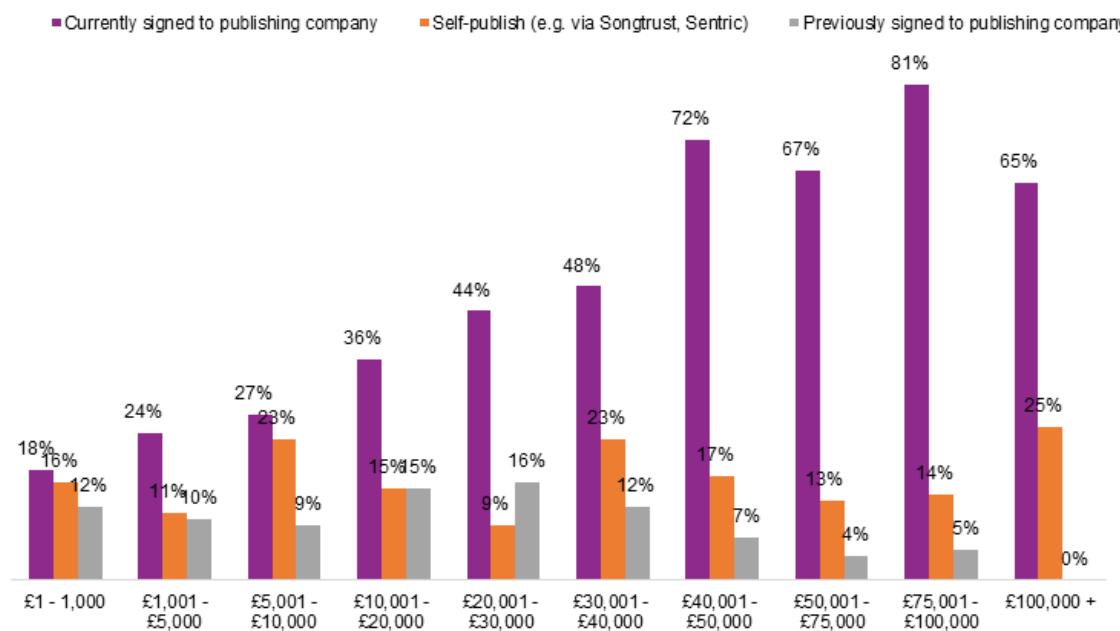


Figure 5.31: Earnings by relationship to music publishing company

In spite of the low proportion of earnings attributed by respondents to streaming royalties, most (90%) had uploaded music to a streaming platform. The most popular music services for respondents to upload their music are indicated in the diagram. It is perhaps notable that Amazon was named more than Spotify, given that Spotify has considerably more subscribers than Amazon according to available figures. Future research may conduct interview or focus group research investigating possible reasons for such results. The results for Apple Music and iTunes may reflect confusion on the part of some musicians concerning changes in Apple's music services over the years; it may be that some respondents think of Apple's streaming service as iTunes, when it refers to the media player and store app for purchasable digital downloads.

Streaming platforms used for uploading music

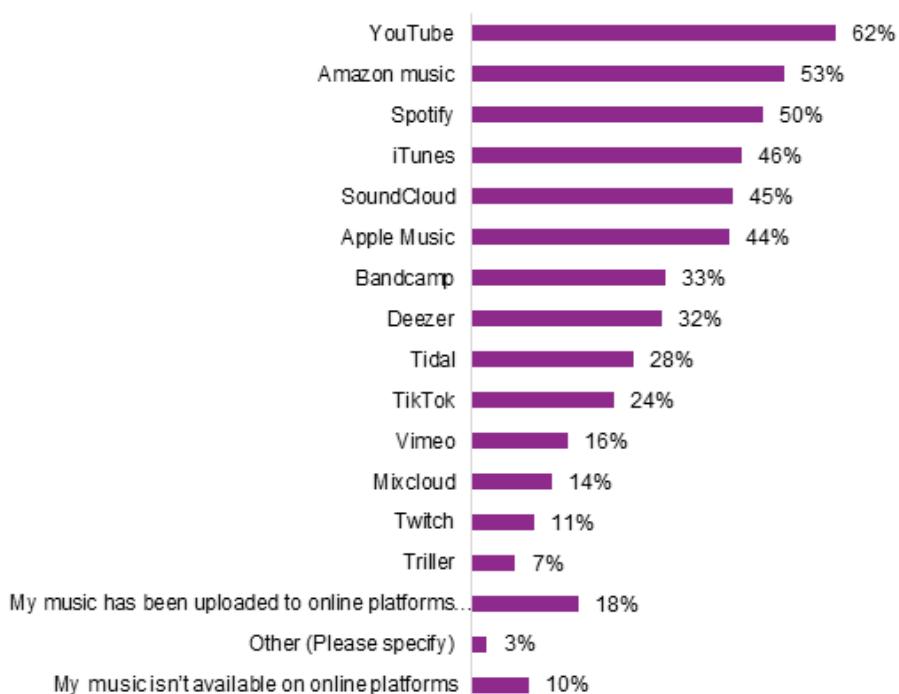


Figure 5.32: streaming platforms used for uploading music

Which of the following **online platforms** have you or a representative uploaded your music to? Please select all that apply. Base: 708 (total sample)

Respondents were also asked about how important they considered streaming to be in reaching audiences. 82% said that streaming was at least somewhat important and 39% considered it extremely important. Higher proportions of those earning lower amounts of money (£1- £1,000) and higher amounts (£75,001 - £100,000 and £100,000 +) said that streaming was extremely important compared to the rest of the sample (46%, 45% and 75% respectively).

At least half of those with earnings between £10,000 and £75,000 said that streaming was somewhat important (50%-55%). The proportion saying streaming was not important (not that important + not at all important) was similar across different levels of earnings.

Importance of Streaming

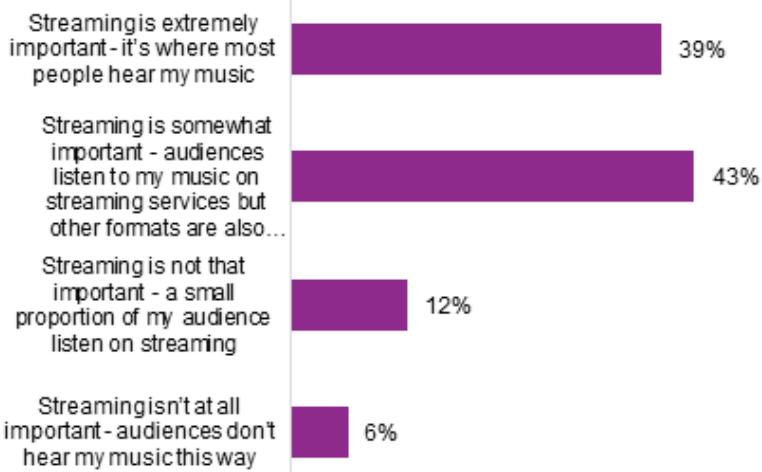


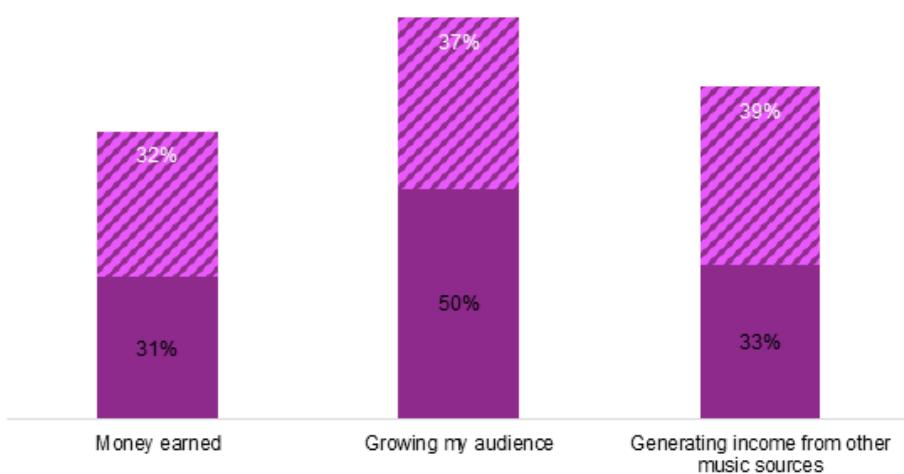
Figure 5.33: Importance of streaming

How important is streaming in terms of getting your music to audiences? Base: 641 (those with music on streaming platforms)

Respondents were also asked about the importance of streaming in relation to three other measures: money earned; audience growth; and generating income from other music sources.

Importance of Streaming

■ Extremely important ■ Somewhat important



How important is streaming in relation to... Base: 641 (those with music on streaming platforms)

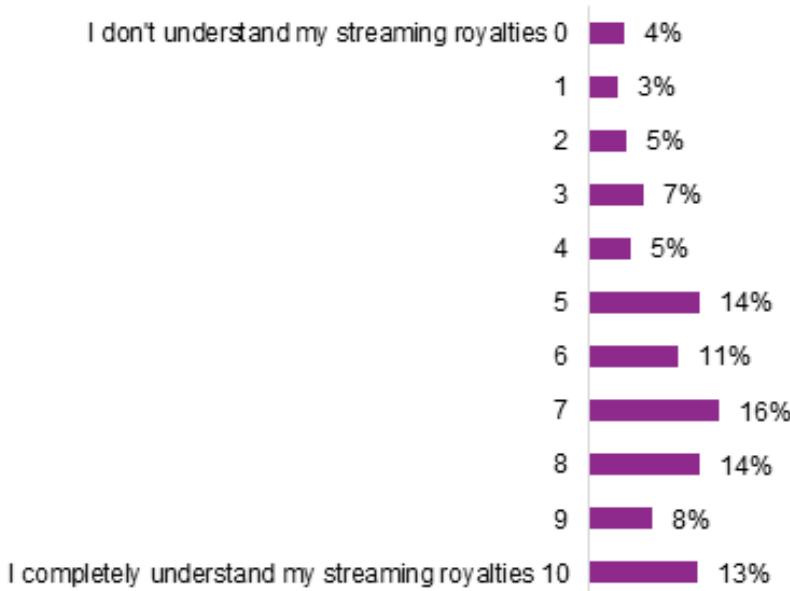
Figure 5.34: Importance of streaming in relation to...

For most (87%) respondents, streaming services were important in terms of helping them develop their audience. 72% found streaming important in terms of helping to generate income from other music sources (e.g. generating interest in their music that leads to income from sources like live performances, merchandise, sync deals). Nearly two thirds (63%) said streaming was important in terms of money earned, as part of their overall income.

The proportion of those for whom streaming was important in terms of both money earned and as part of overall income was generally larger among those who earned £30,001 or more in 2019, with between 70 and 90% saying it was important in terms of money earned, and between 79 and 90% for generating other income.

There is a widespread belief among critics of the current system that the music system is extremely difficult to understand. Our results suggest that such claims need to be somewhat qualified. Respondents were asked to what extent they understood streaming royalties on a scale of 0 to 10, with 0 being 'I don't understand my streaming royalties' and 10 being 'I completely understand my streaming royalties'. The majority (96%) of respondents claimed to understand music streaming royalties to at least 'some extent', with three quarters (76%) rating their understanding between 5 and 7, and one third (35%) claiming a high level of understanding (8-10). One quarter (24%) had lower levels of understanding of music streaming royalties (4 or less).

Understanding of Streaming Royalties



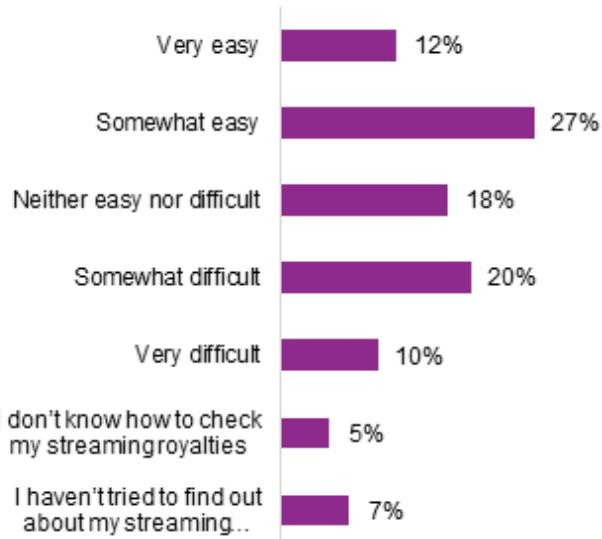
To what extent do you feel you understand your streaming royalties? Base: 641 (those with music on streaming platforms)

Figure 5.35: Understanding of music streaming royalties

On the other hand, while 24% scored themselves 1 to 4 in terms of understanding, a somewhat higher proportion found it very (10%) or somewhat (20%) difficult to find out about streaming royalties. 12% either had never tried or did not know how to check their streaming royalties.

The proportion reporting to have never tried to find out about streaming royalties was highest among those who earned less from music in 2019 (10% £1,-£1,000 and 8% £1,001 -£5,000).

Ease of Finding Out About Streaming Royalties



To what extent is it easy or difficult to find out about your royalties from streaming? Base: 641 (those with music on streaming platforms)

Figure 5.36: Ease of finding out about streaming royalties

This is an aspect of the survey responses that is, to some degree, at odds with suggestions that gaining information about streaming income is a significant challenge to music creators. As discussed in earlier chapters of this report the underlying mechanisms that govern how and what creators are paid from streaming are immensely complex and in some instances these mechanisms are opaque. But it seems that musicians do not find it difficult to gain access to data about the amount of money received from streaming sources.

5.8 Conclusions

We now summarise what we consider to be among the most significant findings of the survey we commissioned.

