Music and streaming

Final report

29 November 2022

Competition & Markets Authority

The Competition and Markets Authority has excluded from this published version of the market study report information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. [Some numbers have been replaced by a range. These are shown in square brackets.] [Non-sensitive wording is also indicated in square brackets.]

Contents

1. Introduction

1.1 On 27 January 2022 the CMA launched a market study into music and streaming.[1] The CMA consulted on a Statement of Scope.[2] Responses to this consultation were published on 12 April 2022.

1.2 On 26 July 2022, the CMA published an Update Paper[3] setting out its early findings from the study and its proposal not to make a market investigation reference. The CMA consulted on this proposal and responses to the consultation were published on 21 September 2022. We have considered these responses and undertaken further assessment of the market.

1.3 This Final Report concludes our market study, setting out the conclusions we have reached on the state of competition in the markets within our scope. Our core conclusion is that the CMA should not make a reference to a market investigation – a lengthy process that would involve all stakeholders in a long and costly proceeding. We do not see a plausible path to any intervention that would produce benefits for consumers or creators that would merit a reference.

1.4 We first describe the context for the study and the background to the sector. We explain how the markets within our scope function, including the licensing and contractual arrangements. We then assess how competition is working in the different markets and consider the impact of user-uploaded content (UUC) platforms on music industry revenues. Finally, we set out the rationale for our decision not to make a reference.

1.5 The music industry continues to change, in light of new technology and changes in the way music is produced, distributed and enjoyed. Our market study has considered one specific element – the functioning of the market. There are wider public policy considerations that affect how the music industry operates, including the overall balancing of the interests of musicians and their audiences, that are outside the scope of our study but that remain actively under consideration. As well as explaining our decision and assessment, our findings may assist to inform and support Government and policy makers' consideration of these wider questions.

[1] The Market Study Notice is published on the CMA's case page.
[2] The Statement of Scope is published on the CMA's case page.
[3] The Update Paper is published on the CMA's case page.

Context

1.6 As well as its wider cultural and social role, music is an important creative sector for the UK economy, in 2021 contributing £4 billion to the UK economy and £2.5 billion in exports.[4]

1.7 However, the sector has – like many others – been hard hit by the coronavirus pandemic. The figures above represent a 31% and 15% decrease respectively from 2019, despite representing an increase from 2020.[5] Live music in particular was heavily impacted, hurting music creators for whom this has previously represented a significant revenue stream. Artists were much more dependent on other revenues including those from streaming.

1.8 An inquiry into the economics of music streaming by the DCMS Select Committee, published in July 2021, identified concerns that music creators were not getting a fair share of streaming revenues. The DCMS Committee also raised concerns about the role of the three largest global music companies, referred to as the 'majors' (Sony Music Group (Sony), Universal Music Group (Universal or UMG) and Warner Music Group (Warner or WMG)), recommending that the Government request a CMA market study into what the Committee called 'the economic impact of the majors' dominance'.[6]

1.9 To take forward the issues it identified, the DCMS Committee made a series of recommendations for both legislative reform and policy and regulatory intervention. In response,[7] the Government set out a range of actions to consider the Committee's recommendations and better understand the issues. These include the establishment of a Music Contact Group with senior representatives from across the industry; and the creation of technical industry working groups to improve contract transparency and tackle data issues such as the provision of metadata identifying copyrights.[8] Alongside this, the Government has committed to a research programme, including by:

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[4] UK Music, This is Music 2022, p11.
[5] UK Music, This is Music 2022, p11.
[6] The DCMS Committee also recommended that the CMA consider exploring designating YouTube's streaming services as having 'Strategic Market Status' (SMS) under the proposed new pro-competition regime for digital markets. The Queen's speech committed to publish a draft Bill to create new competition rules for the largest digital firms which would be overseen by the Digital Markets Unit. The Government's proposals for such a regime are set out here: *A new pro-competition regime for digital markets - government response to consultation*. Until that new regime is in force, the CMA has no power to designate firms with SMS and this recommendation is therefore outside the scope of this market study.
[7] House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report*.
[8] Metadata is the data associated with tracks which provides information on the artist(s) and songwriter(s), as well as other features such as length, genre, etc.

