



UNDERSTANDING THE DIGITAL MUSIC DEBATES

PRESENTED BY:



CONTENTS

INTRODUCTION 04

THE DIGITAL MUSIC DEBATES

Royalty Distribution 06

Direct-To-Fan Revenue Streams 12

Fair Remuneration 14

Stream Manipulation 20

Algorithms 22

Fan Data 28

ABOUT ONE STEP AHEAD 31

UNDERSTANDING THE DIGITAL MUSIC DEBATES



IMPALA – the pan-European organisation promoting and supporting the independent music sector – has teamed up with CMU Insights to deliver One Step Ahead, a new digital intelligence facility to enable independent music companies across Europe to navigate and identify trends, developments, challenges and opportunities in the digital music market.

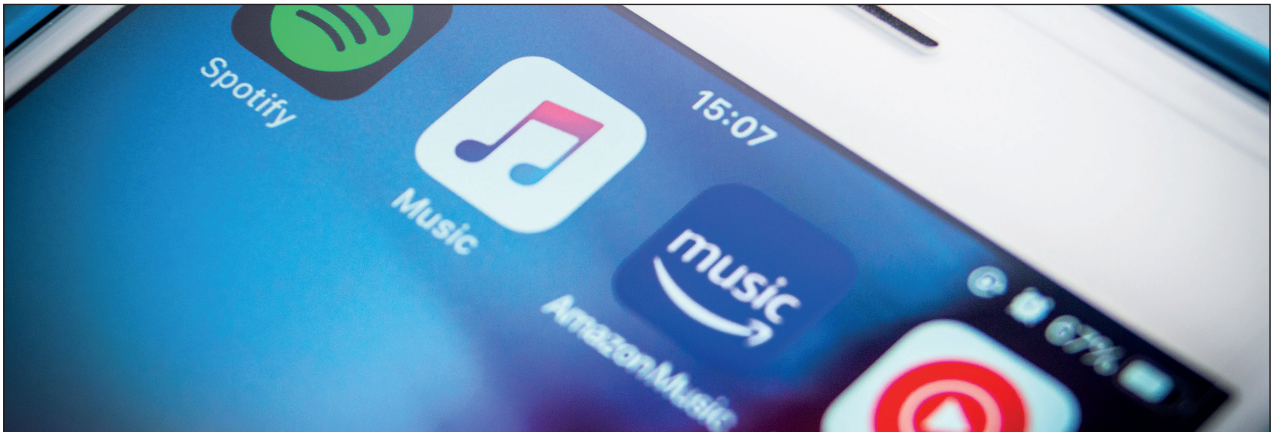
In this fourth report we investigate the key digital music debates in 2021. Expanding on IMPALA's Ten Point Plan to reform streaming models – and revisiting some of the newer issues raised in past One Step Ahead reports – we put the spotlight on seven different digital music debates, providing the background to each topic, and outlining proposals that have been made to address different issues and challenges.

It's important that the wider independent music community is able to take part in each of these debates. This report provides you with all the information you need to navigate and understand the different issues, solutions and discussions.

ONE STEP AHEAD: UNDERSTANDING THE DIGITAL MUSIC DEBATES

Researchers: Chris Cooke, Sam Taylor | Produced by CMU Insights | Published by IMPALA in September 2021
IMPALA, Coudenberg, 70, 1000 Brussels, Belgium | +32 2 503 31 38 | info@impalamusic.org | impalamusic.org

INTRODUCTION



Ever since digital music first began to emerge in the late 1990s and early 2000s, there have been numerous debates within the wider music community about the different business models being employed; the deals being negotiated with the different digital platforms; and the impact the shift to digital has had on how music is marketed and consumed, and on the relationships between the different stakeholders in the music business.

The independent music community has played a key role in these debates throughout that time, often prompting specific initiatives to address head on some of the challenges and issues that have arisen as the digital music market has grown and evolved.

That includes the creation of Merlin in 2008, the launch of the Worldwide Independent Network Fair Deals Declaration in 2014, and extensive lobbying work by IMPALA and others – usually in partnership with other strands of the music

industry – including around the 2019 European Copyright Directive.

And that work continues. In March 2021, IMPALA published a Ten Point Plan that focused on the most timely digital music debates. It set out the independent community's current position on those specific debates and made a number of proposals for how various issues that have been raised by different stakeholders in the music industry can be addressed.

It's important that everyone across the independent music sector has an opportunity to participate in these ongoing debates. With the sector made up of such a diverse mix of businesses – pursuing so many different approaches to making and releasing so many different kinds of music – a diversity of voices is needed whenever current business practices are being assessed and the future direction of the industry is being set in motion.

However, the digital music business is complex, much more so than the traditional business of selling vinyl records and CDs. And the record industry – like the music publishing sector before it – now primarily generates revenue through often complicated licensing deals, rather than directly exploiting its copyrights through the pressing and sale of physical discs,

which requires a more solid understanding of the intricacies of contracts and copyright law.

Taking part in the digital music debates requires an understanding of how the business models work today, how the digital music services are evolving, and what kinds of new services are likely to become significant players in the digital music market of the future.

Expanding on the Ten Step Plan, this latest report from One Step Ahead digs deeper on the key digital music debates and summarises the solutions that have been proposed by the independent music community. It provides the information people in the independent music sector need to navigate and understand the different issues, solutions and discussions.

Based on the previous One Step Ahead reports on playlisting, marketing and the diversifying digital market, it also looks ahead to the digital music debates that are likely to become big talking points in the years ahead – such as the challenges around fan data and the role of the label in direct-to-fan activities. The digital market is constantly evolving – and as the market evolves, the big debates evolve too. Anticipating and considering those future debates is important for the independent community to stay one step ahead.

The debates covered are as follows...

■ **Royalty distribution:** how streaming services allocate monies to each track each month, and proposals for how the current approach could be reformed.

■ **Direct-to-fan revenue streams:** how direct-to-fan services are likely to fuel the next phase of digital market growth and how this impacts on the artist/label relationship.

■ **Fair remuneration:** how monies allocated to tracks are shared out between labels and artists, and proposed reforms to ensure a fair approach is always taken.

■ **Stream manipulation:** how some rogue players currently manipulate the system for marketing and commercial gain, and how to stop that from happening.

■ **Algorithms:** how algorithms are becoming increasingly powerful in driving streams and therefore revenues, and some of the issues with those algorithms.

■ **Local catalogues and cultural diversity:** how streaming has created specific challenges in smaller markets and how to address them.

■ **Fan data:** how music marketing is increasingly data driven, and some of the issues around who has access to fan data, and how labels and artists can use it.

FURTHER READING

This report makes reference to the following resources...