- Our survey confirms previous findings that many musicians combine musical work with other forms of work. Around a quarter of those identifying as music creators had earned a significant majority (i.e. 80-100%) of their income from music. A third (33%) had earned some (i.e. 30-70%) of their income from music with just over a third (36%) earning nothing or a small amount (i.e. 0-20%).
- More than a third of musicians (37%) reported earnings of £5,000 or less from music in 2019 and nearly half (47%) earned less than £10,000. 62% earned £20,000 or less from music in 2019. Of musicians whose income is entirely based on music, 43% reported earnings of £20,000 or less.
- Our survey also shows that music creators gain income from many different music sources. Prior to the Covid-19 pandemic, live performances were by far the single greatest source of income on average, generating nearly one third (31%) of respondents' music-related income. No other source accounted for more than 9% of reported music related income. 90% of respondents had uploaded music to streaming platforms, but audio streaming royalties accounted, on average, for 6% of income - the same as physical sales. Nevertheless, nearly two thirds (63%) of musicians said that streaming was an important element of their earnings.
- Women earn notably less from music than men. Median reported income for women in 2019 was £13,057, whereas for men it was £20,160.
- Of those musicians who were earning money from music before 2015, 40% said their overall income had increased since that time, 32% that it had decreased and 28% that it had stayed the same. 17% said their income had decreased significantly, while 15% said it had increased significantly. We made clear that the question related to income up to 2019, so that the effects of the pandemic in 2020 did not affect results. Respondents were not asked to adjust earnings for inflation.
- Of those musicians for whom music was their only source of income, 67% spent all of their working time on music.
- Just over half (52%) of musicians usually self-release their recordings, reflecting the increased possibilities for this route in an era when digital distribution companies make it easy and inexpensive for musicians to upload their music. 18% went through record companies for releases while 23% reported a mix of the two.
- Median reported income for those currently signed to major record companies (£51,816 in 2019) is very considerably higher than for all other groups of artists, with those previously signed to major record companies next (£25,500). Median reported income for those signed to independent record companies is £20,250 and for self-releasing artists it is £12,944.
- There have been criticisms surrounding a perceived lack of transparency in streaming earnings, but the majority (96%) of respondents claimed to understand music streaming royalties to at least 'some extent', with one third (35%) claiming a high level of understanding (8-10). One quarter of respondents (24%) indicated low levels of understanding of music streaming royalties.

Chapter 6

Concentrations of Popularity: Long Tails and Superstar Effects

We explained in Chapter 1 that popularity tends to shape earnings in the cultural industries more than in other sectors, because of the freelance and contracted nature of the projects involved, and the way that each project is associated with a small group of creators, whose financial rewards depend substantially on the popularity achieved by that project, and the accumulated rewards of all the individual projects in which they are involved. As well as the total revenues generated by the system, and how those revenues are distributed among the different parties concerned – the subject of earlier chapters – another key issue in debates about the new music system centred on streaming is the extent to which popularity, and therefore earnings, remain concentrated among a few earners.

As we saw in Section 1.3, many economists consider that music (and other cultural industries) are prime examples of ‘winner take all’ markets, where top tier products or participants gain very much greater rewards than all other tiers. That formulation was popularised by Robert Frank and Philip Cook’s 1995 book *The Winner-Take-All Society*. Frank and Cook note that a more accurate but less catchy title for the phenomenon that they analyse would be ‘those-near-the-top-get-a-disproportionate-share markets’ and they observe that such markets have long been a feature of entertainment, sport and the arts.

But we also saw in Section 1.3 that many analysts believe that this is changing in the digital era, and the term often used for this idea is that of the ‘long tail’ – that digitalisation has moved, or will move, popularity away from superstars, and further into the middle range of artists by making more music more easily available.

The relevant issue here is whether there might be evidence that streaming, or more accurately the overall recorded music system of which streaming now forms a central part, has made this powerful concentration of earnings among the top music stars and their products more or less pronounced. If it is less concentrated, then other things being equal, more music creators have the opportunity to make a sustainable living from recorded music.

It is very challenging to make historical comparisons between distributions of popularity over time, partly because of a lack of publicly available data, and partly because of conceptual challenges, as formats have changed. We discuss some of the problems and issues concerning this problem of historical comparison below, in section 6.3.

As we indicated in Chapter 1, it is even more difficult to form a definitive picture of the concentration of earnings in the music recording and publishing sectors because there is no global registry of all composer and recording copyrights. To address the problem of forming a picture of earnings in the present environment, we have pursued two main lines of enquiry. One was the survey reported in the last chapter, which was inevitably dependent on self-reported earnings.

The other main line of enquiry we pursued was to purchase data from the Official Charts Company (OCC) to gain a picture of how much, and in what ways, popularity is concentrated among the most successful featured artists or performers and what this might tell us, in conjunction with other data (including some of the calculations we made in Chapter 4), about how many music creators might be able to earn a sustainable living from streaming royalties.¹³⁵

¹³⁵ The Official Charts Company is jointly operated by the BPI and the Entertainment Retailers Association. Data is collected on the OCC's behalf by market research company Kantar. In the case of streaming, it is provided directly to Kantar by the streaming services themselves. We certainly would not have been able to afford the purchase of this data nor the survey on the basis of the original IPO funding for this project; we were reliant on the follow-up funding provided by Research England to the University of Leeds (see Introduction).

We purchased data from 2014 to 2020, in order to gain a sense of whether and how the concentration of popularity might be changing within ‘the era of streaming’. Systematic, comparable information was not available from before 2014. The OCC data report all streams from all audio streaming services legally operating in the UK, both subscription and advertising-supported, including video streaming services where music is uploaded, notably YouTube. As a result, this is much fuller information than the public information sometimes provided by individual streaming services, for example by Spotify.

The data centred on the number of tracks streamed in the UK in October (represented by weeks 40-43 of each year). Obviously, this included the activity of many international artists and not just UK ones but the data we purchased did not categorise artists as UK and non-UK. We reflect on relevant issues arising from this absence below.

The purchased data concerned four main issues and therefore four bodies of information.

First, in order to analyse concentrations of popularity in UK streaming and the extent to which they may have changed or not over time, we obtained data on the number of streams achieved in the UK in each October of the years 2014-2020 by the following ‘tiers’ of tracks and artists.

- the top 0.1 per cent of tracks
- the top 0.4 per cent of tracks
- the top 1 per cent of tracks
- the top 10 per cent of tracks
- the top 0.1 per cent of artists
- the top 0.4 per cent of artists
- the top 1 per cent of artists
- the top 10 per cent of artists

The tiers 0.1%, 1% and 10% seemed obviously simple, rounded variants on what might constitute a ‘top tier’. But why did we use the less obvious 0.4% as one of our tiers? This not only provides differentiation within the top 1 per cent, but is also consistent with other studies that have used the top 0.4% tier of tracks and/or artists in order to assess concentrations of popularity (e.g. Muikku 2017, Page and Safir 2018).¹³⁶

We report on our analysis of these ‘Top tiers of tracks and artists’ in section 6.1. Tracks are defined as ‘tracks achieving at least one stream’. ‘Artists’ here refers to the performers credited as responsible for the title as ‘featured artists’, whether an individual or a group.¹³⁷ Of course, many performers write their own songs, and they are in the most advantageous position financially, because they can combine income streams.

An important caveat needs to be made about ‘artists’. The data about artists is not systematically unified. So it is possible that the same actual artist appears in the OCC data in a number of different guises for example when marked as ‘featuring’, or in apparently (increasingly common) collaborations. But in the absence of an international

¹³⁶ In the cases cited, the tiers were constructed to assess the relative costs and benefits of the current pro-rata system in comparison to the so-called ‘user-centric’ model (see Chapter 3).

¹³⁷ ‘Non-featured performers’ on each track will not receive royalties from streaming but will be paid on a session basis; see Chapters 2 and 4.

system where artists are given unified identifiers for the purpose of tracking royalties, a system which the OCC tell us is currently being developed, this is the best available data.

The data allow us to gain a picture of the extent to which the most popular tracks and artists, understood according to these four different definitions or ‘tiers’, dominate the streaming landscape in the UK. From this we can gain a sense of the shape of the concentration of popularity curve, which some would call the ‘long tail’ curve, even though strictly speaking, that term refers only to the right hand of the horizontal axis of popularity curves, with the ‘big head’ referring to where popularity is greatest (see Chapter 1).

Second, we obtained data that showed the number of tracks and artists that achieved each of the following ranges or ‘thresholds’ of UK streams in each ‘October’ (weeks 40 to 43) of the years from 2014 to 2020.

- 1 billion-9.99 billion streams
- 1 billion plus streams
- 100 million-999,999,999 streams
- 10 million-99,999,999 streams
- 1 million-9,999,999 streams
- 100,000-999,999 streams
- 10,000-99,999 streams
- 1,000-9,999 streams
- 0-999 streams

We analyse this data on ‘streaming thresholds’ in Section 6.2. This adds further vital context on how many tracks and artists are achieving what might be considered a sustainable amount of earnings from UK streams and, in combination with calculations about revenues presented in Chapter 4, to draw from the information about concentration of popularity some tentative speculations about what kind of royalties might be generated by artists achieving certain thresholds of success. In Section 6.3, we contextualise this data further by examining other publicly available data about concentrations of popularity, including Spotify’s own efforts to conceptualise their efforts to increase the numbers of artists that might make a sustainable living from music.

Third, the data we purchased differentiated the tiers and thresholds discussed in 6.1 and 6.2 by ‘new’ tracks and older tracks, which are generally referred to as ‘catalogue’ in the music industries (see definitions below). We did so because some analysts have remarked on what they see as the increasing popularity of older music on streaming services. This matters for music creators’ earnings, for a number of potential reasons, even if definitive answers to these issues are not possible in our analysis. For example, if an increasing proportion of successful music is older music by now-inactive artists, then other things being equal, this means that there is likely to be less income from streaming for artists who are still producing music. Similarly, if much of the most successful music is older music produced by artists who have already achieved financial stability on the basis of past success, then even if those artists are still active, this means, other things being equal, that there will be less income for artists who are not yet financially secure. We analyse our data on catalogue versus new music in Section 6.4.

Fourth, the data we purchased that differentiated the tiers, thresholds and catalogue v new data, according to whether tracks and artists were associated with ‘major’ record companies, or the ‘non-major’ rest. We analyse this data in section 6.5. This matters because the dominance of major record companies is a longstanding theme in debates about the effects of digital technologies on the music industries.

Unfortunately, none of the above information allows us to address issues about the distribution of earnings among songwriters/composers (including lyricists) over time, because ‘artists’ in the OCC data obviously concerns performers. To help form a picture of concentration of earnings among songwriters/composers, we make use of some data provided to us by PRS for Music and the MCPS in Section 6.6.

Some brief further contextualisation and explanation of choices and definitions in the streaming data we purchased are in order.

- Why focus on October in the years 2014 to 2020? As indicated above, the OCC only started collecting comprehensive streaming data in 2014, so this is the first year for which they could provide relevant information. The cost of gaining data for all streams in each of these six years would have been too great given the research budget of our project. Compelled to choose just one month, we chose October, because we were advised by the OCC that this is a ‘normal’ month, whereas certain other months in the year might provide some atypical results – December in the UK might be distorted by Christmas consumption patterns, for example, and August by summer holidays.
- Because the OCC organises data on a weekly rather than a monthly basis, ‘October’ in this chapter really refers to the data for weeks 40 to 43 of each year. Consequently, to make any speculative calculations about one-year figures on the basis of the figures we report, as we do below, one would have to multiply the October figures by 13 (13×4 weeks = 52 weeks), not by 12.
- The OCC also collects details of sales of CDs, vinyl and digital downloads from a variety of physical and online retailers, and claims to achieve 99% coverage of the singles market and 98% of the album market, across all formats. Because of budgetary constraints, the data we purchased was only for streams, and not for CD and vinyl sales or downloads. Further research in future might seek to make comparisons with information about the concentration in popularity evident in download and ‘physical’ (CD and vinyl) sales over a longer period, in order to compare streaming concentrations with concentrations in earlier periods dominated by different business models and technologies. We discuss potential comparisons in future research a little below and draw on some rare and fragmented discussions of existing comparative data by industry stakeholders and analysts (see Section 6.3).

Before undertaking analysis, it is worth highlighting how the data we purchased demonstrate the steep and sustained growth of music streaming as a consumer activity in the UK, with total streams increasing eightfold in the 7-year period.

Total UK Streams October 2014-2020

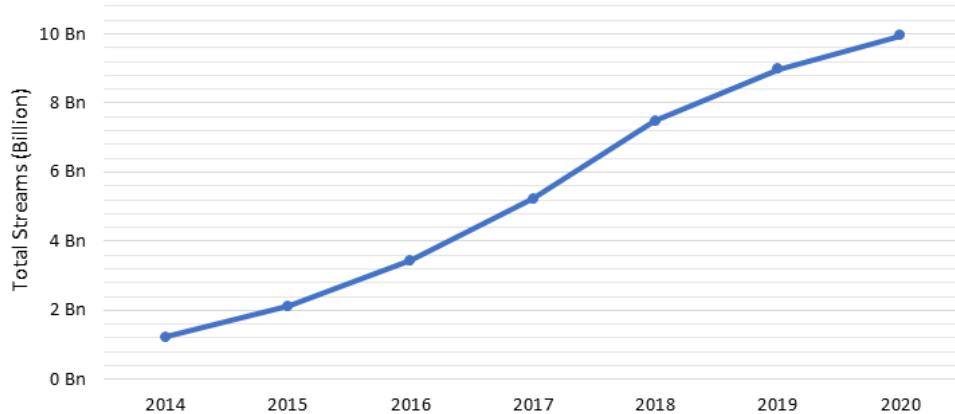


Figure 6.1: Total UK streams October 2014-2020

Index of Streaming Total and Track Count Over time

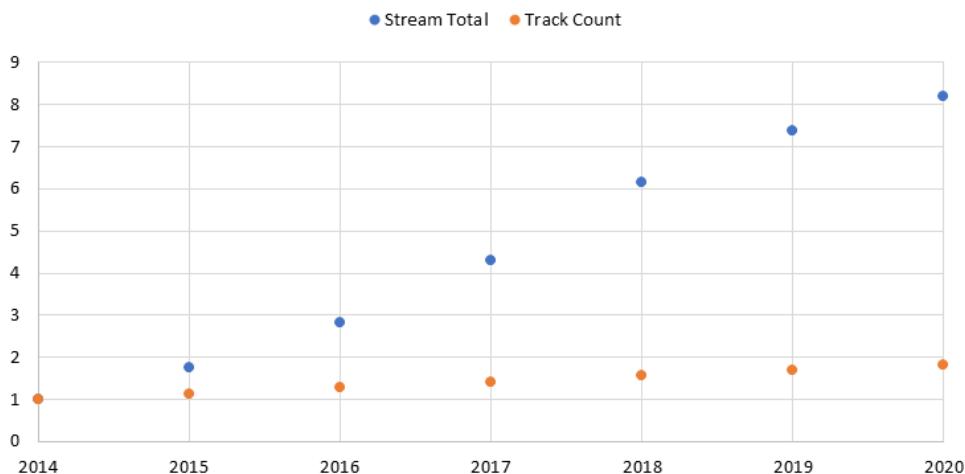


Figure 6.2: Index of total streams and track count 2014-2020

However, as shown in Figure 6.2, the total number of works that were streamed at least once has only doubled (see the brown dots for the ratio of number of works streamed once to the 2014 figure). It follows that year-on-year on average each work is attracting more streams – four times as many on average in October 2020 as in October 2014. However, this tells us nothing about how demand (with its relationships to earnings) is distributed across available tracks and artists. We now turn to this issue.