(a) the Intellectual Property Office (IPO), on

(i) potential options to strengthen creator rights (for example by introducing a right to equitable remuneration[9] when music is consumed by digital means, a right for artists to recapture the rights to their works after a period of time and the right to contract adjustment if their works are successful beyond the remuneration they receive);

(ii) the liability of user-generated content-hosting platforms for copyright infringements within such content; and

(b) the Centre for Data Ethics and Innovation (CDEI), on the impact recommendation algorithms used by streaming services are having on music consumption.

1.10 The Government wrote to the DCMS Committee on 18 May 2022 setting out its progress to date and a forward look for its programme of work.[10]

1.11 The Government also wrote to the CMA, requesting its consideration of a market study. Following consideration by the CMA's Board, the CMA launched a market study into music and streaming on 27 January 2022.

Statement of Scope, Update Paper and our consultations

1.12 As set out in the CMA's Statement of Scope published on 27 January 2022, our study considers the market for the supply of music, from the creators of music through to the consumer, in particular via music streaming services.[11]

1.13 In this context 'creators' covers all the many contributors involved in the making of music, but in this document, unless otherwise specified, will tend to refer particularly to songwriters (by which we mean both composers and lyricists) and artists (by which we generally mean featured artists[12] unless stated otherwise).

1.14 The CMA's market study covers two key levels of the music streaming value chain:

(a) The products and services offered by music companies, including in recorded music and music publishing. We noted in our Statement of

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[9] Equitable remuneration, which currently applies in the UK in respect of radio and TV broadcasts and public performances (eg in pubs, clubs, shops, etc.), provides an automatic, unalienable, non-transferable statutory right for performers to share in recording revenues.
[10] This letter is published here.
[11] See the CMA Notice of 27 January 2022 for this market study.
[12] Featured artists are the main artists featured on a recording. Other artists and musicians may also contribute to the recording and are referred to as non-featured artists.

Scope that most of the possible concerns with a key competition or consumer element link back to possible issues in recorded music.[13] While our initial proposal was to therefore focus on recorded music, in light of representations received from stakeholders we have also considered music publishing in more detail. Within music publishing, our work has focused in particular on whether competition issues may be distorting the share of streaming revenues that is paid out for publishing rights. As part of our assessment of the market we have examined the nature of competition and outcomes for artists and songwriters.

(b) The provision of music streaming services to consumers. Consumer outcomes are an important factor in our assessment of the market as it is our statutory duty to consider whether the market is working in the interests of consumers. Market outcomes for creators are an integral aspect of this – consumers value creativity alongside the quality and range of music supplied – and are considered within (a) above.

1.15 In the course of our market study, a wide range of concerns have been raised, many of which relate to how the market fulfils its wider social and cultural functions and rewards the broad spectrum of those who contribute to music-making. Our focus, as a consumer and competition authority, in this report is necessarily limited to aspects of the market that may distort, or arise from a distortion to, competition. Our competition assessment is only part of a wider policy and copyright framework aimed at ensuring that intellectual property rights are properly protected and rewarded, and that the supply of music is safeguarded as the way consumers listen to music continues to evolve.

1.16 We have consulted a large number of parties throughout this market study and gathered a broad range of evidence. This has involved a high volume of submissions from parties in response to our Statement of Scope and Update Paper, numerous meetings and discussions, and our formal requests for information to market participants. These information requests enabled us to interrogate key internal documents, including contracts, strategy papers, research and financial data. We are grateful to all those parties who have engaged with us, either publicly or in confidence, and informed our market study.

1.17 In response to our Statement of Scope we received calls to conduct a market investigation from four respondents across the following four markets:

(a) The supply of recorded music to music streaming services;

[13] See paragraph 85 of the CMA's Statement of Scope.