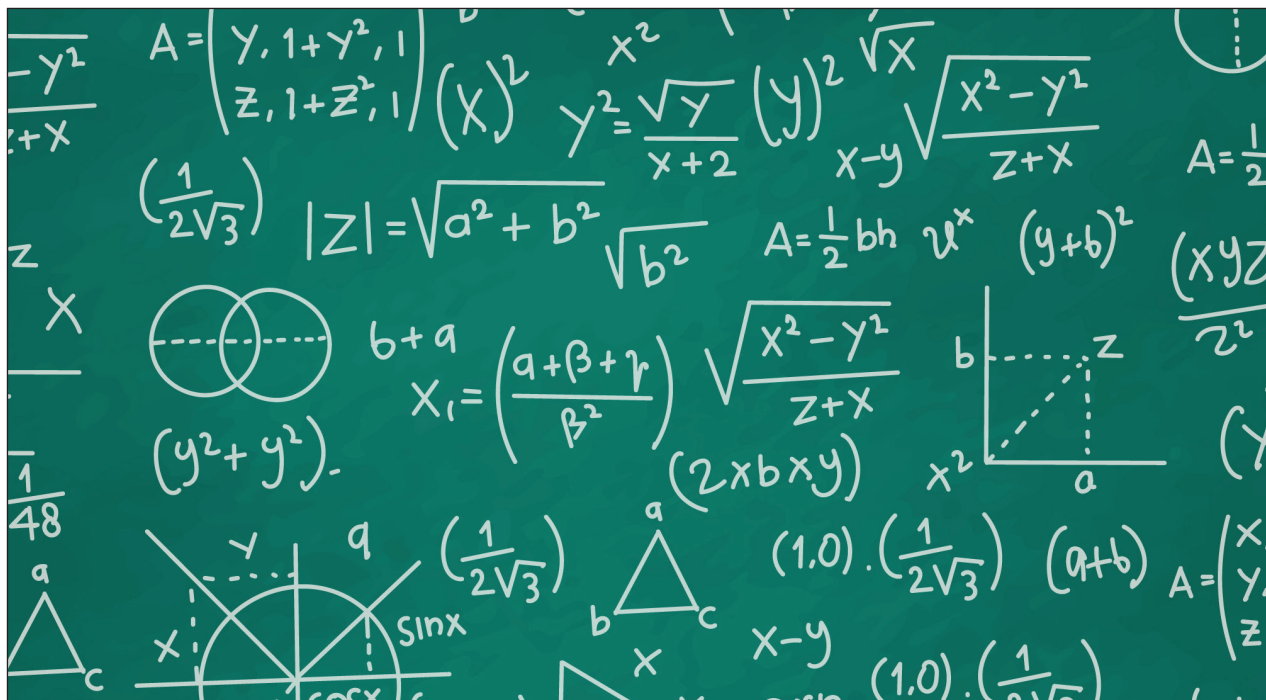
IMPALA'S Ten Step Plan To Reform Streaming Models impalamusic.org/10-steps-to-reform-streaming-models

Artist Revenue And "Equitable Remuneration" impalamusic.org/artist-revenue-and-equitable-remuneration

WIN Fair Deals Declaration winformusic.org/fair-digital-deals

AIM Artist Growth Model Study aim.org.uk/#/resources/how-to-fix-streaming-debate-recording

01: ROYALTY DISTRIBUTION



SUMMARY

WHAT YOU NEED TO KNOW

■ Streaming services operate a revenue share based on consumption share model. Each month a portion of a service's total revenues are allocated to each track based on what percentage of overall consumption it accounted for, and then a share of that allocation is paid to the label/distributor and publisher/collecting society. This is sometimes referred to as the 'pro-rata' or 'market share' model.

■ Some people argue that it would be better if track allocation was done on a user-by-user basis, so each subscriber's payment is allocated to each specific track they listened to, based on what percentage of that subscriber's consumption it accounted for. There are both pros and cons in shifting to a user-centric approach.

■ One argument in favour of user-centric is that it would redistribute some monies from

the most streamed tracks and artists to lesser streamed tracks and artists. This might be the outcome, but it's not assured. Another option is something called the artist growth model which would explicitly redistribute some monies in this way.

■ A 'play' is currently counted by a streaming service if a subscriber listens to at least 30 seconds of a track. This system, however, penalises longer tracks, and genres where tracks tend to be longer. Some argue that the system should be amended so that longer tracks earn more or are counted as more than one play.

■ A final proposal around royalty distribution is that how a subscriber came to listen to a track should be factored in – so that a track would be allocated more if a subscriber specifically selected it, rather than it being pushed to the subscriber by an algorithm.

■ To date the highest profile debate around royalty distribution has been contrasting

the current approach with the user-centric approach. However, IMPALA's view is that this debate should consider and assess all the proposed alternatives – which is why the Ten Point Plan offers several proposals. Some of these proposals address different concerns and could actually co-exist.

KEY TALKING POINTS

■ Should alternative approaches to royalty distribution be employed – and if so which ones? Do the benefits of those alternative approaches outweigh any possible increased costs and complexities caused by their implementation?

■ Given a service would have to apply any new approaches to its entire catalogue – at least within any one market – what would need to happen to allow any new approaches to be adopted? What is the industry's role in making this happen?

BACKGROUND

Streaming services of the Spotify and Apple Music variety operate a revenue share based on consumption share business model. Each month each streaming service allocates its total revenues across the catalogue of tracks on its platform based on consumption share. Money allocated to each track via that system is then shared with the relevant rights-holders.

So, if a streaming service generated €10 million in revenues, and one track accounted for 0.01% of all streams, it would be allocated 0.01% of the money, or €1000. The label or distributor that controls the rights in the recording would then be paid 50-55% of that money, depending on the terms of its licensing deal with the service. The publisher or collecting society that controls the separate song rights would be paid 10-15%.

This allocation of monies to tracks based on consumption share currently happens at a

subscription type and country level, on a more or less monthly basis. So the above calculations are done separately for each subscription type (eg free v premium) in each country each month. So French premium subscription revenues are allocated based on what tracks French premium subscribers streamed in any one month.

How a subscriber came to stream a track – ie did they directly select it, or was it featured in a playlist they subscribe to, or did an algorithm push it at them? – is not considered in this process. Meanwhile a track is considered to have been played at 30 seconds, which means the stream is counted providing the subscriber listens to 30 seconds or more of the track.

Various issues have been raised with the current approach to royalty distribution. Certainly the current approach disadvantages some artists and labels.

PROPOSALS

A number of alternative approaches to royalty distribution have been proposed. The basic model would be the same, but the allocation of monies to each track might happen at a different level, or certain additional factors might be considered when calculating the value of any one track's allocation. Many of these proposed alternative approaches could actually co-exist – meaning they shouldn't necessarily be seen as either/or solutions.

The user-centric approach

The alternative approach that has been most widely discussed is the user-centric approach. It's common to refer to the current system as the pro-rata approach, and to then contrast that with this user-centric approach. However, it's important to note that user-centric is also a pro-rata system. The difference is at what level the allocation of monies takes place.

So the process is the same as above, but

each individual user's subscription money is allocated to the tracks they specifically listened to, rather than revenues and usage data for each subscription type in each market being pooled for the purposes of track allocation.

This makes a difference because some subscribers will be low-level users and some subscribers will be high-level users, with the former listening to a relatively low number of tracks each month, and the latter a relatively high number. If a low-level user's subscription was specifically allocated to the tracks they listened to, the average per-play pay out will be higher. Meanwhile the average per-play pay out from a high-level user would be lower.

Under the current model low-level users are in essence subsidising high-level users, in that some of the subscription money paid in to the system by the former will actually be allocated to tracks that were streamed by the latter.

There are three main arguments presented in favour of user-centric:

- It seems fairer for each subscriber's monthly payment to only be shared with the people and companies involved in the music they specifically listen to.

- It might result in the biggest tracks and the superstar artists being allocated slightly less, and more niche tracks and middle-level artists being allocated slightly more.

- This approach has also been put forward as a possible solution to some of the stream manipulation practices outlined in section three.

But there are also a number of arguments presented against this approach:

- It makes an already complicated royalty distribution system even more complicated.

- It makes it harder for artists and labels to predict and audit streaming royalties. Although average per-play rates differ from market-to-market and month-to-month, some approximations can currently be applied across the catalogue. Under user-centric average per-play rates would depend on whether an artist's fans tended to be high-level or low-level users of any one streaming service.

- The shift from one model to another would require the introduction of new administrative systems which would result in additional costs. It's not currently clear who would bear the brunt of these costs.

- Research has also been inconclusive on the impact a shift to user-centric would have in terms of redistributing monies from the biggest tracks and superstar artists to the more niche tracks and middle-level artists. Some niche tracks and middle-level artists could actually lose out as a result of a shift to the user-centric approach.

To date Deezer has been the biggest advocate of the user-centric approach, lobbying – albeit so far unsuccessfully – for the industry to agree to shift to user-centric in at least its biggest market, which is its home market of France.

That said, it is SoundCloud which has actually started using this approach. This is because SoundCloud is different to other audio streaming services, in that it also has a user-upload element and, as a result, it has direct relationships with a community of grassroots content creators, as well as licensing music from the music industry.