6.1 Concentrations of popularity by top tiers of tracks and artists

The OCC data we purchased (see Figure 6.3) shows that the top 0.1% most popular tracks achieved more than 40 per cent of all streams in all years (based on October) and the top 0.4 per cent of tracks accounted for more than 65% of all streams from 2016 onwards. The top 1 per cent of tracks account for between 75 and 80% and the top 10 per cent for between 95 and 97%, in all years from 2016 to 2020.

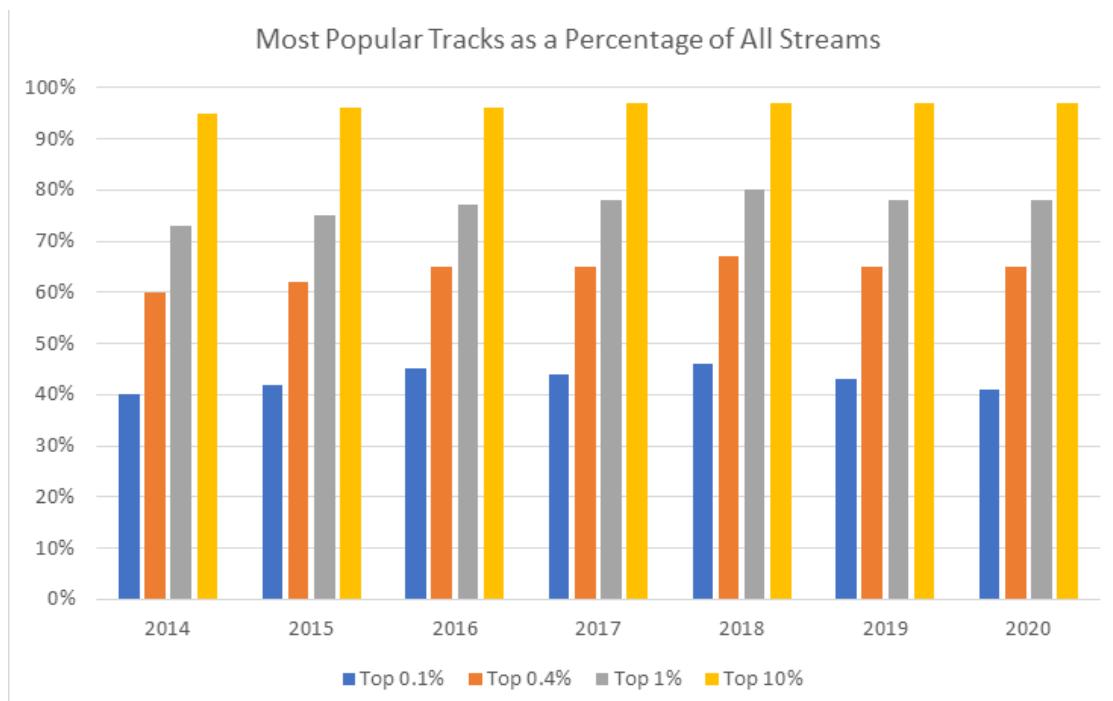


Figure 6.3: Most popular tracks as a percentage of all streams

The rates of concentration are relatively consistent over time, but it is worth noting that the percentage of total streams accounted for by the top 0.1% of tracks increased from 2014 to 2018, from 40% up to 46%, but then declined quite steeply back to 41% in 2020.

A very similar picture in terms of trends in concentrations in popularity emerges in relation to ‘artists’ (see above for definition). The concentration of popularity in the top 0.4% of artists has been consistent at 63-65% over the years for which data is available. The top 1% of artists account for 78-80% of streams, and the top 10 per cent for 98 per cent. The top 0.1% tier of artists achieve between 39% and 43% of all streams in all years, but note the modest but intriguing decline since 2016. We shall return to this issue in a moment, as it is potentially significant.

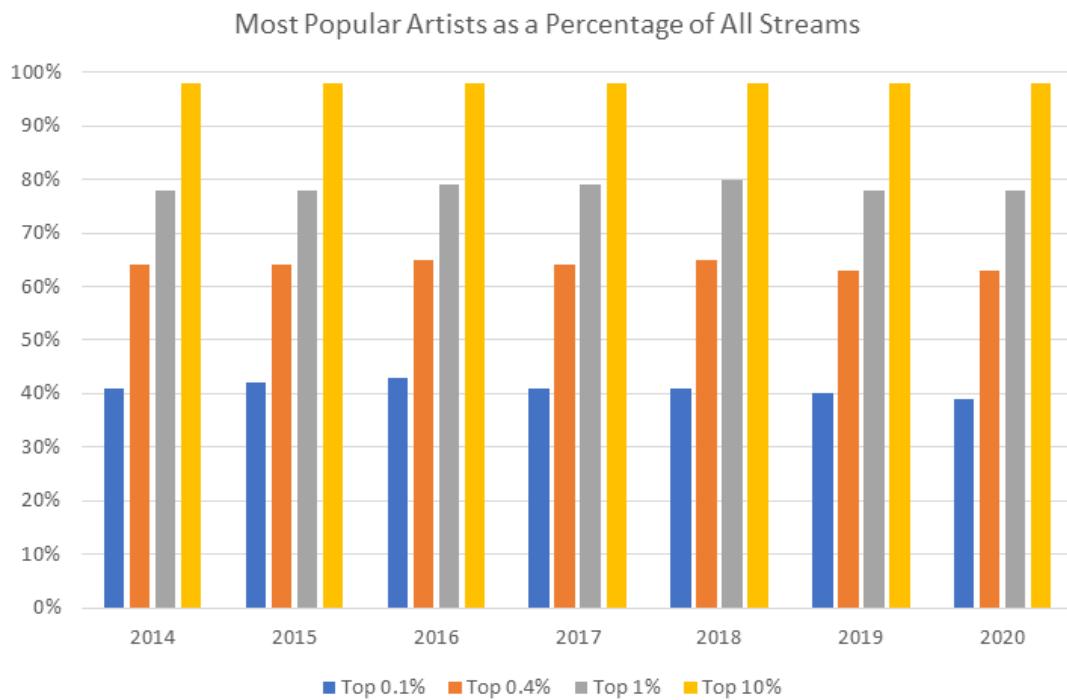


Figure 6.4: Most popular artists as a percentage of all streams

What does this mean for our understanding of music creators' earnings? The lack of change in the figures above indicate that a relatively stable large head and long tail have emerged in the streaming part of the new recorded music industry. As already indicated, we address the difficult question of how this concentration of popularity might be compared with other parts of the contemporary recorded music industry (e.g. physical sales and downloads) and with other years or 'eras', below. But we can see that the vast majority of tracks and artists achieve very few streams indeed and therefore earn very few royalties.

Let us draw out some of the implications for concentrations of popularity, and potential implications for understanding music creator earnings.

- Of the 4.28 million tracks achieving at least one stream on UK streaming services in October 2020, 1% (42,835 tracks) accounted for around 78% of streams, which means that the remaining 4.24 million tracks accounted for only around 22% of total streams.
- Total streams in October 2020 were just short of 10 billion, which means that the 2.2 billion streams achieved in that month by the 99 per cent least popular tracks (not counting tracks that achieved zero streams – an issue to which we return below) were shared among 4.24 million tracks, an average of just over 500 streams each.
- Multiplying this by 13 for a rough annual figure (recalling, as per Section 6.1, that our 'October' is really four weeks rather than an actual month), the average track in the long tail of tracks achieving at least one play (defined as the least popular 99%) would achieve just 6,500 streams.

- Income would depend upon a large variety of factors (see Chapter 4 and Chapter 6.2). On the basis of our estimate in Chapter 4, based on BPI figures, that each UK stream generates an average of 0.008 pounds (roughly four fifths of one pence) per track for rights holders, this would mean that **the average track in the 99 per cent long tail would generate around 52 pounds per year in payments to rights holders, at May 2021 rates, on the basis of UK streams.**
- This of course would have to be shared between the rights holders themselves and music creators (including cuts for distribution companies and collecting societies, as appropriate).
- Our calculations are for the UK alone so more earnings would accrue from streams in overseas markets.
- As we discuss below, any notion of an average track needs to be treated with great caution in this domain, partly because of the very high number of tracks that receive no plays.

Total Number of Tracks Reaching Streaming Thresholds

	2014	2015	2016	2017	2018	2019	2020
Total	218,150	250,556	285,539	317,207	350,918	387,136	424,073
0.1% =	218	251	286	317	351	387	424
0.4% =	873	1002	1142	1269	1404	1549	1696
1% =	2182	2506	2855	3172	3509	3871	4241
10% =	21,815	25,056	28,554	31,721	35,092	38,714	42,407

Table 6.1: Number of artists achieving one stream in ‘October’ of each year by tier

	2014	2015	2016	2017	2018	2019	2020
Total number of streams	1.2	2.1	3.4	5.2	7.4	9.0	10.0
0.1%	0.5	0.9	1.5	2.1	3.1	3.6	3.9
0.4%	0.8	1.4	2.2	3.4	4.9	5.7	6.2
1%	0.9	1.7	2.7	4.1	6.0	7.0	7.7
10%	1.2	2.1	3.4	5.1	7.4	8.8	9.7

Table 6.2: Number of streams (billion) achieved by each tier of artists in October of each year

We can see similar patterns in the OCC data concerning artists. The 1 per cent figures suggest that the least popular 99% of artists generated only 22% of total UK October streams in 2020, which equates to just over 2.2 billion streams. This averages out to 5,240 UK October streams per artist, or 68,120 per year, which at the same 0.011 estimated rate used above, and explained in Chapter 4, would equate to around 749 pounds per year.

6.2 Data on 'streaming thresholds'

It is clear, then, that significant earnings of the kind that are likely to form the basis of musicians making a sustainable living out of music are currently confined only to the highest echelons of popularity. But at what level of success in the popularity figures does a sustainable living from music become a possibility? We can explore this question further via analysis of the OCC data we purchased on the total number of tracks and artists achieving various defined 'streaming thresholds'. Table 3 indicates the track thresholds and Table 4 the artist thresholds.

Total Number of Tracks Reaching Streaming Thresholds

	2014	2015	2016	2017	2018	2019	2020
10 million-99,999,999	0	1	8	10	15	22	17
1 million-9,999,999	59	116	203	418	807	962	1099
100,000-999,999	1318	2710	4742	7669	10,576	13,290	14,972
10,000-99,999	15,557	25,056	34,951	48,482	59,150	72,911	80,417
1000-9999	86,915	119,590	156,135	199,868	236,527	270,669	298,911
0-999	2,263,574	2,510,074	2,829,681	3,113,417	3,428,067	3,669,665	3,888,116
Total	2,367,423	2,657,547	3,025,720	3,369,864	3,735,142	4,027,519	4,283,532

Table 6.3: Total number of tracks reaching streaming thresholds

Total Number of Artists Reaching Streaming Thresholds

	2014	2015	2016	2017	2018	2019	2020
100 million-999,999,999	0	0	0	0	0	0	0
10 million-99,999,999	3	11	34	55	78	104	110
1 million-9,999,999	187	340	533	825	1212	1441	1613
100,000-999,999	1610	2471	3536	4895	6528	7518	8322
10,000-99,999	7026	10,144	13,080	16,455	19,937	24,138	27,180
1000-9999	19,778	25,438	32,274	38,813	46,084	52,883	59,997
0-999	189,546	212,152	236,082	256,164	277,349	301,052	326,881
Total	218,150	250,556	285,539	317,207	350,918	387,136	424,073

Table 6.4: Total number of artists reaching streaming thresholds

The data show big increases in the number of tracks and artists achieving each threshold in each year at all relevant levels. This is consistent with the huge increase in use of streaming services and numbers of streams since 2014, the latter already demonstrated in Figure 6.1. But higher numbers of streams do not necessarily translate into greater earnings, because of the greater number of rights-holders and artists competing for a share of the pie.

In terms of how many music creators might earn significant revenues, we would draw particular attention to the two thresholds immediately above the level of one million UK streams in a month. This is because one million streams at our calculated rate of 0.011 pounds per stream in revenue (a rate that is valid for the years 2016 onwards – see Chapter 4) and 0.008 pounds (four fifths of a penny) in payments to rights holders and music creators, equates to 11,000 pounds in streaming revenue, and 8,000 pounds in streaming payments to rights holders and music creators, and this may sound like a healthy amount. Based on our calculations in Chapter 4, let us posit that 1,210 pounds of that streaming revenue might go to performers and 1,238 pounds to songwriters. If similar streaming success were

sustained across a year this would equate to 15,730 pounds per year for a solo performer. If they wrote their own songs, then that solo performer would get another 16,094 pounds.¹³⁸

However, many ‘artists’ are in fact groups or ensembles. It would take four million streams for a group of four performers to achieve the above level of recording royalties. Many artists do not write their own songs. Moreover, performers and songwriters often have to pay considerable expenses out of their own earnings.

Against this, though, we have to recognise that the kinds of artists achieving a million streams per month would be quite likely to have a profile that would allow them to achieve revenues from other sources, including overseas streaming income and other rights, such as sync rights (for the use of their music in films and television programme) and broadcast payments, not to mention live performance.

Overseas streaming revenues seem particularly worthy of attention in this context. Streaming is a global system, and it is vitally important to realise that many successful performers will be streamed in overseas markets as well, so royalties from UK streaming are very likely to be supplemented by overseas earnings from streaming, perhaps especially in certain genres that ‘travel well’, such as pop.

The data we obtained from the Official Charts Company provide information only about UK streams. How might we take overseas earnings into account? Former Spotify Chief Economist Will Page has claimed that on the basis of his analysis of Spotify data over a one-month period, UK artists achieved an average of four overseas streams for every one UK stream they achieved (Ingham 2018). He also claimed that 80% of UK artists (within his Spotify data set, which clearly must have differentiated UK and non-UK artists in some way) achieve more streams from overseas than they do in the UK. The BPI reported to us in correspondence that they came to similar conclusions, based on a dataset sourced from the market research company MRC Data using international streams of the top 10,000 artists. With access to similar data, further research might reproduce Page and the BPI’s experiments, and present the full range of multiples achieved by artists, as well as the average.¹³⁹ A factor that would need to be borne in mind is that in many countries of the world, streaming revenues are lower than in the UK because subscription and advertising rates are lower; in a few countries, they are higher. So further research might also seek to deduce approximate ratios in a range of scenarios, depending on the markets where UK music creators manage to achieve success. The multiple for earnings might, for example, be higher for a pop artist achieving significant success in the wealthier countries of the world but lower for an artist who, for whatever reason, achieves a high proportion plays in regions with a higher take-up of ‘free’ (i.e. advertising supported) streaming services, for example in Latin America or South Asia, which would pay quite a bit less in royalties.

With these caveats in mind, we can however make the following speculation: that **a million streams per month, if sustained over a period of time might be a reasonable basis for a living wage for performers and/or songwriters.** The threshold might be lower for solo artists or for solo songwriters.

Table 4 shows that 1723 artists achieved 1 million UK October streams and above. Interestingly, that constitutes 0.41% of all artists whose music achieved at least one stream in October in the UK: ‘interestingly’ because this is very close to the 0.4 percentage that we used as one of our ‘tier’ definitions, in line with previous research.

¹³⁸ Assumptions, derived from Chapter 4, are as follows. For the featured artists’ share: 52% of £11,000 to get the recording rights share and then 21% of that figure to get the recording artists royalties. This equals £1,210. For the composers and lyricists’ share: 15% of £11,000 (to get the publishing rights share) and then 75% of that figure (to get the composer/lyricist royalties). This equals £1,238. Multiplied by 13 for an annual figure (see above for explanation and caveats).

¹³⁹ As far as we are aware, Will Page has not published the research reported in Ingham’s 2018 piece, and the BPI informed us that the MRC data and their work on it was proprietary.

'All artists achieving at least one stream in October in the UK' is of course not at all the same as 'UK artists', whether defined as artists living and/or working in the UK or by some other means. The OCC data we purchased does not tell us which artists are citizens of the UK and which are not, or which artists live and work in the UK and which do not. However, OCC data does differentiate artists by nationality; and the BPI's annual statistics reports, currently called *All About the Music*, provide sales figures by artist nationality, based on the top 10,000 albums and top 5,000 'singles', combining physical and download sales data with streaming figures to produce composite 'sales' figures.¹⁴⁰ The 2020 edition reports that share of the top 5,000 UK singles 'sales' attributable to UK artists was 41.8% in 2019; the USA accounted for 43.2% (see BPI 2020: 36-37).

Applying this figure to the 1723 artists achieving more than 1 million streams in the UK, this would mean that 720 British artists gain a million or more UK streams a month (because 41.8% of 1723 is 720) and therefore exceed what we are suggesting might be some sort of minimum basis for sustaining a career.

What about the other thresholds? A small group of mega-stars achieved ten million streams or more in each October: 110 of them in October 2020, 0.026 per cent of the total number of artists who achieved at least one play in that 'month'. At 10 million, payments to rights-holders, at the 0.011 assumed rate, equate to 110,000 pounds per month. So on the basis of our calculations in Chapter 4 about rates of payments to music creators (see footnote 5 above) then a solo performer could be earning 185,900 pounds per year ($14,300 \times 13$), with a further 160,875 ($12,375 \times 13$) if they write their own songs. Here we are into the realm of the very comfortably off solo performer-songwriter. Again, if those performer royalties had to be divided by, say, four members of a group, then the amount becomes much smaller, but with all the extra sources of income available to artists at this level of success, it is to be expected that artists at this level should thrive.

However, there is another factor that needs to be borne in mind in terms of arguments about sustaining active musicians. This is that the increasing popularity of 'catalogue' on streaming suggests that at least some artists and songwriters might no longer be active. We explore this issue in Section 6.5, but first we need to put the popularity figures above in larger context.

6.3 Concentration of popularity in context - and music creators' earnings

Let us now compare our findings with some other publicly available information about concentrations of musical popularity, to draw some tentative conclusions about how the debate about music creators' earnings might be advanced.

The numbers of musicians achieving a million or more UK streams in October 2020 may seem small, but we should note that the 1723 figure represents a considerable increase on previous years. It is three times more than the 567 artists achieving that number of UK streams in 2016 for example. And so if the same percentage of artists were British (we used 41.8% as a basis above) then obviously they too have grown by the same multiple. This does not necessarily mean that three times as many artists, or UK artists, were able to make sustainable careers out of recorded music in the UK music market than in 2016. Against this needs to be set the declining per-stream rates we calculated in Chapter 4, the continuing effects of declines of CD sales and the many other variable factors indicated above. Nevertheless, the increase is striking.

¹⁴⁰ The BPI methodology treats 1,000 streams as equivalent to a sale of a CD album. In response to our request for information concerning how this figure was arrived at, the BPI informed us that 'The ratios used are calculated on analysis of label income by format and 1,000 streams generates roughly the same amount of revenue as does the sale of one album (averaged across all formats). A measure called Album Equivalent Sales is used in the industry to allow comparison across music-to-own formats and streaming. Similar ratios are used in that and in the album and singles chart to allow both sales and streams to count towards chart position on an even footing' (Sophie Jones, BPI, personal correspondence, 26 August 2021). Crucially, this ratio was calculated in the early 2010s, when per-stream rates were around double what they are now, rendering its continuing use problematic. See also 'Why 100 to 1? That streaming-to-download ratio investigated', *Music Week* (27 June 2014).

What other evidence might be drawn upon to understand streaming's effects on concentrations in popularity, and therefore earnings? One potentially interesting source in this regard is information released by Spotify regarding its efforts to expand the number of musicians in its 'top tier'. We saw in Chapter 1 that Spotify's figures show that the number of artists in what they define as their 'top tier' (the most popular artists that collectively account for 90% of streams) has, according to Spotify, increased from 16,000 in 2015 to 43,000 in 2019 (Ingham 2020). Music business journalist Tim Ingham (2020) has analysed this data, using Spotify financial results, and applying similar assumptions to ours in Chapter 4, arrives at an average of US\$ 22,395 recorded music royalties generated per top tier artist, per quarter, so (crudely multiplying by four) \$US 89,580 per artist per year, globally.¹⁴¹

We can extend Ingham's calculation slightly:

- The \$US 89,580 in recorded music royalties per top tier artist needs to be divided between recording rights-holders and featured artists.
- Although Ingham does not make this calculation, if we assumed that 21% of that amount went to performers, on the basis that this is a fairly standard performer royalty rate (on Chapter 4's assumptions of 25% minus the 4% studio producer royalty) then the average would be around \$US 18,812.
- However, this is for Spotify only. So if we assume that Spotify has around a third of the global market (as various sources suggest – see below for further discussion), then the overall average global figure for Spotify's top tier (those taking up the 90% of streams) could be around \$US 56,400 – around 41,160 pounds at August 2021 exchange rates.

This certainly does not mean that 43,000 recording artists globally are making this much money out of music however. First of all, as Ingham points out, there will be very considerable variations in popularity, and therefore earnings from global streaming, among the 43,000 artists. Second, many of the above artists will be 'catalogue' artists (see below for the growing role of catalogue in the streaming market). Some of the artists will be dead, with the money going to their estate. Even some of the living artists may not be active in recording and song-writing. Against this, however, when it comes to the issue of making sustainable livings from music, many recording artists will also be making money from song-writing (we do not have space to pursue what implications for songwriters can be drawn from Spotify's interventions here).¹⁴²

Ingham's point is that Spotify's declared aim of allowing a million musicians to make a living out of their art is extremely unlikely to be realistic. We would draw a further conclusion: that, for all its good intentions, the way that Spotify measures the ability of musicians to forge sustainable careers out of music (i.e., number of artists comprising the top 90% of streams) is not an attractive way of conceptualising the problem. The 90 per cent aggregate leads to too large and undifferentiated a number of musicians. We suggest instead that examining how many artists achieve various thresholds of streams a year, and using estimates of generated royalties from this, however rough, might be more effective, as we have above. Access to data concerning how many global streams are achieved per year by, say, the 10,000 or 50,000 or 100,000 most successful artists would allow us to see how many artists reached this threshold, and other higher and lower ones. If this data were broken down by nationality, we would see how many UK artists achieved the various thresholds. If individual musicians at different points of popularity were willing to share information about their earnings from other rights and non-rights sources too, then we would potentially be in

¹⁴¹ Ingham calculates that if 43,000 artists gained 90% of Spotify streams in 2019, then they are generating 90% of US\$ 963 million of Spotify's 1.07 billion pay out to recording rights holders in the second quarter of 2019. He then makes further calculations about music creators' earnings, assuming that 52% of these revenues goes to recording rights holders, 10-15% to publishing rights holders.

¹⁴² Enders Analysis (2021) have used Spotify's Loud and Clear website, which allows users to figure out what level of total 2020 streams is associated with what position in a list of tracks by number of streams, from high to low, to calculate that around 7,800 artists earn royalties (presumably recording and publishing) for rights holders of more than USD 100,000 per year from Spotify. But they use a dubiously low metric for converting this information into royalties and make no effort to draw conclusions about music creators' earnings. However, the Loud and Clear website may help produce further information, especially if combined with information from musicians about what particular numbers of streams generate as payments.

a position to provide more precise (though still rough) figures concerning how many musically sustainable careers are possible in the age of streaming.

What about streaming compared with other formats or eras, in terms of concentrations of popularity? Evidence provided by some sections of the music industries suggests that streaming is better in terms of resisting hit and superstar concentrations than physical sales and downloads by comparing current concentrations of popularity associated with streaming with current concentrations of popularity associated with other formats, such as CDs. For example, in its written submission of the DCMS Inquiry, the Entertainment Retailers Association (an industry body that includes streaming services) cited evidence that 10,666 artists accounted for 90% of UK streams in 2019, whereas only 2,890 artists took the same percentage of revenues from physical recorded music revenue in the same year. Similarly, in its DCMS Inquiry submission, the BPI provided evidence showing the Top 100 tracks account for only 5% of streams, but 25% of total CD sales (BPI 2021: 24-25). The figures are striking, but the historical question ideally requires comparisons of the total music market at different times, rather than comparison of different formats during the same era (see Section 6.6 below).

Such historical data is elusive (see further comments on this problem below, in Section 6.6). The BPI's submission does however provide the following diagram, which compares the percentage of total sales accounted for by four different sources, and how they have changed over time. As the diagram shows, the percentage of total album sales accounted for by the top 100 CD titles was in the low 40s in the late 1990s, but then declined to under 30% by 2019. But even more striking is the streaming figure. The top 100 streaming titles (i.e. tracks) accounted for over 10 per cent of total UK streams in 2014, but declined to just over 5 per cent in 2019. It seems clear then that streaming is associated with a shift in concentrations of popularity down the 'long tail' and away from a hit-driven business. But as the BPI themselves point out, while artists are earning a lot more in total than they were when streaming emerged (at a low point for recorded music revenues in 2014-15), and while more artists are earning money from streaming than ever before, those who do earn may be earning less than under previous, more hit-driven formats. It would be fascinating to observe historical processes for different tiers of popularity, as we did in our data above – for example, the top 500 tracks, the top 1,000, the top 2,000 and so on.

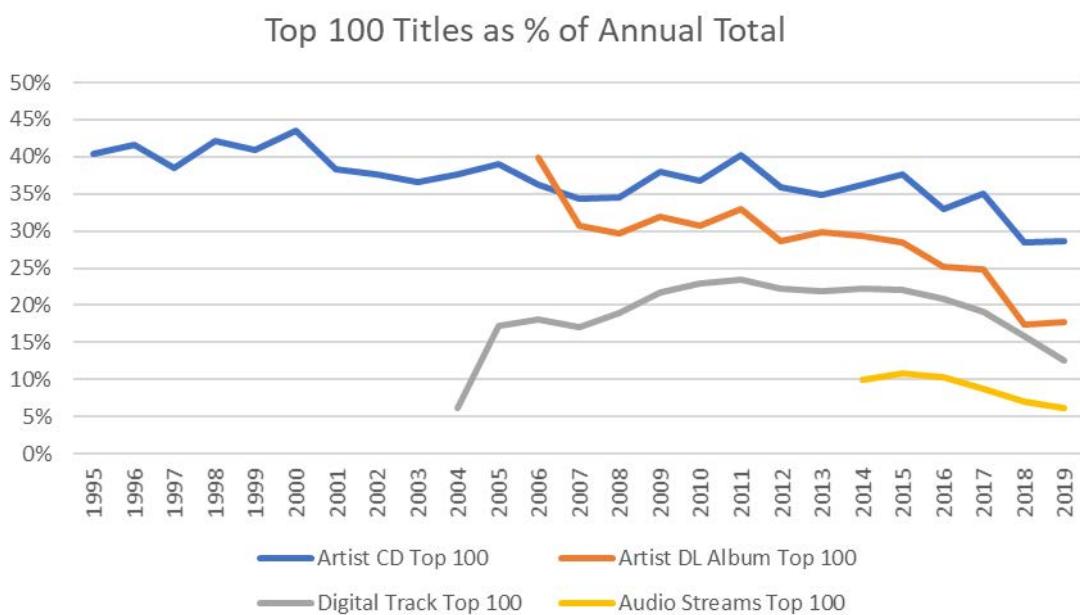


Figure 6.5: Historical picture of percentage of sales accounted for by top 100 titles, by music format. Source: BPI (2021: 24).