It is with the grassroots content creators that SoundCloud is currently employing a user-centric approach, or what it calls 'fan powered royalties'.

Each month SoundCloud's revenues are first split between the company's grassroots content

creator community and its music industry licensing partners based on what percentage of overall consumption the two sides of the business accounted for.

The monies due to SoundCloud's music industry licensing partners are then allocated to each individual track using the current standard model. However, the monies due to the grassroots content creator community are allocated to content uploaded by those creators based on a user-centric approach.

It will be interesting to see how SoundCloud's fan-powered royalties programme plays out as the first application of the user-centric approach. Initial results publicised by SoundCloud are positive so far, although obviously it has good reasons to promote the positives of the programme at the moment. But as more data becomes available, SoundCloud's work in this space will hopefully be able to inform the wider debate in a useful way.

The artist growth approach

Another alternative is the artist growth approach, which has been specifically proposed by the independent music community. IMPALA contributed to the development of this proposal after it was initiated by AIM in the UK, who first formally presented it in a written submission to the British Parliament's high profile inquiry into the economics of streaming in late 2020.

As noted, many supporters of the user-centric approach are primarily motivated by the idea that allocating monies in that way might result in a modest but nevertheless significant redistribution of streaming monies from the biggest tracks and superstar artists on the platforms to the more niche tracks and lower-level artists. So that the former make slightly less and the latter make slightly more.

However, while that might be the outcome

of adopting the user-centric approach, that result is definitely not assured. Whereas the artist growth model guarantees that outcome by overtly instigating a modest but significant redistribution of streaming monies. It would basically mean that the average per-play rate for the most streamed tracks would be slightly lower, and the average per-play rate for less streamed tracks would be slightly higher.

There are various ways that this could be implemented. AIM commissioned a study of this approach, with support from IMPALA, undertaken by economic experts Will Page and David Safir. That study employed a model whereby all the tracks currently in the system were split into ten groups based on number of monthly plays, so that group ten contained the most played tracks, and group one the least played tracks. Groups nine and ten were then penalised, and the resulting monies relocated to groups five to eight.

Under that specific model – and based on the data set AIM used to test the approach – the combined independent sector would have seen an overall revenue gain of 1.5%, Universal Music's catalogue would also have had a 0.4% gain, while Sony Music and Warner Music would have seen a revenue dip of 0.9% and 0.8% respectively.

Obviously the actual impact in real terms would vary from market to market, and month to month. However, by definition, with the artist growth model the tracks currently being allocated the most streaming money would see their total allocations decline, directly benefiting tracks in the middle tier, which would all see increased allocations.

AIM's study into the artist growth approach also compared the pros and cons of this system with other approaches to both royalty distribution and artist remuneration, and that aspect of the study is considered in section three below.

The pro rata temporis approach

Because a play is counted at thirty seconds oblivious of the length of the track, those artists, labels and genres that tend to release longer tracks are clearly disadvantaged, in that a six minute track would get ten plays in an hour, and a three minute track 20 plays.

Some of the music industry's collecting societies already address this challenge when it comes to the distribution of broadcast royalties, with various approaches being taken.

Perhaps the simplest solution to this problem in the streaming space is the idea that longer tracks should count as more than one play. IMPALA's Ten Step Plan proposes that additional payments be triggered at five minute intervals up to a point, so that additional plays would be counted a five minutes and 30 seconds, ten minutes and 30 seconds, and fifteen minutes and 30 seconds.

The allocation of monies to tracks would continue as normal, however longer tracks would now account for a larger consumption share, because one full play would count as two or more plays, depending on the length of the track and how long the subscriber listened to it.

The active engagement approach

One other proposed change to the royalty distribution process is that different kinds of streams are weighted differently, impacting on the value of a track's allocation.

The most obvious distinction to make is between tracks that are specifically selected or saved by a subscriber, versus tracks that are pushed to a subscriber by a curated playlist or algorithm. The argument is that in the former case, the artist and label has played a more proactive role in facilitating the stream, and possibly should earn more as a result.

Quite how this would work – and what impact it would have – is still very much up for debate, and – as with all these alternative approaches – further research with actual usage data is required before any one new approach is actively promoted.

The user-choice approach

A final proposal regarding royalty distribution relates to streaming services adding new functionality that would allow artists to provide fans with extra premium content and enhanced experiences in return for an additional payment. This would provide artists with engaged fanbases with additional revenue beyond their share of the existing royalties pot.

The Ten Point Plan noted that: "We have seen during the pandemic that fans like to support and connect with their favourite artists more directly. There has been an explosion of direct-to-fan sales of vinyl and other physical goods, of subscription based digital fan clubs, and of paying for live-streaming experiences. We want to work with streaming services to create initiatives and products that allow artists to earn more, directly from fans' streaming".

As the One Step Ahead report 'A Diversifying Digital Market: Capitalising On The New Opportunities' explained, direct-to-fan activity is becoming an ever more important aspect of the digital music experience, creating many new opportunities for the wider music community. The streaming services could play a key role in helping artists and labels to capitalise on those opportunities, and in doing so provide artists with additional revenues.

It is worth noting, that these new direct-to-fan opportunities also prompt new debates, especially relating to the artist/label relationship, which are discussed in section two.

FROM THE IMPALA TEN POINT PLAN

“User-centric pay-outs feel more appealing to some who like the idea of their money going to the artists they listen to. We are ready to explore this option and scrutinise the pros, cons and unintended consequences of some services choosing the user-centric model”.

“We feel, though, that on its own it won’t create the optimal market for artists, just a different set of artists who gain and lose, without growing the market or embracing other dynamics which we feel are needed to achieve change”.

“We want a more nuanced approach to the distribution of value from streaming platforms. For example, differentiating the value of listeners’ streaming behaviour. Some services will see value in rewarding deeper relationships with an artist’s music”.

“Active engagement with individual creators, such as adding an artist’s album or single to your collection, or ‘liking’ her track on a playlist, could drive enhanced value to that artist and their label. This would be an opportunity for services who wish to recognise the key role of the individual artist in the creation of music”.

“Such a distinction could really enhance synergies between artists, fans and services which we expect would quickly lead to greater opportunity for interaction, innovation and conversion of free customers to payment”.

“Several of our proposals for revenue growth strategies are in effect user-centric – they encourage fans to pay more for enhanced offerings, exclusive content, and connect with the artists they love”.

“Artists who create longer-form pieces of music, such as jazz, electronic and classical, currently have to accept that the consumption of their music is measured in the same way as shortform pop music. An hour of listening might include 20 pop songs, but three classical pieces. In this instance, the classical artists are at a significant revenue disadvantage if streams are paid only ‘per song’”.

“IMPALA’s membership agrees that the length of a track should be valued and recognised. We also see opportunities for some services to take a creative approach to attracting fans of longer-form genres, and we have a proposal for rewarding the work of artists in these genres in new ways”.

“We want to work with streaming services to create initiatives and products that allow artists to earn more, directly from fans’ streaming. This could also reduce artists’ reliance on touring and would thus be more sustainable for the environment and for the artists themselves. These new revenues could provide exciting opportunities for different types of new business models and revenues splits”.

02: DIRECT-TO-FAN REVENUE STREAMS



SUMMARY

WHAT YOU NEED TO KNOW

■ Direct-to-fan services are likely to become key in the next phase of growth in the digital music market. These are D2F services that sell access to premium content and experiences, often monetised by the membership, donation and digital gifting tools offered by streaming, social media and bespoke D2F platforms.

■ Most digital music debates to date have centred on download stores and streaming platforms. Some may have to be revisited in the context of D2F.

■ As D2F becomes about digital content, the label obviously has a much bigger role to play. Labels need to assess when their rights are being exploited by D2F projects, and what other value they can bring to this activity.

■ New deals should cover future D2F projects, while labels might need to speak to artists and managers on existing deals about what possible D2F opportunities are worth pursuing, and how the label and its rights will be involved in that.