6.4 Catalogue versus new music

As we explained in the introduction to this chapter, the OCC is able to distinguish between new music and ‘catalogue’ – with ‘new’ defined as music released within the previous 12 months before the stream took place, and ‘catalogue’ as music released before then.¹⁴³ Our OCC data helps us to track the growing role of catalogue music in the streaming eco-system.

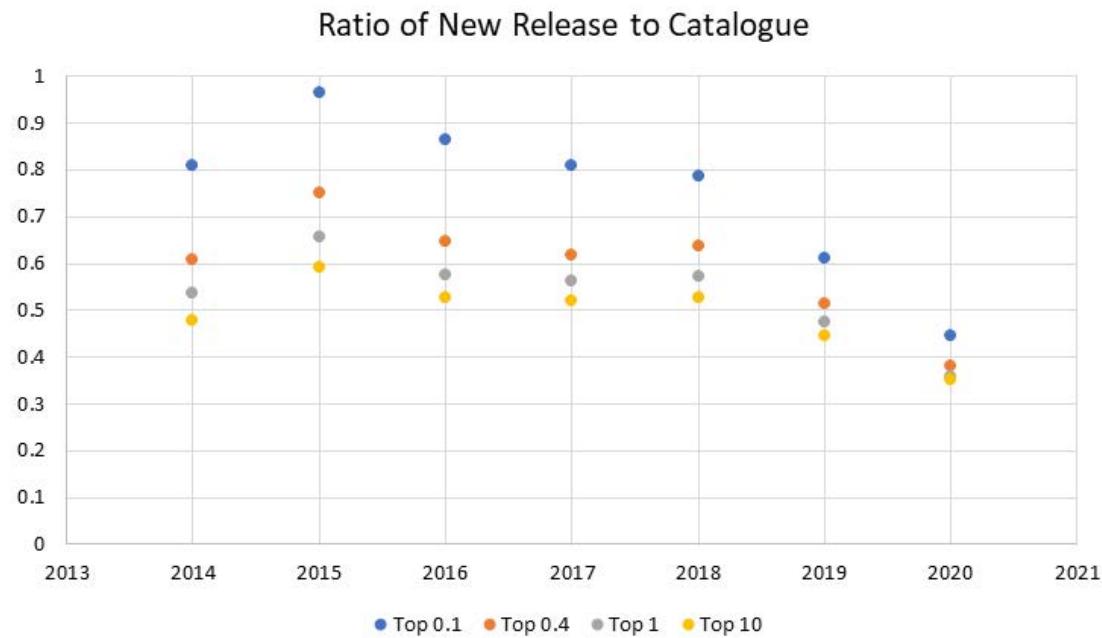


Figure 6.6: Ratio of UK October streams achieved by new releases to those achieved by ‘catalogue’

The OCC figures reported in Figure 6.6 show that since 2015 when the ratio of new to catalogue music in the top 0.1% tier of popularity was close to 1:1 (i.e. the shares were more or less equal) the ratio of streams of new music to catalogue music has declined. It has done so particularly sharply since 2018, so that this ratio is now around 0.45:1 (i.e. new music now accounts for less than a half of the streams achieved by catalogue tracks). There has also been a significant narrowing in the range of ratios across all four tiers. Catalogue music, in other words, has become increasingly significant across all of the tiers of popularity.

Moreover, the OCC data shows a significant increase in the proportion of the most streamed tracks being from catalogue, especially at the most popular end. Note in Figure 6.7 how the percentage of tracks accounted for by ‘catalogue’ in the 1 million to 10 million streams category (in October alone) rose from just over 10 per cent in 2015 to nearly 60 per cent in 2020. This may mean that, other things being equal, as streaming has developed, the artists standing to earn most from streaming will be those with significant degrees of catalogue, as opposed to artists releasing new music.

¹⁴³ It seems that industry data is available that differentiates age of music on a more fine-grained level. BuzzAngle, for example, (2018) categorises works by whether it is new, recent, catalogue or deep catalogue, using the following definitions. New: releases up to eight weeks old; Recent: releases greater than eight weeks old and up to 78 weeks old; Catalogue: releases greater than 78 weeks old and up to 156 weeks old; Deep Catalogue: releases greater than 156 weeks old. Obtaining access to this more fine-grained analysis might help to illuminate the issues discussed in this section in greater depth.

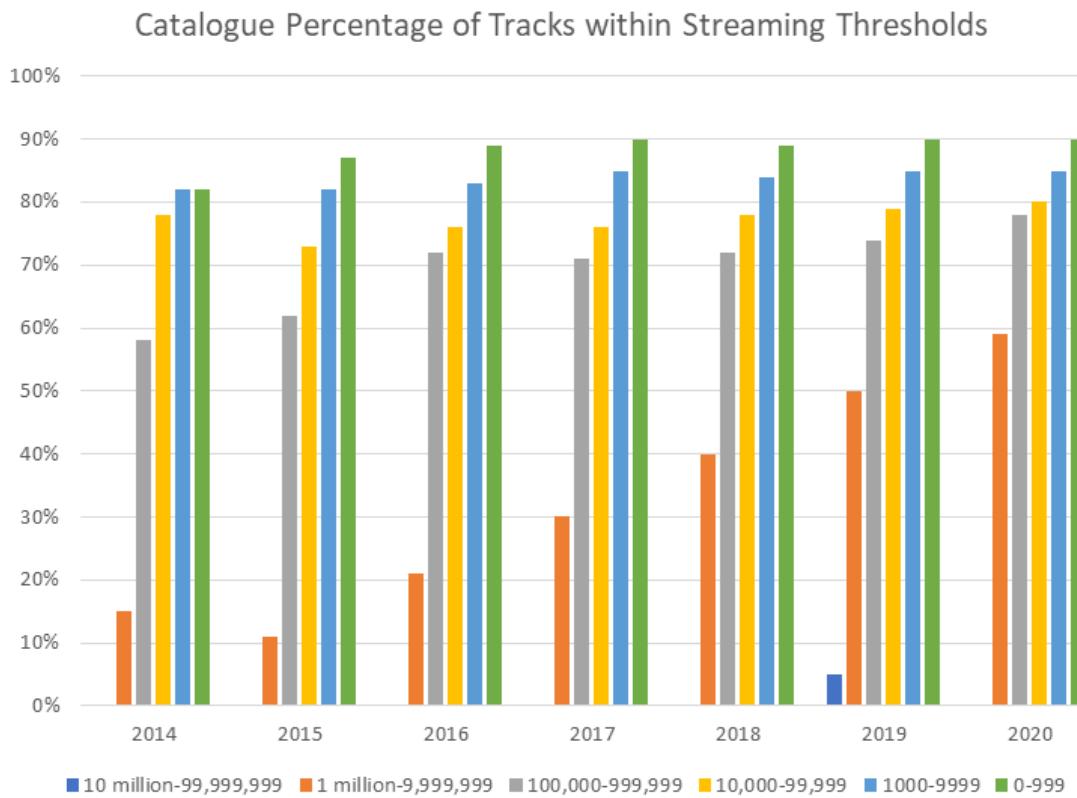


Figure 6.7: Catalogue percentage of tracks within streaming thresholds

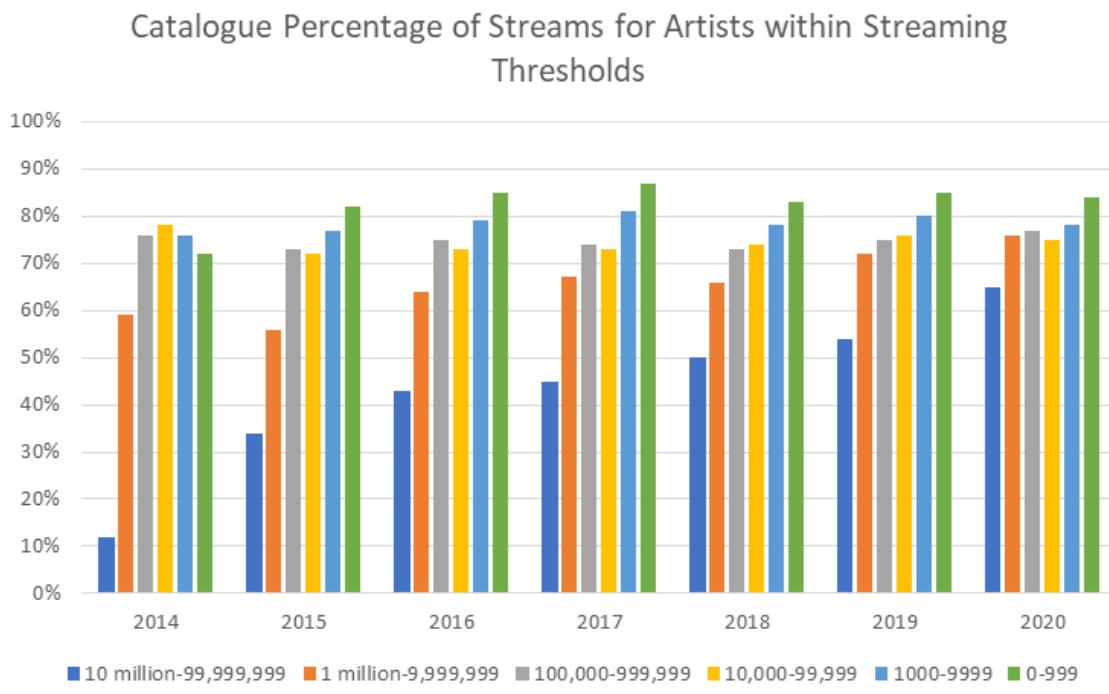


Figure 6.8: Catalogue percentage of streams for artists within streaming thresholds

This confirms findings from other sources, such as Enders Analysis (2021), which used 2018 BPI data to show that catalogue albums (those dated 2017 and earlier) generated 54% of physical sales in 2018, 66% of digital sales, and 88% of album streams.

6.5 Major and non-major music output

Historically, the distinction between major music companies and independent music companies refers to a distinction between those multinational entertainment corporations that tend to dominate the production and distribution of music, and smaller recording and publishing companies (some of them quite large) that are not in the group of most dominant companies. In addition, as we have stressed throughout this report, there are now a number of distributors and label service companies that allow music creators to by-pass the label-based system altogether.

The term ‘independent’ and its abbreviation ‘indie’ have come to accrue various cultural and ideological connotations, and the term ‘indie’ has of course been used for a genre of rock music since the early 1980s. We use the terms ‘major’ and ‘non-major’ to avoid any such potential connotations here. At the moment the ‘Big Three’ music companies globally are Sony Music Entertainment, Universal Music Group and Warner Music Group. Some would see BMG Music Group as a ‘mini-major’. Each of these companies has a substantial recording and publishing arm. ‘Non-major’ here includes any entity involved in the business of music recording or publishing that does not form part of these corporations, including artists that choose not to sign with recording or publishing companies.

Our OCC data permits analysis of the extent to which the concentrated nature of popularity and success has altered as music streaming has become the preeminent means to disseminating and consuming recorded music.

Figure 6.9 shows that the domination of the majors increases with each tier, so that the ratio of non-major to major output is around 0.3:1 for the top ten per cent tier but is just over 0.1:1 for the top 0.1 per cent. In other words, there are nine times as many tracks that are major repertoire in the top 0.1% tier.

Ratio of Streams of Non-Major Output to Major Output for each Tier of Tracks

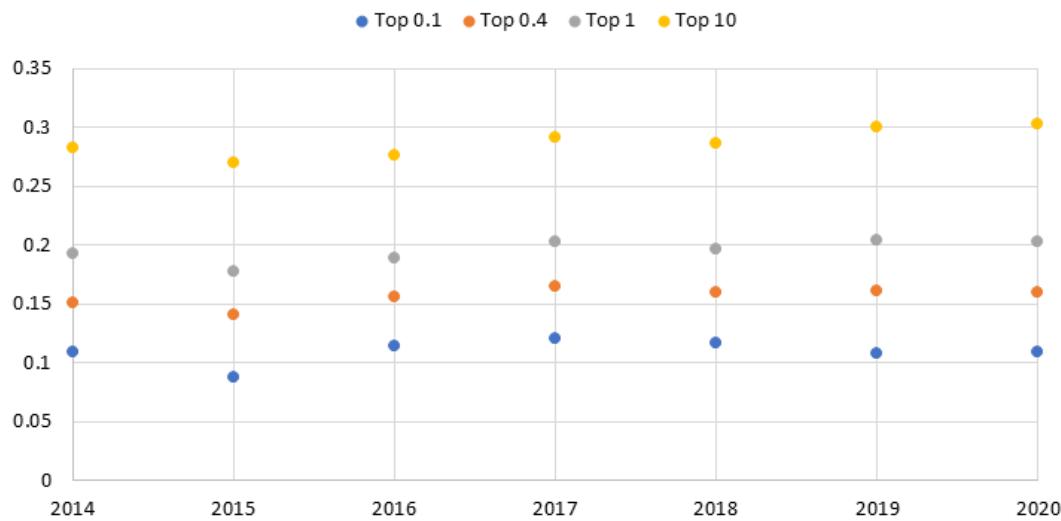


Figure 6.9: Ratio of non-major to majors for each tier of tracks by popularity over time

Over the seven years observed there is no significant change in the ratios for each tier.

In Figure 6.10, majors enjoy over 90% of October UK streams of tracks in the top 0.1% tier in years 2014-2015 before a modest decline in the following years.