KEY TALKING POINTS

■ What direct-to-fan services are likely to be the biggest revenue generators in the next decade – and what is the role of the label in each of those services?

■ How can labels future-proof record deals to ensure future direct-to-fan opportunities are anticipated and covered by record contracts?

BACKGROUND

Direct-to-fan activity – whether hosted on the streaming services as proposed in IMPALA's Ten Step Plan – or on social media platforms and

via bespoke D2F websites and apps, is going to play an increasingly important role in the next phase of growth in the digital music market. While this creates many new opportunities for artists and labels, it also raises some new debates, in particular regarding the artist/label relationship.

Whereas direct-to-fan to date has mainly focused on the sale of physical recordings and merchandise through online artist and label stores, increasingly direct-to-fan is becoming more about selling access to the core fanbase to premium digital content and experiences.

Most social media and video-sharing platforms are adding tools in this domain, including memberships, donations and digital gifting. Meanwhile standalone platforms like Bandcamp and Patreon also power direct-to-fan activity of this kind.

Increased interest – among both artists and fans – in livestreaming, artist podcasts and NFTs are also linked to all this, in that that activity is also usually about providing the core fanbase with premium digital content or experiences.

Many labels have been involved in more traditional direct-to-fan activity for many years, of course. Either because that activity centred on selling CD and vinyl releases, or because a label's deal with an artist also covered merchandise, or possibly direct-to-fan in general.

However, as direct-to-fan becomes increasingly about digital content, the role of the label arguably increases, in turn further changing the artist/label relationship.

The label has an expanded role for a couple of reasons. First, most labels have increased their expertise in creating digital content – especially

video content – over the years, as such content has become a vital element of music marketing. And second, the label possibly has rights over the artist's direct-to-fan content, either because it uses the label's existing recordings, or the label has exclusivity rights over any recorded content the artist creates.

Therefore labels need to consider which of these direct-to-fan opportunities are available to which artists, and discuss the role they will play with the artist and their management.

And, as these services become ever bigger revenue generators, the industry may need to return to various other digital music debates, but in the context of direct-to-fan rather than download stores and streaming platforms.

PROPOSALS

The increased importance of direct-to-fan revenues has the potential to both create tensions between artist and label, or to enhance the partnership.

With new deals, artists and labels need to discuss upfront what direct-to-fan opportunities they plan to pursue, and what the label's role will be in that activity, especially if it utilises content created or owned by the label. If the label is sharing in the income, will that activity be run through the label's accounts on the relevant platforms and the artist be paid a royalty as normal. Or, if it is run on the artist's accounts, how is the label accounted to?

With existing deals – including possibly catalogue – labels should assess what activity artists might be planning, and what role they will play. What policy is a label taking when its content is being exploited in any direct-to-fan activity? And how can the label demonstrate the positive impact it can have on direct-to-fan projects, beyond its rights being exploited?

03: FAIR REMUNERATION



SUMMARY

WHAT YOU NEED TO KNOW

■ After a streaming service has allocated monies to a track and paid a share of that allocation to a label or distributor, said label or distributor in turn pays a share of that money to the artist. What share depends on the specific deal that has been negotiated between the label or distributor and the artist.

■ Deal types and terms vary hugely across the industry, though as a general rule the more services and investment a label or distributor provides the artist, the bigger cut of any subsequent revenues it is going to receive.

■ There has been much debate over the years as to what level of artist remuneration is ‘fair’ – both in terms of new deals that specifically set out royalty rates or revenue share terms for streaming, and also when interpreting old record deals that don’t specifically talk about digital income.

■ With the shift to streams, some labels have voluntarily adjusted old contracts, uplifted

royalty rates and written off unrecouped advances. At the same time, from the label perspective, record deals vary so much, it is impossible for there to be an industry-wide consensus on what is ‘fair’.

■ Some people have proposed legislative measures that would impact on and/or set artist remuneration rates, for example extending the equitable remuneration system that currently applies to broadcast and public performance revenues to streaming revenues. Most labels argue that such a solution is counter-productive.

■ There are clearly best practices labels can employ to ensure that each record deal is fair in terms of how revenues are shared, in the context of the wider partnership between artist and label. And also in how labels interpret pre-digital deals when it comes to paying royalties on streaming revenues.

■ Both IMPALA and the Worldwide Independent Network – as well as some national trade groups for the independent sector – have made statements regarding this best practice and have also put forward their own proposals

to reform streaming, pointing out that one of their members' key priorities is to maximise revenues.

KEY TALKING POINTS

■ Can there be an industry-wide consensus on what is fair remuneration for artists in terms of how streaming monies are shared? Given most labels would argue that there can't be, what processes and policies can labels implement to ensure each specific deal is negotiated and then interpreted in a fair way?

■ How can labels better communicate to artists and managers how streaming monies are being processed and royalties calculated, especially when new kinds of streaming services launch that make payments in different ways? How can distributors help their label clients with that communication task?

BACKGROUND

After a streaming service has allocated its monthly revenues to each track and a share of that allocation has been paid to the label or distributor which provided the recording, the label or distributor then in turn pays a share of that money to the artist.

How the money is split between the label or distributor and the artist is entirely dependent on the specific record or distribution deal that has been agreed between said company and said artist. There has been much debate over the last decade – and especially in the last year – regarding what a fair split of streaming monies might be.

Of course, what is fair depends very much on the wider deal that has been agreed. And across the independent sector record deals vary hugely, more so today than ever before, especially now that it is more common for artists to basically become a label themselves and then hire the services of a music distributor

or label services company – or, indeed, another label – to help with distribution and marketing.

The general rule is that the more services and investment an artist needs from a label or distribution partner, the more they will give up in terms of future rights and revenue. Or to put it the other way round, the more services and investment the label or distribution partner provides, the more they'll need in return from future rights and revenue.

In terms of the fair remuneration debate, it's important to distinguish between those deals that were negotiated in recent years and which include specific terms regarding royalties or revenue share relating to streams, and those deals that were negotiated pre-streaming where terms covering streams – or even digital in general – are not included.

Most of the controversies in this domain actually relate to the latter. Some artists and managers have argued that some labels have unfairly interpreted old contract terms relating to physical product when it comes to setting royalties for streams, and that there is often no formal way to challenge that interpretation, other than through the courts.

And even newer deals could face similar challenges as the digital market evolves. New kinds of digital services might require different kinds of licensing deals. There may also be other kinds of income, like advances, lump sum payments or equity in a start-up business. It can be hard for a record deal to anticipate all these future eventualities, which again means labels inevitably have to interpret old deal terms in the context of new opportunities.

PROPOSALS

As noted, across the independent sector new record deals vary hugely, which – from a label perspective – makes it hard to consider an industry wide standard on what kind of artist

remuneration is 'fair', because it depends on what investment and services a label provides.

Every single record deal is different, although there are some common practices across the industry, and it is possible to identify different kinds of deals that are done between artists and record industry business partners around their recorded music.

Some deals are **royalty arrangements**, where labels lead on the production, release, distribution, marketing and management of new recordings, and pay the artist a percentage of subsequent streaming income – usually up to 25%. Although certain upfront costs, in particular any cash advance, will initially be recoupable from that royalty.

Some record deals are **profit share arrangements**, where labels provide similar services, although usually with lower budgets, and artists and labels split any streaming income – often on a 50/50 basis – once all of the label's upfront costs have been recouped.

Some record deals are **services agreements**, where the label – or a distributor or label services company – provides a specific list of distribution and marketing services, and takes a fee or commission out of future streaming income, usually up to 50% depending on the number and kind of services that the label, distributor or label services partner is providing.

Some deals will also see the label become the owner of the copyright in the sound recordings, either for a set time period or for life of copyright. Other deals will see the label license the rights in the sound recordings from the artist for a set time period.

Fair deals and best practice

So, from a label perspective, what is a fair split of streaming monies on a new deal

depends entirely on which of these deal types it is entering into, what specific services it is providing, and what investment it is making, and therefore what financial risk is involved.

However, there are industry-wide best practices that labels can employ to ensure that any deal negotiations and future management of each record deal is fair. This includes...

- Ensuring artists are properly advised by management and legal representatives throughout the deal-making process, so they are aware of the choices available to them, and how the upfront investment and services they are getting from the label is balanced with the future share of rights and revenues.

- Committing to be fully transparent throughout the deal-making process and subsequently regarding the processing and payment of royalties, so that the artist and their team fully understand how recordings are being monetised, what revenues are being generated, and how those revenues are being shared out.

- In terms of future developments that will impact on the artist/label relationship, labels can commit to act in a fair and transparent way when new opportunities arise, in particular in relation to any other income that might be generated by future deals, especially income that is not directly linked to specific recordings.

In 2014 the independent community came together to create the Worldwide Independent Network Fair Deals Declaration and an accompanying collective positioning statement for the sector called the Global Independent Standard.

Labels across the world were then invited to sign up to the declaration. This was the first initiative of its kind and helped establish new standards whereby labels made commitments without being contractually obliged to.

THE WIN FAIR DEALS DECLARATION

Signatory labels will...

1. Ensure that artists' share of download and streaming revenues is clearly explained in recording agreements and royalty statements in reasonable summary form.
2. Account to artists a good-faith pro-rata share of any revenues and other compensation from digital services that stem from the monetisation of recordings but are not attributed to specific recordings or performances.
3. Encourage better standards of information from digital services on the usage and monetisation of music.
4. Support artists who choose to oppose, including publicly, unauthorised uses of their music.
5. Support the collective position of the global independent record company sector as outlined in the Global Independent Standard.

We wholly disapprove of certain practices, which leave artists under-recompensed and under-informed in the digital marketplace and will work together with the artist community to counter these practices.

These two documents make a number of statements regarding the fair negotiation and management of record deals, including...

■ We support independent music labels that treat their artists as partners and who work with them on reasonable commercial terms, noting that labels are investors who deserve a fair return alongside their artists.

■ We promote transparency in the digital music market; artists and companies are entitled to clarity on commercial terms.

■ Labels signed up to the Fair Deals Declaration will ensure that artists' share of download and streaming revenues is clearly explained in recording agreements and royalty statements in reasonable summary form.

■ Labels signed up to the Fair Deals Declaration will account to artists a good-faith pro-rata share of any revenues and other compensation from digital services that

stem from the monetisation of recordings but are not attributed to specific recordings or performances.

As noted, most of the controversies regarding fair remuneration relate to how old record deals have been interpreted for the digital age. Again, the context of every deal is different, so from the label perspective, there needs to be some nuance here.

But at the same time, industry best practice is to be fully transparent about how old deals are being interpreted, treating artists fairly in this process, and having systems in place that allow artists and their managers to scrutinise and discuss decisions that have been made. In its Ten Point Plan, IMPALA stated: "Record labels must commit to revising all pre-digital royalty rates, and all artists should receive a fair contemporary digital rate. This benefits all artists, but especially those on older deals where royalties can be as low as 4%".

Proposed statutory interventions

Some groups within the music industry have proposed statutory intervention on artist remuneration. Various different proposals have been made.

For example, a contract adjustment mechanism in copyright law that would give artists a statutory right to renegotiate old contracts in the context of the modern music market. There is a contract adjustment mechanism in the 2019 European Copyright Directive, though arguably that is not specifically intended to be used in that way.

Another proposal is the extension of the ‘equitable remuneration’ principle that currently applies to broadcast and public performance revenues to streaming revenues, so that at least some streaming revenue would be paid directly to performers – including featured

artists signed to labels and session musicians – via the collective licensing system. The label community argues that the latter solution isn’t practical, because of the diversity of deals negotiated between artists and labels.

From a label perspective, a one-sized-fits-all system for sharing the record industry’s main revenue stream would remove flexibility from the deal-making, hitting hardest those artists and labels who have innovated the most in the way they structure their deals, including those artists who have basically set up their own labels. Concerns have also been raised about this proposal making rich artists richer and not helping emerging artists.

IMPALA’s position on the proposal that performer equitable remuneration be extended to streams – which includes additional concerns – is included in the blue boxes below.

FROM THE IMPALA TEN POINT PLAN

“Record labels must commit to revising all pre-digital royalty rates, and all artists should receive a fair contemporary digital rate. This benefits all artists, but especially those on older deals where royalties can be as low as 4%”.

“Equitable remuneration sounds fair and has recently received a lot of attention. But let’s be clear. It is not a new right – it is a compensation mechanism for rights when they are stripped away. The model on which it’s based illustrates the loss of value it brings, with radio paying rates per listener that are up to 200 times lower than streaming. And in some countries, like the USA, terrestrial radio doesn’t pay anything to play recorded music”.

“It may also allow monopoly market participants to end the industry’s freedom to negotiate commercial rates for streaming; and it would not result in greater pay-outs to artists”.

“In addition, equitable remuneration cuts across innovative initiatives such as the Fair Digital Deals Declaration, introduced by the independents to deal with legacy issues and to facilitate the sharing of revenue previously not covered by contracts. It transformed the market, and helped thousands of artists share in the benefits accrued to labels when Spotify floated. Equitable remuneration would deplete value from the commercial market and reduce capital for investment in new artists and projects”.

“This would disproportionately harm the independent sector, which is responsible for 80% of new releases, and that’s before counting the community of artists who are not signed to record labels”.

RELATED STUDIES

In summer 2021, IMPALA published an article on ‘Artist Revenue And Equitable Remuneration’.

It summarised the concerns about the ‘equitable remuneration’ principle previously outlined in the Ten Point Plan, and again stressed the importance that all the proposed reforms for royalty distribution and fair remuneration outlined in this report be rigorously assessed by the wider music community. It also included some additional conclusions from the above mentioned AIM study into the artist growth model by economic experts Will Page and David Safir, and the results of an impact assessment undertaken by a significant AIM member in the UK.

From the Artist Growth Study

In their study on the artist growth approach for AIM, Will Page and David Safir summarised their conclusions regarding the impact of this approach alongside the status quo and the likely impact of equitable remuneration being applied to streams.

They concluded that equitable remuneration would lead to:

1. Significant upside for services with less value flowing through the industry and to artists.
2. Increased administration costs to be borne by industry – and ultimately artists.
3. A decrease in transparency for artists.
4. A decrease in investment in artists – and particularly new artists.
5. A potential loss of choice for artists – particularly if equitable remuneration results in a drift towards blanket licensing.

From the impact assessment

These conclusions were echoed by the findings of a significant AIM member in the UK who submitted the following outline impact assessment of equitable remuneration on streaming...

Option Appraisal	Status Quo	Equitable Remuneration	Artist Growth Model
Impact on label return on investment	Investment likely to increase in line with UK revenue growth	Less investment in UK artists as ROI falls and foreign competition increases	Increased investment in more diverse and niche content
Impact on streaming service cost of goods	Likely to edge downwards (increasing service leverage)	Increased downside risk for labels under compulsory blanket licensing	Negligible – labels will have marginally different agreements with services
Impact on economies of scale	Indie share increases with prominence of Merlin and DIY	PPL licensing shifts costs but mainly benefits larger labels	More equitable allocation of costs and benefits
Impact on transaction costs	Likely to fall as systems are re-engineered	Likely to increase due to legal implications of ‘switching costs’	One-off increase in transaction costs to calibrate scales
Impact on artist-label contracts	More transparency as artists negotiate more confidently	Less transparency accompanying increased switching and auditing costs	Potential for less transparency as complexity increases

04: STREAM MANIPULATION



SUMMARY

WHAT YOU NEED TO KNOW

■ Agencies exist that artificially boost streams of certain tracks – usually by setting up multiple accounts and playlists on the streaming services and setting them to play either their own tracks or the tracks of their clients.