Streams of top 0.1% tracks by company type

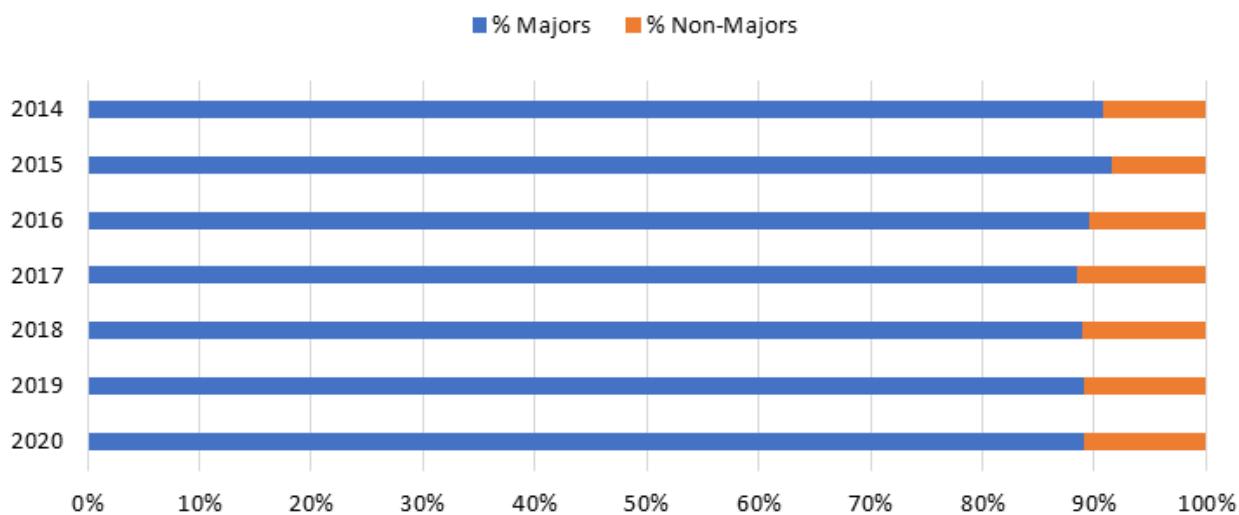


Figure 6.10: Streams of top 0.1% tracks by company type

Figure 6.11 shows that for the top 0.4% of tracks the split is marginally less skewed: the non-major share is 13% in 2014, growing to 16% by 2020.

Streams of top 0.4% tracks by company type

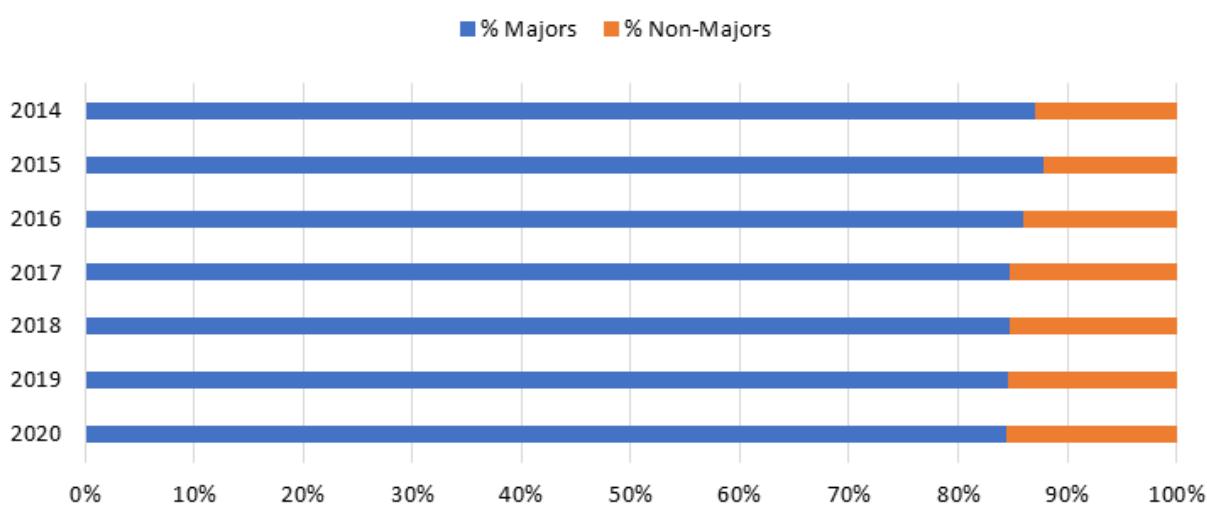


Figure 6.11: Streams of top 0.4% tracks by company type

A similar modest growth in the non-major share is apparent for the top 1% tier , as shown in Figure 6.12, reaching around 18% by 2020. However, earnings for tracks between the 0.4% and 1% level would be quite minimal, as suggested above.

Streams of top 1% tracks by company type

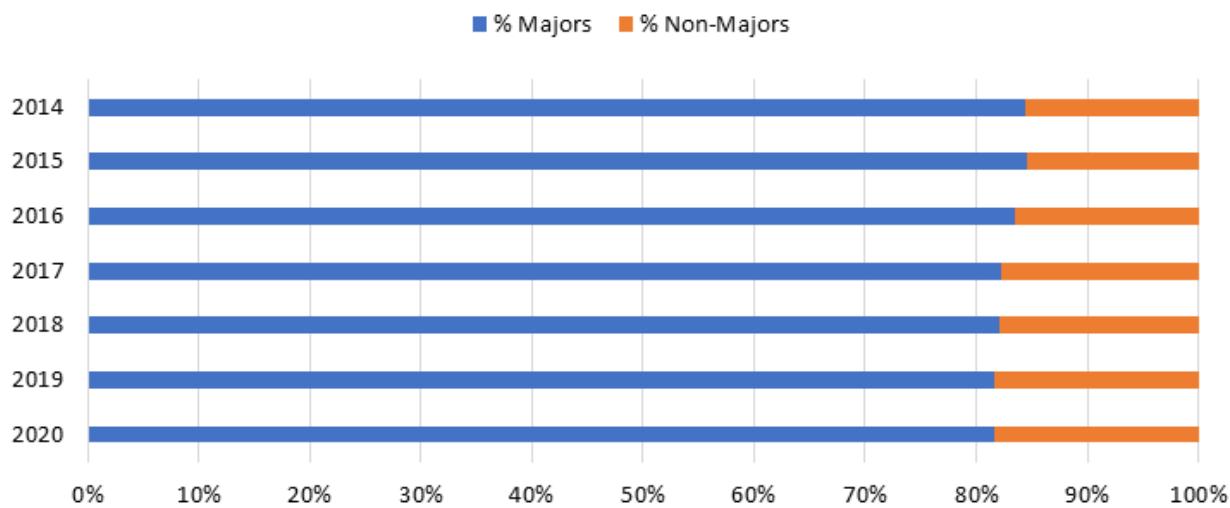


Figure 6.12: Streams of top 1% tracks by company type

Similarly in Figure 6.13, showing patterns for the top 10%, non-majors have a still larger share, growing slightly from 21% in 2014 to 23% in 2020.

Streams of top 10% tracks by company type

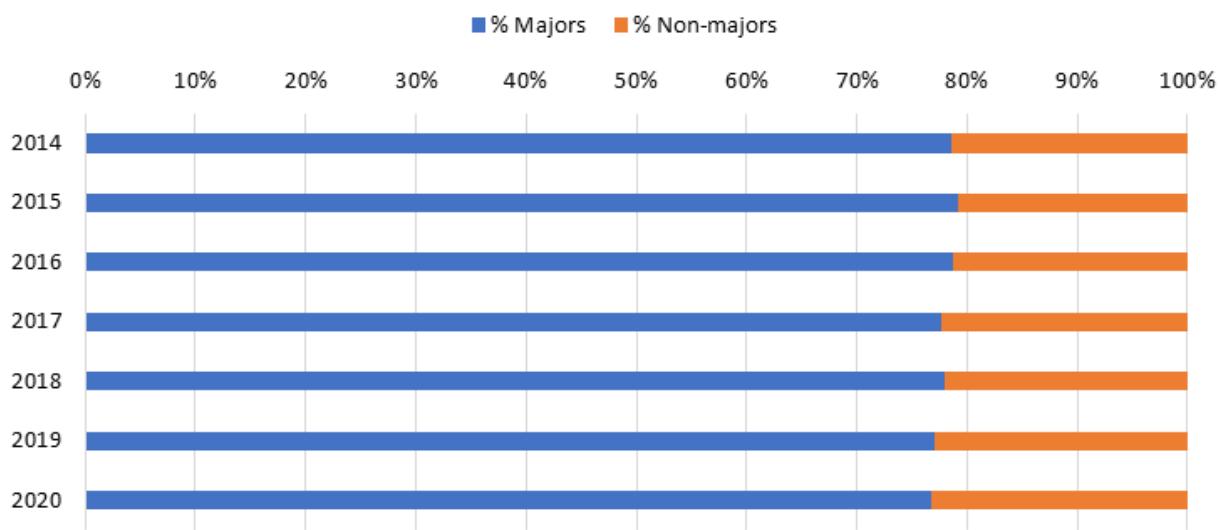


Figure 6.13: Streams of top 10% tracks by company type

The OCC data on streams in each case illustrates the extent to which major music companies continue to dominate the market in the streaming age, and how this has settled into a relatively stable pattern. While there is some evidence of a modest adjustment in the balance, there is nothing in these datasets that supports early predictions that digitalisation of dissemination and consumption of recorded music would reduce the music market share of major music companies.

6.6 Songwriters and composers

In this section we briefly discuss potential songwriter earnings, drawing on some data that PRS for Music have provided to us, to indicate earnings for songwriters, and how they are spread. We then discuss a notable controversy surrounding songwriter earnings and, expanding on the discussion above (where we deduced some conclusions about songwriter earnings from our work in chapter 4), we combine Spotify stream numbers with information in the public domain to gain a rough sense of what songwriters might earn from certain levels of streaming numbers and from certain levels of CD sales.

The first set of data concerns PRS distributions to composer-songwriter members for payments derived from public performance and communication to the public of their works, and this can be treated as a decent basis for estimating the number of living professional songwriters in the UK, although some of these songwriters and composers may no longer be actively writing (i.e. they are being paid royalties on works they previously wrote). The second set of data reflects MCPS distributions to members for payments derived from reproduction of their works. There are fewer members of MCPS than of PRS because in many cases writers will choose to assign their mechanical rights to publishers, and in those cases the MCPS will pay publishers, who then pay the songwriters and composers.

Streaming revenue, which would have been very small in 2009 and a great deal more in 2019, is included alongside other online revenue, public performance revenue, broadcast revenue and international revenue in the PRS data. This shows a great many more songwriters 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 song-writing and composition in 2019, up 51% from 2573 members in 2009. That represents 6.2% of song-writing earners, down from 7.11% in 2009. The number of songwriters earning more than £50,000 has increased from 719 in 2009, to 801 in 2014, to 1168 in 2019. Between 2009 and 2019 this is a 62% increase, though of course this figure would be much lower if inflation were taken into account.

As is the case in many of the distributions demonstrated in this chapter, there is a pronounced skew in the figures. In short, the vast majority of writers that receive income are in the bottom tier of earnings under £10,000. This cohort has remained within a margin of plus or minus 1% over the period. This tier encompasses music creators likely to be operating on the margins of part-time and full-time status and so-called portfolio careers. Without access to data with a comparable degree of granularity to that found in MMC (1996) report on Performing Rights (see Chapter 1), it is not possible to interrogate the subtler dynamics of any income trends among this important constituency of music creators. The percentage of those in the top tier of £1 million plus has doubled from 0.02% to 0.04%, but the absolute numbers represented here are tiny, so it would be rash to claim that this represents a reinforcement of superstar effects.

No MCPS data was available for 2009, but in the five years from 2014 to 2019, the overall total receiving distribution payments went up 17%, from 11,314 to 13,189. Those earning above £10,000 in mechanical royalties (reflecting very high 'reproductions' of recorded music using their songs and compositions) went up from 271 to 309. This is an increase of 14%. Those receiving £50,000 and above went up from 101 to 126, an increase of 25%.

However, the MCPS data includes both publisher and writer members. MCPS writer membership is a smaller constituency of music creators than that of PRS, as most published songwriters will collect mechanical royalties via their publisher and therefore will not be writer members of MCPS. It is likely that any of the songwriters earning more than 10,000 pounds in mechanicals directly from MCPS were also in the group earning 10,000 pounds in performing royalties. This suggests a reasonable guess that around 5,000 songwriters might be earning more than 20,000 pounds a year (close to the living wage) from song-writing alone, based on their UK earnings (some of which will be based on earnings collected abroad by overseas collection societies that have reciprocal agreements with PRS for

Music). Many of these songwriters may of course be earning money from other sources, including, direct licensing such as synchronisation to film or TV, and any royalties due to them as featured artists or non-featured performers. Whether this number should be higher is a matter for public debate, and not for this report.

1,168 songwriters and composers were able to achieve the ‘comfortable’ amount of £50,000, and at least some of these (assuming all the most successful MCPS members are also members of PRS) would be earning another £50,000 in mechanical royalties, with a few hundred more earning similar amounts via mechanical royalties paid to them by publishers. At a very rough estimate, we can speculate that around 1,000 songwriters might be earning £100,000 a year from song-writing alone.

Song-writing earnings from streaming have been a particularly contentious area of discussion and debate. For example, in media coverage of the DCMS Inquiry, it was widely reported that songwriter Fiona Bevan had earned only £100 in royalties from a song she had written for a Kylie Minogue album. The Daily Mail reported that ‘A songwriter who worked on Kylie Minogue’s latest number 1 album netted just £100 in royalties’ with a headline that proclaimed ‘Kylie Minogue’s hit writer was paid just £100’.¹⁴⁴ The track on which Fiona Bevan has a share as a co-writer is ‘Unstoppable’, which appears on Kylie Minogue’s 2020 album, DISCO. The album was released on 6 November 2020, and so when Fiona Bevan appeared before the House of Commons DCMS Select Committee Inquiry and her remarks were reported, on 8 December 2020, the track had seemingly been available for just over a month; the song will undoubtedly have gained more royalties for Bevan since then.¹⁴⁵ Without going further into the details of Fiona Bevan’s case, it is worth investigating what kinds of streaming income might be generated by a million streams on Spotify, what this might tell us about song-writing income from streaming, and how this might compare with song-writing earnings from CD sales.

Here is some key information, and some further assumptions and calculations.