■ This allows the artificial boosting of the stats linked to an artist or track for marketing reasons.

■ These tactics can also be used to exploit the royalty distribution model employed by the services, sufficiently boosting a track's streams so that an agency can pull more money out in royalties than it puts in by buying premium accounts

■ This conduct is, of course, unethical. And from a marketing perspective results in long-term damage to an artist, by rendering their all-important fan data useless.

■ The streaming services are best positioned to counter this activity, although the music industry has a role to play too. Both the services and representatives of the music industry signed up to a code of conduct on this issue in 2019.

KEY TALKING POINTS

■ How big an impact is stream manipulation having on official stats and royalty distributions? It is hard to assess in tangible terms, but some people argue that the impact is actually very significant indeed. Some have estimated that the number of streams generated from manipulation practices on a platform like Spotify could represent about 3-5% of the total number of streams serviced.

■ Are the services doing enough to combat stream manipulation, given that they aren't really in themselves harmed by this conduct? What can the music industry do to ensure the services are as prolific as possible in this domain?

■ What can you do as a label – in terms of contracts and communications – to ensure no one in your company, among your suppliers, and among the wider teams of your artists is involved in any stream manipulation activity?

BACKGROUND

Agencies exist that will artificially boost streams of specific tracks in return for payment. This artificial boosting of streams is achieved in an assortment of ways, though most commonly agencies will set tracks to play on their own accounts and playlists. Some agencies have also hacked other people's accounts on some services and set tracks to play there too.

There are two motivations for employing such agencies. One is to simply make it look like a

track is more popular than it really is, either to secure a higher position in the music charts, or to influence decision makers in the music and media industries.

Similar tactics have been employed by rogue operators in the music industry in the past, of course, including labels buying back their own CDs to secure a higher chart position or paying agencies to request their own tracks on jukebox TV channels and such like.

It has to be said that, while stream manipulation might deliver short term marketing benefits, in the long term such tactics are counter-productive. Partly because, if the manipulation is discovered, services will amend official stats to remove any artificially boosted streams, resulting in a sudden drop in listens and listeners.

But more importantly, accurate fan data is now crucial for delivering and assessing effective marketing campaigns and building successful artist businesses, and if stream manipulation is employed it becomes impossible to distinguish between actual fan data and artificial fan data. Making all the fan data pretty much worthless.

The second motivation for employing stream manipulation is financial. Because of the way streaming monies are allocated to tracks based on total consumption share, it is possible for agencies and their clients to pull more money out of the system from their artificially boosted streams than they put into the system by buying premium accounts or paying an agency's fees.

This makes stream manipulation different to the similar tactics used in the old music industry, in that the manipulation can lead to tangible financial gain, as well as any marketing benefits. It also has a direct negative impact on the rest of the music industry, because as more monies go to tracks that have enjoyed

an artificial boost, there is less money to be allocated to and shared with all the other tracks on the system.

Indeed, in addition to those agencies who sell stream manipulation services to the music industry, there are other entities that undertake stream manipulation simply to game the system for their own financial gain. These entities will create and distribute their own recordings, buy thousands of premium accounts, and then set those accounts to prolifically stream their own tracks. The royalties they receive back greatly exceed whatever they spent buying subscriptions.

PROPOSALS

It makes most sense for the streaming services to take the lead in combatting stream manipulation, even though commercially speaking they are not themselves negatively impacted by this activity, and indeed possibly sell more subscriptions as a result.

Nevertheless, the streaming services do officially oppose stream manipulation and – partly under pressure from the music industry – have gone to some effort to counter this activity. Artificially boosting streams breaches the terms and conditions of each streaming service, which means services can cancel accounts used for that activity if they are identified.

In 2019 most of the streaming services – alongside representatives of the music industry, including IMPALA – signed a code of conduct regarding stream manipulation. The services specifically agreed to "implement a set of balanced, commercially reasonable measures and controls enabling the prevention and/or reduction of stream manipulation", including "supporting effective detection and management of instances of suspected illegitimate activities in a commercially and technologically reasonable and proportionate manner".

The music industry also has a role to play. First, labels need to ensure that they, their employees, and any agencies they or their artists work with are fully opposed to stream manipulation and will not participate in any such activity. This was the key commitment made by representatives of the music industry in the aforementioned code of conduct. In some countries – especially Germany and Brazil – the record industry has also played a proactive role in targeting agencies who sell stream manipulation services, in some cases securing court injunctions that order those companies to stop all such activity.

The legal basis of such injunctions varies from country to country, but record industry trade groups and anti-piracy agencies in Germany and Brazil have had some success in this domain.

As for those companies who upload their own recordings with the aim of artificially boosting streams on their own accounts – so to pull more money out in royalties than they put in via subscriptions – the music distributors have a role to play in ensuring they don't inadvertently help such rogue entities deliver their content to the streaming services.

FROM THE IMPALA TEN POINT PLAN

“[We call for] more vigilance by music services on unlawful activity that removes value from creators, including streaming manipulation, ad-blocking and stream-ripping software”.

05: ALGORITHMS

SUMMARY

WHAT YOU NEED TO KNOW

- The streaming service algorithms are becoming ever more important in the way that services recommend music to their users. But these algorithms are complicated, constantly evolving and not entirely transparent.

- It is felt that the services need to get better at communicating how their algorithms work, reassuring the music industry that there are no deliberate or unintended biases skewing recommendations in favour of certain kinds of music, and educating artists and labels on how to organically influence the system.

- Spotify has launched a commercial paid-for

service that allows artists and labels to formally influence its algorithm, but many labels, artists and managers have criticised this approach, equating it to payola. Allowing the industry to inform the algorithm is a good idea, but most argue that it should not be a paid-for system.

KEY TALKING POINTS

- How can artists and labels organically influence the streaming service algorithms? The One Step Ahead report 'Playlists And Curation In The Streaming Music Market' provides some tips.

- How can the industry – and possibly law-makers – put pressure on the streaming services to be more transparent about their algorithms?

BACKGROUND

As explained in the One Step Ahead report 'Playlists And Curation In The Streaming Music Market', the algorithms employed by the streaming services to curate playlists and power personalised recommendations are becoming ever more important.

The role of the algorithm, in particular when it comes to curating themed playlists, does vary from service to service. However, Spotify in particular has invested heavily in its algorithm-powered playlists and auto-play functions.

And while some of its rivals like to stress that they prioritise human curation, as personalisation and voice-control become an increasingly important part of the user-experience, the algorithm becomes more crucial. And, of course algorithm-led curation is ultimately more cost-efficient for the services.

The increased importance of the streaming service algorithms raises a number of concerns for the music community, and while this has traditionally been a less high profile digital music debate, it is likely to become a much bigger part of the conversation moving forward.

There are at least three concerns...

■ Like with the social media algorithms, the streaming service algorithms are complicated, constantly evolving and not entirely transparent. There are ways that artists and labels can organically influence the algorithms, but understanding how that works often involves a lot of trial and error, which gives bigger music companies who are constantly running release campaigns an advantage.

■ Many streaming services have much more prolific human-led playlisting operations in the big markets. This means that in small markets, services will have fewer, if any, regionally

focused playlists curated by local specialists. Unless third party playlists are able to fill this gap, it means that the algorithm is even more influential in those countries. This reduces the marketing options for labels in these markets.

■ Spotify is currently rolling out what it calls Discovery Mode, which allows artists and labels to influence its algorithm, basically by letting the system know what tracks are current priorities or somehow newsworthy. In theory this is a good development, except it is a commercial service. Artists and labels must accept lower royalties on any plays that are instigated as a result of Discovery Mode.

PROPOSALS

There has been a lot of debate regarding the need for more transparency in the digital music market over the last decade. However, to date that has generally focused on the need for more transparency regarding the structure of digital licensing deals, especially for artists and labels who are one step removed from the licensing process, relying on business partners, including distributors, to get their music to market.