- The DCMS Inquiry heard from Tony Harlow, CEO of Warner Music Group, that one million streams is worth between £4,000 and £5,000 in payments to recording rights-holders, but we can use this figure to calculate a rough sense of payments to publishing rights-holders, from which songwriters earn their revenues (DCMS Inquiry, oral evidence, 19 January 2021).
- Assuming that recording rights represents around 52% of gross streaming revenues and that publishing rights generate 15% of gross streaming revenue (see Chapters 3 and 4), then working on the lower basis of 52% = £4,000, then gross streaming revenue per million streams would be just over £7,692. 15% of gross streaming revenue would therefore come to around £1,153.
- We saw in Chapter 4 that songwriters commonly receive 75% of royalties. Applying that percentage to the £1,153 above would mean songwriters receive around £865 per one million streams in the current environment. There will of course be different views on whether or not this figure represents a fair or generous amount but such comment is outside the scope of this report.
- Songwriters can also earn further royalties from a number of other sources, including revenue from the public performance right, sync licensing etc.

¹⁴⁴ <https://www.dailymail.co.uk/tvshowbiz/article-9032617/Kylie-Minogues-hit-writer-paid-just-100-MPs-told.html>. See the citation of Fiona Bevan’s testimony to the Inquiry in Chapter 3. In that evidence, Bevan disclosed that she has a 48% share of the song.

¹⁴⁵ As of 27 August 2021, the track had been streamed 2,355,007 times on Spotify. The most popular track on the album, ‘Say something’, had been streamed around ten times more, with 22,409,338 streams.

- Songwriters continue to make royalties for as long as the song is protected by copyright and they, their assignees, or their estates can continue to generate song-writing royalties for a further 70 years from the end of the year in which the last of the credited songwriters dies.
- However, the vast majority of tracks on DSPs appear to gain most of their streams in the first year after release.

The above calculations depend on assumptions about how much revenue for rights holders and music creators a certain number of streams can generate. As stated above, the CEO of Warner Music Group told the House of Commons DCMS Select Committee Inquiry that 'we would probably say that one million streams is worth £4,000 to £5,000 in revenue, and that would deliver, on that same 20% metric, £1,000 to the artist'. How valid is this assumption? One music creator has provided us with information about their earnings from streaming over a seven year period, by sharing with us the monthly reports from the distribution services they use to upload their self-released recordings.

- This information reveals that the artist's self-released recordings achieved a combination of 665 track downloads, plus ten 'release downloads' (probably albums), plus 1,829,552 streams.
- Collectively these earned the artist USD 7,268.12 (£5,300.25 at August 2021 dollar-pound conversion rates) between July 2014 and April 2021.
- If we treat the 665 track downloads as equivalent to 6,650 streams (on the 1:10 basis assumed by the industry) and the ten release downloads as equivalent to 1000 streams (ten tracks on a 1:10 basis), that makes a total of 1,837,202 streams generating USD 7,268.12.
- This figure represents 85% of payments to rights-holders¹⁴⁶ by DSPs, as the distribution service retains 15%, suggesting the full total of streaming payments to be USD 8,550.73 (£6,234.19 at August 2021 rates).
- This equates to USD 4,654.85 (3,394 pounds at August 2021 rates) per million streams – somewhat less than the 4,000 to 5,000 pounds per million streams cited by Tony Harlow, though this may be because Harlow was speaking about the situation in 2020, and the artist's rates go back to 2014, when streaming payments may have been lower.
- It is also somewhat lower than our own calculations in Chapter 4, which estimated an average rate of £0.006 per stream for recording rights, and £0.002 for publishing rights.

It is important to note that the popularity of an album as a whole does not determine payments to songwriters on DSPs. Songwriters are paid from streaming on the basis of the popularity (i.e. streams) of the particular tracks that they wrote, whereas revenue from CD sales is distributed equally among the songwriters of the tracks, according to their respective shares of the song-writing credits. What might songwriters earn from the equivalent of a million streams?

- In order to calculate 'album equivalent sales' in its yearbooks and other sources, The BPI has assumed that 1,000 streams should be treated as the equivalent of one CD sale (see footnote 144). So on this basis one million streams *may* be treatable as the equivalent of 1,000 album sales.
- Songwriters earn money from CD sales in the following way. 8.5% of the wholesale price or 'published price to dealer' (PPD) is paid by record companies to MCPS, of which the songwriter will receive 75% after admin costs.

¹⁴⁶ In this case, the artist/performer is the sole rights-holder, as they own all rights to the recordings covered by these figures. They also earn money from other tracks issued via an independent record company, publishing royalties and income from sync licensing and other sources.

- If we assume PPD to be £8, this would mean that 1,000 album sales would generate £8,000 in gross publisher revenue. 8.5% of this amount would constitute £680 in mechanical rights.
- Assuming 75% royalty as above, that would mean **songwriters are paid £510 per 1,000 album sales, compared with £865 per one million streams.**
- Does this mean that streaming is more generous than CDs for song-writers? It is impossible to know without further investigation of the one CD = 1,000 streams assumption (see footnote 144)
- Moreover, PPD was much higher than £8 in real terms during ‘the CD era’ (roughly 1985 to 2005). Perhaps the biggest difference between the CD era and the streaming era is that payments to the different writers on an album would have been distributed among them. There would be no way of differentiating the popularity of individual tracks in order to make differential payments.

This raises the important issues of whether and how to make comparisons between the digital era and preceding eras (notably the ‘CD era’, from roughly 1985 to 2005). When we began the project, we hoped that it might be possible to carry out such comparisons, perhaps using some information about sales. We were unable to access detailed historical data on physical sales from the 1990s. The BPI’s Yearbooks do provide some data on how many albums and singles reached various thresholds of sales, above 100,000 (see Figure 6.14), going back to 2002. There is little information differentiating thresholds in lower sales figures, and nothing indicating the size of the ‘long tail’ of less successful albums and singles (and therefore less successful artists associated with them). However, it may be that the BPI has available in its archives more detailed information about sales going back to the 1990s, and covering the full range from the ‘short head’ to the ‘long tail’ (even if the long tail was shorter in the CD era). However, estimating earnings from even those more detailed figures would be a daunting proposition. One difficulty is the sheer range of prices charged for albums and singles, including variation by format. It might be possible to make some rough sort of calculation using average retail prices for albums, which BPI have provided in their Yearbooks, though these have sometimes been concentrated on CDs rather than covering all physical formats. BPI have reported overall sales figures for each format in each year, which perhaps could be averaged year on year to estimate the proportions of each format that would make up what earnings would be generated by, say, 100,000 album sales, or 250,000 album sales. But estimating creators’ earnings would be further complicated by the fact that the BPI have not published average dealer prices and also because the actual dealer price can differ widely from the published dealer price, due to trade discounts and returns. A further problem is that artist contracts have many clauses relating to the sale of physical formats, with deductions for breakages and reductions in respect of TV advertising, budget price records etc. A historical comparison between what music creators earn in the ‘streaming era’ and what they earned in the ‘CD era’ of the 1990s therefore remains elusive, but it could be the subject of future research, if access to historical industry data were possible. Such research may serve to avoid dubious ideas that there was ever a golden era where substantial numbers of music creators could earn a sustainable living from recordings.

Concluding comments

Let us now summarise what we consider to be the most significant findings from this chapter.

- The OCC data we purchased (see Figure 3) shows that the top 0.1% most popular tracks achieved more than 40 per cent of all streams in all years (based on October) and the top 0.4 per cent of tracks accounted for more than 65% of all streams from 2016 onwards. The top 1 per cent of tracks account for between 75 and 80% and the top 10 per cent for between 95 and 97%, in all years from 2016 to 2020.
- The concentration of popularity in the top 1% of artists has been consistent at 63-65% over the years for which data is available. The top 1% of artists account for 78-80% of streams, and the top 10 per cent for 98 per cent. The top 0.1% tier of artists achieve between 39% and 43% of all streams in all years, but there has been a modest but intriguing decline since 2016.
- Of the 4.28 million tracks achieving at least one stream on UK streaming services in October 2020, 1% (42,835 tracks) accounted for around 78% of streams.
- We suggest that a sustained achievement of around 1 million UK streams per month may be some kind of guide to a minimum threshold for making a sustainable living out of music, at least in cases where UK streams are complemented by non-UK streams and other sources of income. For solo performers or songwriters and for those with significant access to other revenue streams, the figure will naturally be lower.
- The number of musicians reaching 1 million UK streams in October 2020 was around 1723. We estimate that this 1723 UK figure may translate into around 720 UK artists achieving this level of success in 2020. However, there are many variables here, and so this can only be a very rough guide.
- Since 2015 when the ratio of new to catalogue music in the top 0.1% tier of popularity was close to 1:1 (i.e. the shares were more or less equal) the ratio of streams of new music to catalogue music has declined particularly sharply since 2018, so that this ratio is now around 0.45:1 (i.e. new music now accounts for less than a half of the streams achieved by catalogue tracks). There has also been a significant narrowing in the range of ratios across all four tiers. Catalogue music has become increasingly significant across all of the tiers of popularity.
- The top 0.1% tier of tracks by popularity contain nine times as many tracks that are owned by major record companies as non-major output. At the top ten per cent level, the ratio is closer to 1:3. There has been no significant change over time in the proportion of the most popular output owned by majors.

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Appendix 1

Interviews and focus groups

We chose interviewees to approach, based on a desire to reflect a wide range of views and perspectives from across the music industries, in consultation with the Steering Group. Further recommendations were followed up, in a “snowballing” approach. Some of those we contacted did not respond or were not available.

No	Organisation	Note
1	Ivors Academy	Council of Music Makers
2	Musicians' Union	Council of Music Makers
3	FAC	Council of Music Makers
4	MMF	Council of Music Makers
5	MPG	Council of Music Makers
6	PRS for Music	CMO
7	PPL	CMO
8	BPI	Trade Body
9	AIM	Trade Body
10	UK Music	Trade Body
11	IFPI	Trade Body
12	WIN	Trade Body
13	Deezer	DSP
14	YouTube	DSP
15	Bandcamp	DSP
16	Soundcloud	DSP
17	Beggars	Independent label
18	BMG Publishing	Large independent publisher
19	Reverb Music	Independent Publishing
20	Bucks Music	Independent Publishing
21	Hipgnosis	Independent Publishing
22	Maria Forte Music Services	Independent Publishing
23	Believe Digital	Independent distributor
24	Ditto Music	Independent distributor
25	Music industry accountant	Accountant
26	Broken Record Campaign	Campaigning activist
27	A popular musician's manager	Manager
28	Former Sony	Former employee
29	Former Spotify	Former employee
30	Former ASCAP	Former employee

Appendix 2

Summary of Sources Underpinning the Cost Estimates in Chapter 4

Here we summarise the sources used to arrive at the cost estimates discussed in Section 4.2.3, Rationales Underlying the Divisions of Revenue

BPI Yearbooks (1977-1990)

For the years 1977-1990, the yearbooks issued by the BPI include a section that details the costs associated with the manufacture and sale of physical formats. This material is based on ‘figures provided by companies involved in the entire vertical range of functions in the recorded music industry’; the BPI make clear that they are ‘approximations’ due to the fact that ‘there are no typical cost breakdowns which can reasonably be applied to any individual release of a single, LP or cassette’ (Scaping 1984: 20).¹⁴⁷ Year-by-year, these figures provide the following divisions of costs and earnings, which are calculated in relation to the published dealer prices of recordings.¹⁴⁸ Between 1977 and 1979, the A&R costs consist of recording costs only. Subsequent to that, they include other expenses such as tour support and video costs, but do not include personal advances. The featured artist royalty figures are shown gross before any recoupments and are based on approximate rates.¹⁴⁹

BPI: Cost Breakdowns for Physical Recording Products 1978-1990

	1977	1978	1979	1982	1984	1985	1986	1987	1989/90	Average
Manufacture	19.9%	20%	20.1%	14.5%	13.9%	13.9%	12.1%	11.1%	15.1%	15.6%
Packaging	6.1%	6.0%	6.9%	5.5%	4.6%	5.3%	5.4%	5.7%	4.8%	5.6%
Distribution and dealer discounts	18.4%	19.1%	19.9%	20.3%	21.7%	21.5%	20.3%	19.6%	16.8%	19.7%
Advertising, marketing and promotion	10.7%	10.5%	13.6%	15.8%	6.8%	7.9%	9.5%	10.3%	7.2%	10.3%
A&R costs	4.9%	4.8%	4.7%	6.7%	7.1%	7.4%	6.2%	6.5%	4.9%	5.9%
Featured artist royalty	19.1%	17.8%	15%	13.1%	17.4%	18%	16.8%	16.5%	17.7%	16.8%
Publishing royalty	9.5%	9.5%	9.4%	8.2%	7.9%	8.1%	8.0%	7.7%	7.1%	8.4%
Contribution to record company overheads	9.8%	9.8%	10%	17.8%	15.6%	15.5%	17.3%	17.2%	15.8%	14.3%
Record company profit	1.7%	1.6%	-	(2.1%)	4.5%	3.5%	4.4%	5.4%	10.5%	3.3%

¹⁴⁷ The 1987 yearbook states that there are ‘between fifteen and twenty thousand separate new items of recorded music coming to the market each year’ (Scaping 1987: 39). This can be contrasted with the situation in 2021, when 60,000 recordings were being uploaded to Spotify each day (Ingham 2021b).

¹⁴⁸ It is important to note that this is not the realized cost that the record companies obtain. The dealer price figure will be lowered due to ‘dealer discounts’, which unfortunately for research purposes are amalgamated with distribution costs in these yearbooks.

¹⁴⁹ The BPI quotes approximate royalty rates of 12.5% (less deductions) in the 1979 and 1982 yearbooks (Scaping 1979: 127; Scaping 1982: 24), and of 13% in the 1986 and 1989/90 yearbooks (Scaping 1986: 32; Scaping 1989: 48-9). These are based on retail price rather than dealer price, as was typical of record company contracts of this time. The BPI yearbooks show the dealer price as proportion of retail price (including tax) being 57.7% (1978), 66.4% (1982), 67.3% (1986), 63.9% (1989/90). This provides average dealer price-based royalties of 21.7%, 18.8%, 19.3% and 20.3% respectively, resulting in an overall average of around 20%. The deductions would result in a lowering of the royalty rate, taking into account ‘breakage’ allowances for faulty products and the reduction in royalties that occurs when recordings are advertised on television or sold at discounted prices.

MMC, The Supply of Recorded Music (1994)

In 1994, the MMC published a study of the recording industry in the UK (MMC 1994), which includes accounting information submitted by the five major record companies then operating: BMG, EMI, PolyGram, Sony and Warner.¹⁵⁰ This information details revenues from the sales of records in the UK, as is the practice of BPI's yearbooks. In addition, it includes revenue that the majors have gained for the use of their recordings by 'affiliated companies overseas', as well as revenues from performing rights, sync and other types of licensing (MMC 1994: s. 8.15). The figures presented here are adapted from those in the report so that they relate to net sales of records rather than gross sales of records (and thus do not incorporate returned goods and discounts to dealers). Featured artist royalties are shown gross before any recoupments and are separated into 'featured artist royalties (for sales of records in the UK)' and 'matching royalties and other costs' (for royalties from licensing), although the latter heading also includes the majors' costs for these licensing activities. There is no separate category for recording costs, as these are included under 'A&R written off' alongside any featured artist advances,¹⁵¹ video costs and tour support that is not expected to be recouped, as well as the costs of A&R and business affairs departments. 'Manufacture' includes the costs of packaging; 'marketing' includes the costs of advertising, promotion, public relations, cost of free goods, staff costs and the record company share of video costs; 'Selling, general and administrative' includes the costs of the sales, finance, systems, personnel, administration, legal and general management departments, as well as trade body subscriptions.

Aggregated Costs of the Core Recorded Music Businesses of the Five Major Record Companies 1989-1993

	1989	1990	1991	1992	1993 (estimated)	Average
Manufacture	15.6%	16.7%	15.6%	13.8%	13.5%	15.1%
Distribution	3.7%	4.2%	4.1%	3.4%	3.6%	3.8%
Marketing	12.1%	12.9%	12.6%	12.9%	11.7%	12.4%
Featured artists' royalties	7.3%	7.1%	7.4%	6.6%	7.2%	7.1%
Matching royalties and other costs	20%	17.7%	21%	25.3%	23.8%	21.6%
A&R written off	12.6%	12.6%	12.9%	13.3%	11.3%	12.5%
Publishing royalty	5.7%	6.4%	5.5%	5.1%	5.3%	5.6%
Licence fees	5.5%	6.4%	6.5%	5.4%	5.9%	5.9%
Selling, general and administrative	9.6%	10.7%	9.6%	9.9%	10.4%	10%
Other	1.1%	0.6%	0.7%	1.3%	1.2%	1%
Profit before Interest and Tax	6.9%	4.8%	4.2%	2.8%	5.9%	4.9%

The MMC study also provides a breakdown of A&R expenditure, establishing a standard method of reporting that has subsequently been used by the UK recording industry, including the BPI for its own A&R expenditure calculations:

¹⁵⁰ The MMC was a statutory body which addressed issues relating to mergers, monopolies, anti-competitive practices, the performance of public sector bodies and the regulation of some privatised industries. The 1994 inquiry, The Supply of Recorded Music, was prompted by concerns over the high price of compact discs but was expanded to include a general survey of the recording industry and retailers of recorded music.

¹⁵¹ The report states that 'Recoupments from artists as a percentage of advances varied between 66 per cent (in 1990) and 93 per cent (estimated for 1993)' (MMC 1994: s. 8.30).

A&R Expenditure Incurred by the Five Major Record Companies 1989-1993 (% of revenues)

	1989	1990	1991	1992	1993 (estimated)	Average
Advances	11.7%	13.6%	13.7%	15.7%	11.7%	13.4%
Recording and origination costs	7.3%	6.7%	5.4%	5.1%	4.7%	5.7%
Video costs	1.1%	1.1%	1.0%	1.2%	1.1%	1.1%
Tour support	0.5%	0.6%	0.6%	0.4%	0.2%	0.4%
Staff	1.6%	1.9%	2.0%	1.8%	1.8%	1.8%
Others	0.4%	0.5%	0.9%	2.4%	2.1%	1.4%
Total	22.5%	24.3%	23.6%	26.7%	21.7%	23.8%

Independent record company information (2019)

One of Britain's independent record companies supplied us with a margin analysis that outlines its domestic and international revenues for the year 2019.¹⁵² These accounting figures combine the revenue and costs for physical sales alongside those for streaming, as evidenced by 'cost of goods sold' category, which encompasses the manufacture, freight and mastering of compact discs and vinyl records. This distorts the figures somewhat, as representatives of the independent sector have acknowledged that the 'profit margins of streaming are better than probably physical records at the moment because physical records have distribution costs, freight costs, storage costs and so on' (Rupert Skellett, oral evidence, DCMS Inquiry, 4 February 2021).¹⁵³ The 'sales' accounting figures for this company include revenues from sync licensing, public performance and broadcast. In contrast to the figures from the BPI and the MMC, featured artist royalties are shown net of recoupment. 'Recoupable costs', in consequence, addresses featured artist costs that are being paid in lieu of royalties.¹⁵⁴

Independent Record Company: 2019 Margin Analysis

Cost of goods sold	10.7%
Distribution	6%
Marketing	6.2%
Recoupable Costs	9.1%
Featured artist royalties	24.9%
Publishing royalties¹⁵⁵	0.3%
Overheads	35.3%
Profit before tax, exchange gains and losses (PBT&X)	7.6%

¹⁵² We have received separate data from the same independent company outlining the royalties for a selection of Featured artists in the period 2017-2020. These document their streaming royalties against their total royalties from the record company (excluding sync licensing). In many cases, streaming royalties for these artists in 2020 are at the level that their total royalties were in 2017, but in general they have increased without diminishing the royalty share for physical products. Overall, streaming royalties approximate to 60%-80% of these artists' royalties. There are, however, spikes when vinyl reissues or box sets are released, resulting in some dramatic increases in physical sales royalties.

¹⁵³ AIM's supplementary evidence, submitted to the DCMS Inquiry following this oral session, states that, 'Whilst this is true, it is not the whole story and his [Skellett's] evidence did not detail the costs that are incurred in the digital market – it is not accurate to think of it as 'cost-free'. Systems, data analysts and the complexity of successfully navigating the digital market comes at considerable cost and labels have seen the need to increase head-count, and invest considerably in these areas' (AIM 2021: 2).

¹⁵⁴ For a 'traditional' exclusive deal, this recoupment includes featured artist advances, recording costs, producer/mixing costs and sometimes video costs. For profit-share deals, the recoupable costs will also include the featured artist's share of production, distribution and third-party marketing.

¹⁵⁵ These payments address the publishing royalties for UK physical product sales only. The publishing royalties for US physical sales are incorporated within 'cost of goods sold'.

Sony Music Featured Artist royalty deal (2020)

In response to a request from the DCMS inquiry into the Economics of Music Streaming, Sony Music supplied information addressing the potential profits and losses relating to a streaming release. This information is useful as it disaggregates streaming revenue from physical format revenue. It also illustrates the differing economic situations of rights holders and creators. Where the information is less useful is that it is based on Sony's estimates of expenditure, rather than an accounting example. Based on the label achieving a 10% profit margin (which equates to the contemporary operating profits of the major labels [Page 2020: 9]), we can see that expenditure on advances and recording costs amounts to 35% of gross revenues. Sony report a marketing figure set at whichever is the higher of either £300k or 30% of revenues.¹⁵⁶ These figures align with data issued by the IFPI in respect of new releases (IFPI 2016: 6), but they do not correspond with the IFPI's data for all releases (i.e. new releases plus back catalogue), which suggest an average A&R spend of 24% and a marketing spend of approximately 10% (Ingham 2019a).¹⁵⁷ Sony's information suggests that, whereas the costs of advances and recording are fixed, those relating to marketing will increase as a recording achieves popularity. Also, while a label's overheads are fixed, the contribution that each release makes to those overheads will be based on 25% of that release's gross revenue and will therefore rise as its revenue rises. Sony wish to indicate that the record company, rather than the featured artist, is in debt at the start of the process, as the label issues the artist with advance payments. The label gains the equivalent in profit to these advances when the recording has been streamed 378 million times. The featured artist in this example is paid a royalty rate of 24%, which recoups their advances and recording costs after 458 million streams.

Sony Featured Artist Royalty Deal: Profit and Loss (2020)

	Label break- even point	Label 10% Margin	Label £300k profit	Artist recoups	% of Revenue: calculated in relation to 'Label 10% Margin'
Streams (millions)	10	100	244	314	378
Gross Revenue (£000s)	£50	£500	£1,222	£1,571	£1,889
Artist Advance (£000s)	£300	£300	£300	£300	£300
Recording Costs (£000s)	£250	£250	£250	£250	£250
Artist Royalty (£000s)	£0	£0	£0	£0	£0
Marketing (30%/£300k minimum) (£000s)	£300	£300	£367	£471	£567
Overhead (25%) (£000s)	£13	£125	£306	£393	£472
Label profit/loss (£000s)	(£813)	(£475)	(£1)	£157	£300
Artist Total	£300	£300	£300	£300	£950

¹⁵⁶ Jason Iley: 'From an A&R perspective [...] we would spend over £20 million a year, and a similar amount on marketing. There is a huge amount of money that goes back to invest in an artist, because you have to appreciate that from a marketing perspective, there are marketing costs, digital costs, promo, press, radio, TV, the support we give our artists—including tour support—obviously advances, and recording costs' (Oral evidence, Economics of music streaming, HC 868, 19 January 2021).

¹⁵⁷ The IFPI's tally is 26% on A&R and marketing (2011); 27% on A&R and marketing (2013), 27% on A&R and marketing (2015); 33.8% A&R and Marketing (2017). Ingham uses these figures to calculate 16% A&R and 10% marketing (2011); 15.6% A&R and 11.4% marketing (2013); 16.9% A&R, and 10.1% marketing (2015); 23.8% A&R and 10% marketing (2017).

WMG accounting information for recording (2018-2020)

WMG was a public company between 2005 and 2011, and became a public company again in 2020 – the only one of the majors that is public at present. Because of this, more detailed accounting information is available for WMG than the other majors.

The following tables compile information from the WMG Annual Reports for 2010 and 2020. These reports break down the company's global recorded music revenue into digital (streaming, downloading and mobile ringtones), physical (vinyl, CDs, DVDs etc.),¹⁵⁸ 'artist services and expanded rights' (revenue from WMG's artist services businesses and 360-degree deals), and licensing (sync, public performance and broadcast). The company's costs are broken down into production, distribution, A&R, marketing and administration. The A&R costs include, amongst other things, the advances and royalties paid to featured artists.¹⁵⁹

WMG: Recorded Music Revenues 2008-10 and 2018-2020 (£m)

	2008	2009	2010	Average % of revenues 2008-10	2018	2019	2020	Average % of revenues 2018-20
Digital	£599	£656	£713	24.8%	£2,019	£2,343	£2,568	62.8%
Physical	£2,076	£1,763	£1,524	66.8%	£630	£559	£434	14.9%
Artist services and expanded rights					£389	£629	£525	13.9%
Licensing	£230	£223	£218	8.4%	£322	£309	£283	8.4%
Total	£2,905	£2,642	£2,455		£3,360	£3,840	£3,810	

¹⁵⁸ For 2008-2010 the 'physical revenues' include revenues for WMG's artist services business and 360-degree deals (WMG 2011: 47)

¹⁵⁹ A&R costs: 'costs associated with (i) paying royalties to artists, producers, songwriters, other copyright holders and trade unions, (ii) signing and developing artists, (iii) creating master recordings in the studio and (iv) creating artwork for album covers and liner notes (2008-2010); 'costs associated with (i) paying royalties to recording artists, producers, songwriters, other copyright holders and trade unions; (ii) signing and developing recording artists; and (iii) creating master recordings in the studio' (2018-2020); Selling and marketing: 'costs associated with the promotion and marketing of recording artists and music, including costs to produce music videos for promotional purposes and artist tour support' (2008-2010 and 2018-2020); Production costs: 'the costs to manufacture, package and distribute product to wholesale and retail distribution outlets as well as those principal costs related to expanded rights' (2008-2010); 'the costs to manufacture, package and distribute products to wholesale and retail distribution outlets, the royalty costs associated with distributing products of independent labels to wholesale and retail distribution outlets, as well as the costs related to our artist services business' (2018-2020); General and administrative expense: 'the costs associated with general overhead and other administrative expenses' (2008-2010 and 2018-20) (WMG 2011: 47; WMG 2021: 45)

WMG: Recorded Music Costs and Profits 2008-2010 and 2018-2020 (£m)

	2008	2009	2010	Average % of revenues 2008-10	2018	2019	2020	Average % of revenues 2018-20
Production costs	£588	£579	£559	21.6%	£700	£827	£773	20.9%
Distribution	£76	£66	£68	2.6%	£67	£114	£95	2.5%
A&R costs¹⁶⁰	£809	£579	£559	25.2%	£1,054	£1,178	£1,148	30.7%
Selling and marketing Costs	£544	£482	£444	18.4%	£521	£621	£627	16.1%
Licensing costs	£77	£78	£70	2.8%				
General and administrative expenses	£431	£398	£423	15.7%	£573	£522	£875	17.9%
Net profit	£380	£460	£254	13.6%	£445	£578	£292	12.1% ¹⁶¹

¹⁶⁰ In his written evidence for the DCMS inquiry into the Economics of Streaming, Tony Harlow, CEO of Warner Music UK, breaks 'A&R Investment' into advances; video, production (of which a redacted percentage is recoupable from artists' royalties); recording costs; royalty advances to A&R consultants ('certain producers, sound engineers or others who are paid on a royalty basis. These advances are recouped against the consultants' royalty earnings, not the artist's royalty earnings'); TV advertising (of which a redacted percentage is recoupable from the artist' royalties; the remainder is covered within marketing/promotion costs). Harlow also points towards Warner accounting information, which indicates that the company will expect \$220m of its royalty advances to be recouped within one year and a further \$269m after one year (2021: 5)

¹⁶¹ In their own analysis of these figures, CC Young & Co have provided calculations that remove the general and administrative expenses because they contain figures not directly related to the production or distribution of recorded music, such as depreciation and non-cash stock-based compensation expenses. They have also made adjustments to the 2019 figures in lieu of costs relating to the acquisition of EMP Merchandising Handelsgesellschaft mbH, which were contained within Distribution and Selling & Marketing expenses. The removal of these two sets of figures provides the following calculations for net profit as proportion of revenue: 2018 = 30.3%; 2019 = 31.41%; 2020 = 30.68%.

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