However, the need for more transparency regarding how streaming services recommend music – and how the algorithms that power personalised recommendations and playlists work – is now being more widely discussed within the music community.

The need for more transparency

A study on the streaming sector by France's Centre National De La Musique, which reported in early 2021, noted how many rights-holders that researchers had spoken to had "lamented a lack of transparency concerning how different recommendation services work".

Meanwhile the report published following the UK Parliament's inquiry into the economics of streaming added that: "Several submissions warned that algorithms, as with any

recommendation system, could reflect biases that may subsequently reduce new music discovery, homogenise taste and disempower self-releasing artists. Many creators ... were critical of the opacity of algorithmic curation and called for greater oversight”.

Spotify has published some blog posts about its algorithm. In one post it discussed the thousands of factors its algorithm considers, what it calls ‘signals’. They include data relating to each user’s past activity (eg what they listened to, how they interacted with a track, what they repeat played); features of tracks listened to in the past (eg genre, tempo, musical elements, length, language); the related features of tracks that the user hasn’t previously listened to; and the listening habits of people with similar tastes to the user.

However, the services could do much more to communicate with the wider music community about their algorithms. That would include information on what measures are taken to ensure that the algorithm is not skewed by deliberate or unintended biases, and that musical diversity is a key objective. And also education on how independent artists and labels can organically influence the algorithm through other marketing activity.

The 2019 European Copyright Directive includes a new transparency obligation for labels and publishers that requires communication to artists and songwriters about how recordings and songs are being exploited. Some have argued that similar transparency obligations should also be introduced for the streaming services in relation to their algorithms.

Discovery Mode

Although Spotify’s initial announcement of its Discovery Mode pilot received a mixed response from within the music industry, many in the independent sector – and in the artist and management communities – have since criticised the idea that artists and labels should have to pay to formally influence the algorithm, even if that payment takes the form of agreeing to provide a streaming service with a discount on future royalty payments.

In its Ten Point Plan, IMPALA urged the entire music sector to reject proposals like Discovery Mode, which it equated to payola, the often illegal (and always frowned upon) practice where labels paid to guarantee airplay on radio stations.

The UK Parliament’s report urged the country’s government to “commission research into the impact of streaming services’ algorithms on music consumption, including where creators are forgoing royalty payments in exchange for algorithmic promotion”. And in the US, Congress members Jerry Nadler and Hank Johnson have expressed specific concerns about Discovery Mode, which they say raises “significant policy issues”.

In an open letter to Spotify CEO Daniel Ek, they wrote that the scheme “may set in motion a ‘race to the bottom’ in which artists and labels feel compelled to accept lower royalties as a necessary way to break through an extremely crowded and competitive music environment”, and that “any plan that could ultimately lead to further cut pay for working artists and ultimately potentially less consumer choice raises significant policy issues”.

FROM THE IMPALA TEN POINT PLAN

“We call on the entire music sector to stand with IMPALA to reject any proposals by services that reduce royalties for plays, or privileged treatment, in algorithms or other features. This is payola, and has no legitimate place in improving viability and opportunity for creators”.

06: LOCAL CATALOGUE AND CULTURAL DIVERSITY



SUMMARY

WHAT YOU NEED TO KNOW

■ Because streaming is dominated by a small number of global players, artists and labels in smaller markets are often at a disadvantage. Services are less likely to have on-the-ground playlist or editorial activity in those markets, and are less likely to have day-to-day relationships with the local music community.

■ There is also a disparity between markets in terms of average revenue per user – or ARPU – in part based on the ratio of paying subscribers to users on free services. In markets where there are many more free users, the ARPU will be lower, meaning a smaller royalties pot to share across the sector each month.

■ Although the streaming services need to take the lead in addressing these challenges,

they should also utilise the expertise of the independent music community in markets where they do not have a prolific on-the-ground presence.

■ There are also some simple practical measures the services could implement, such as allowing tracks to have multiple titles in multilingual countries, and allowing users to navigate a platform by label.

KEY TALKING POINTS

■ What measures and initiatives should the streaming services prioritise to help music communities in smaller markets and to ensure maximum cultural diversity across their services?

■ What role does the independent music community have in meeting those challenges – and how can governments help ensure that services recognise how important these challenges really are?

BACKGROUND

One of the biggest positives of the big shift to digital in recorded music is that all artists and labels now have global reach in distribution terms, in that it is relatively easy to get your music streaming on digital platforms in pretty much all markets across the world.

However, at a regional level it has created challenges for artists and labels whose initial target audience is more local. With the exception of a handful of emerging markets in Asia and Africa, in much of the world streaming is dominated by a relatively small number of global platforms. Unlike in the physical era, you don't have retail chains focused on one or a small number of markets, or independent stores focused on one town and its local area.

Inevitably, global platforms are more proactive and prolific in the bigger markets, both in terms

of playlist curation and other editorial activity, and in interacting with the local independent music community and addressing their specific needs.

Another issue is the disparity between markets in terms of average revenue per user – or ARPU – which is to say the average money each user is putting in the system each month. Because royalty distribution happens on a market-by-market basis, in countries where the ARPU is lower, the amount of money to share across the industry will obviously be less.

The lower ARPUs in some countries are partly because the subscription prices streaming services set need to take into account the economic realities of each market. As a result, the price set in any one country will be the economic equivalent of the benchmark price of ten euros a month, rather than the currency equivalent.

However, ARPU is also affected by the ratio between those users who pay to stream and those users who sign up to free ad-funded services. Ad income is always much lower than subscription income, so in countries where many more users sign up to free services, the ARPU across the user base will be lower, resulting in a much smaller royalties pot.

PROPOSALS

The streaming services have to take the lead in addressing these challenges, although the independent label community can play a role too, if the services allow it.

There are some relatively simple practical measures that services could implement to address some of the issues in smaller markets. For example, in multilingual countries, allowing multiple titles for tracks in different languages would be a good starting point.

Beyond that, another key solution would be for

services to increasingly see independent labels in each market as both curation and marketing partners, as well as licensing partners.

Where it is not viable for services to have on-the-ground playlisting operations in a country, they should utilise the curation expertise of local labels instead.

This could be as simple as allowing users to navigate a service's catalogue by label. Additionally, services could encourage labels to create their own playlists – featuring their own and other recordings – and then help to promote those playlists to relevant users in that market.

Services could also utilise the expertise of local

independent labels to consider strategies for converting more subscribers currently signed up to free services to paid for services. This might involve piloting alternative subscription packages – as some services are already doing – or developing marketing campaigns involving local artists and labels.

There has been increased discussion in recent years as to what role governments might play in this domain. In some countries traditional broadcasters have obligations to support local talent, and similar measures could be introduced to pressure global streaming platforms to likewise make commitments to cultural diversity, in particular by partnering with the music communities that have expertise in any one market.

FROM THE IMPALA TEN POINT PLAN

“There is huge commercial potential in smaller markets, especially in Europe where there is great cultural and linguistic diversity. Two simple ways to unlock this value are by enabling multiple titles for tracks, in different languages, and implementing search by label. These are key to promoting linguistic diversity, inclusion and market access”.

“Search by label lets fans explore and enjoy the artistic lineages and choices that make labels special and unique. It opens up a deeper and more exciting relationship between musicians, labels and listeners – which in turn offers dynamic ways to grow revenue”.

“We welcome all opportunities to work with streaming services to boost diversity and market access in Europe and elsewhere, in line with IMPALA's diversity charter. However, the market is dominated by a small number of multinational conglomerates. They have global business imperatives, so they focus on a small number of global hits, and the most lucrative markets. Few resources go to smaller or emerging markets, even though these have the potential for healthy music ecosystems. The status quo rewards global homogeneity of content, and under-represents local or niche artists. It gives no incentive to investment in more diverse forms of repertoire, by language or genre”.

“The variance in ARPU (Average Revenue Per User) across markets also makes it harder for artists outside the top few territories to make sustainable earnings from streaming. We must create new models in markets where streaming services are failing to convert listeners from free to paying”.

07: FAN DATA

SUMMARY

WHAT YOU NEED TO KNOW

■ Fan data is now crucial for building successful artist business and running effective music marketing campaigns. Given artists work with multiple business partners – each of which will be gathering data – a key challenge is ensuring that everyone has access to the data they need.

■ Aside from any commercial sensitivities, the sharing of fan data is also regulated by data protection law.

■ As a result, data considerations should be included in all deal negotiations and record contracts, so all parties are clear on what data will be gathered, what data will be shared, and what needs to happen to allow such data sharing. Labels should also consider putting together data policy statements, especially in relation to existing artists whose old contracts don't talk about fan data.

■ Given the kinds and role of fan data is constantly evolving – as are the data policies of the big digital platforms and data protection law – the music community increasingly needs to discuss best practice on a regular basis.

KEY TALKING POINTS

■ Are you currently getting access to all the fan data you need to run effective music marketing campaigns? Are your artists getting all the fan data they need to successfully grow their individual artist businesses?

■ What data protection laws do you need to consider when gathering and sharing data about your artists' fanbases?

■ What fan data terms should be included in

record contracts – and what does a label fan data policy look like?

BACKGROUND

Looking ahead to the digital music debates that are likely to become big talking points in the years ahead, the One Step Ahead report 'Marketing Power Through Data And Networks' posed a number of questions and raised some potential issues around fan data.

That report explains how the gathering and utilisation of fan data is now a key component of music marketing. It summarises the different kinds of data now available to the music industry, and explains in more detail how labels can use that data to expand reach and gain insight.

Briefly, targeting and retargeting tools provided by various digital platforms allow labels to build below-the-line audiences to which content and communication can be targeted through social advertising campaigns. Individual artists can – and should – do this too, but the label's advantage is that it can build audiences across its roster. This allows the different artists the label works with to all benefit from the activities of other artists and fanbases.

All the different kinds of fan data combined can also be used to profile each fanbase and to assess each marketing campaign. Music marketing is increasingly digital marketing, and digital marketing is a trial and error process. Data is therefore key to that process.

You post content on different platforms and measure the response, learning what does and doesn't work among the fanbases of different artists, genres and scenes. Again, the label benefits from having data across its roster, meaning it can use insights from one artist's

campaign to inform the next artist's campaign.

To allow all this to happen, labels need to have access to as much fan data as possible for each artist they work with, and the legal right to utilise that data (which is, of course, regulated by data protection law). Some of that data will be directly collected by the label or platforms with which the label has the primary relationship. But other data will be directly collected by the artist or another of the artist's business partners.

The flip side to this is that artists and their management teams usually need access to the data that is directly collected by the label or its business partners in relation to the artist's fanbase. This data helps the artist to grow their wider business, in particular informing and helping to publicise live, merchandise and direct-to-fan activity.

As fan data sharing becomes crucial for all parties in the wider music industry, the debate over best practices in this domain is becoming increasingly important.

PROPOSALS

The need for both sides to access fan data gathered by the other has the potential to create new tension points between an artist and a label. But at the same time, it can also strengthen the relationship, where both sides acknowledge the other's requirements and priorities, and seek to ensure the other party has access to the data they require.

The best way to ensure a positive outcome is to consider and discuss fan data requirements when negotiating new record deals and to make sure terms covering the gathering and sharing of data are included in any subsequent contract. This is particularly important because data protection law requires that fans are told what data is being gathered and how it

will be used at the point the data is collected. Therefore any sharing of data needs to be anticipated from the start, so that data and privacy policies, and terms and conditions on relevant websites, can be updated accordingly.

Though, as with the debate around fair remuneration, there is the issue of old contracts that do not specifically cover fan data. A good starting point here would be for labels to produce fan data policies that set out what data the label plans to gather; of that data what the label is happy to share with the artist and their other business partners; and what data the label needs from the artist and those partners to run effective marketing campaigns.

While it is important for labels to be much clearer about their position on fan data – in both new contracts and possibly through general policy statements – consideration also needs to be given to liabilities. This requires both some nuance in contracts and policies, and also education within the label itself, and/or of the marketing agencies it employs.

For example, if a label commits to share data with an artist – or vice versa – it is important that everyone involved in subsequent projects is aware of what legal requirements must be met to allow that data sharing to happen. And if, through error or oversight, data and privacy policies are not updated so data cannot be shared, obviously neither side wants to be in breach of contract. So, there needs to be some flexibility in that regard.

Of course, the kinds of fan data available, how data is used in digital marketing, the data policies of the big digital platforms, and data protection law around the world is constantly evolving. Therefore the wider music community should come together to discuss data issues on a regular basis, identifying best practices on all sides.

OWN
YOUR
FUTURE

We Proudly Support
IMPALA's One Step Ahead

MERLIN

Find out more at merlinnetwork.org



ABOUT ONE STEP AHEAD

One Step Ahead is a digital intelligence facility from IMPALA to enable independent music companies across Europe to navigate and identify trends, developments, challenges and opportunities in the digital music market. Delivered in partnership with music business consultancy CMU Insights and with support from Merlin, One Step Ahead provides reports, tools and training to help independent music businesses of all sizes to get the most out of today's digital opportunities in Europe.



ABOUT IMPALA

IMPALA was established in 2000 and now represents over 5000 independent music companies. 99% of Europe's music companies are small, micro and medium businesses and self-releasing artists. Known as the independents, they are world leaders in terms of innovation and discovering new music and artists – they produce more than 80% of all new releases and account for 80% of the sector's jobs. IMPALA's mission is to grow the independent music sector sustainably, return more value to artists, promote diversity and entrepreneurship, improve political access, inspire change, and increase access to finance. Read more about IMPALA's story in 20 milestones on our website. impalamusic.org



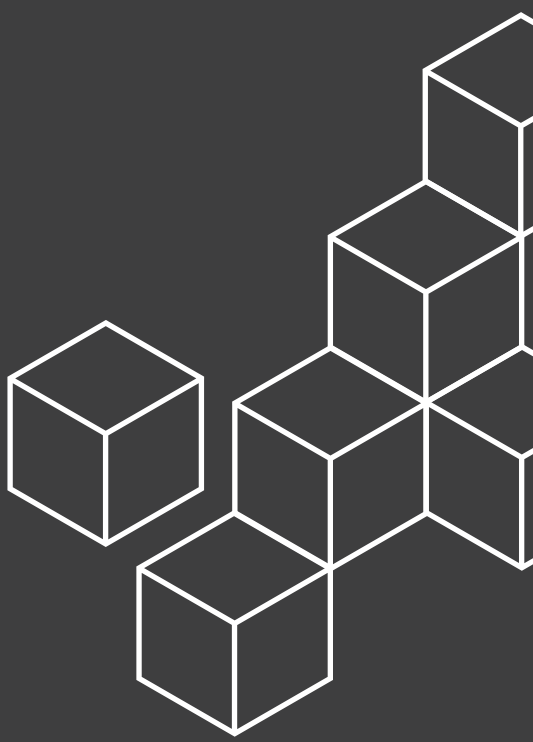
ABOUT CMU INSIGHTS

CMU helps people navigate and understand the music business through media, education, research and events. CMU Insights is the company's business intelligence unit. It supports the music industry – both music companies and companies working with music – through training, consulting, research reports and conference sessions. cmuinsights.com



ABOUT MERLIN

Merlin provides independents the means to own their future. Members work directly with key digital partners, but benefit from Merlin's premium deals with over thirty digital music services around the world. Merlin's membership consists of independent labels, distributors, and other rights-holders, representing tens of thousands of labels and hundreds of thousands of artists from every country in the world, representing 15% of the global market share. As a member-led, artist-focused organisation, Merlin's mission is to deliver best in class services and work collaboratively with its digital partners to drive incremental benefits to members, while delivering value back to digital music services. merlinnetwork.org



IMPALA 20 

impalamusic.org