(b) The supply of music streaming services to consumers;

(c) The supply of record company services to artists; and

(d) The supply of publishing services to songwriters.[14]

1.18 The CMA has the power to make a market investigation reference when the findings of a market study give rise to reasonable grounds for suspecting that a feature or combination of features of a market or markets in the UK prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or part of the UK (the 'reasonable suspicion' test).[15][16]

1.19 A decision whether to make a reference is made by the CMA's Board, in consideration of the organisation's full range of priorities and objectives and taking into account the CMA's published guidance.[17] In this case, a key question is whether there are impacts on competition (sometimes termed 'market failures') that would best be addressed in a market investigation.

1.20 We published our Update Paper on 26 July 2022. In the Update Paper we consulted on our initial view that the reasonable suspicion test had been met in relation to the first three markets set out in paragraph 1.17 above, but not in relation to the fourth market (the supply of publishing services to songwriters). We said in relation to the markets where the reasonable suspicion test had been met that we did not consider that a reference would be appropriate taking into account, in particular, the scale of the suspected problems and whether a reference would be the best mechanism to deliver better outcomes.[18] We said we would revisit our provisional conclusions in the Update Paper in light of the consultation responses that we received and our further analysis during the remainder of the market study.

1.21 We received 75 responses to our Update Paper consultation. Of those responses, we received:

(a) 5 responses (all coming from organisations, including all three majors) that supported our proposal not to make a reference;

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[14] See the submissions of The Ivors Academy, #BrokenRecord Campaign, the European Composer and Songwriter Alliance and from an artist management company on our case page.
[15] Section 131 of the Enterprise Act 2002.
[16] See *Airwave Solutions v CMA* [2022] CAT 4, paragraphs 8 to 12.
[17] OFT511, paragraph 2.1, contains a list of relevant criteria which must be met for the CMA to propose making a reference. Even if these criteria are met, the CMA retains a discretion to decide whether it is appropriate to make a reference.
[18] See paragraphs 6.14 to 6.21 of the Update Paper.

(b) 50 responses (coming from 7 organisations and academics, and from 43 individuals) that opposed our proposal not to make a reference;

(c) 11 responses (including those from 6 individuals) that were silent on the issue of a reference; and

(d) a further 9 responses where the respondent's stance on our proposal not to make a reference was unclear.

1.22 The responses supporting our proposal not to make a reference did not discuss the reference issue at length. One respondent (UMG) went further than the others, arguing that the reasonable suspicion test was not met as the concerns identified were *de minimis*. For the reasons set out in Chapters 4 and 5 below, we disagree with this representation.

1.23 The majority of the responses in favour of a reference focussed on issues relating to publishing rights and/or the interests of creators (artists and/or songwriters) rather than those of consumers. A number of them argued that the CMA should find that the reasonable suspicion test was met in respect of the market for the supply of publishing services to songwriters. Some suggested further areas for the CMA to investigate.

1.24 Our detailed consideration of these representations is set out in Chapters 4 and 5 below. For the reasons elaborated on in those chapters, we consider that the 'reasonable suspicion' test has been met in relation to all four markets set out at paragraph 1.17 above.

1.25 As set out in more detail in Chapter 7, we have decided not to make a market investigation reference on the basis of a combination of two main factors:

(a) the scale of the suspected problem is not so great that a reference would be an appropriate response; and

(b) a reference is not likely to be the most appropriate mechanism for assessing the issues and delivering better outcomes.

Background

The impact of digitisation and streaming

1.26 Digitisation and technological change have had a profound impact on the music sector over the last twenty or so years. In particular, the ability to listen to music through digital audio files transformed consumer behaviour and expectations to which the sector had to respond. It is no longer necessary to visit a ‘bricks and mortar’ shop to purchase a physical CD or record in order to have access to the music you want.

1.27 The growth of the internet enabled audio files to be shared and gave consumers access to vast libraries of music at the click of a button.

1.28 However, digitisation initially led to an increase in illegal file sharing. This had a profound effect on the industry. Sales of CDs, both singles and albums, fell considerably and, significantly, music industry revenues dropped dramatically. Between 2001 and 2015, UK recorded music revenues dropped around 60% from £1,868 million to £761 million (see Figure 1.1).

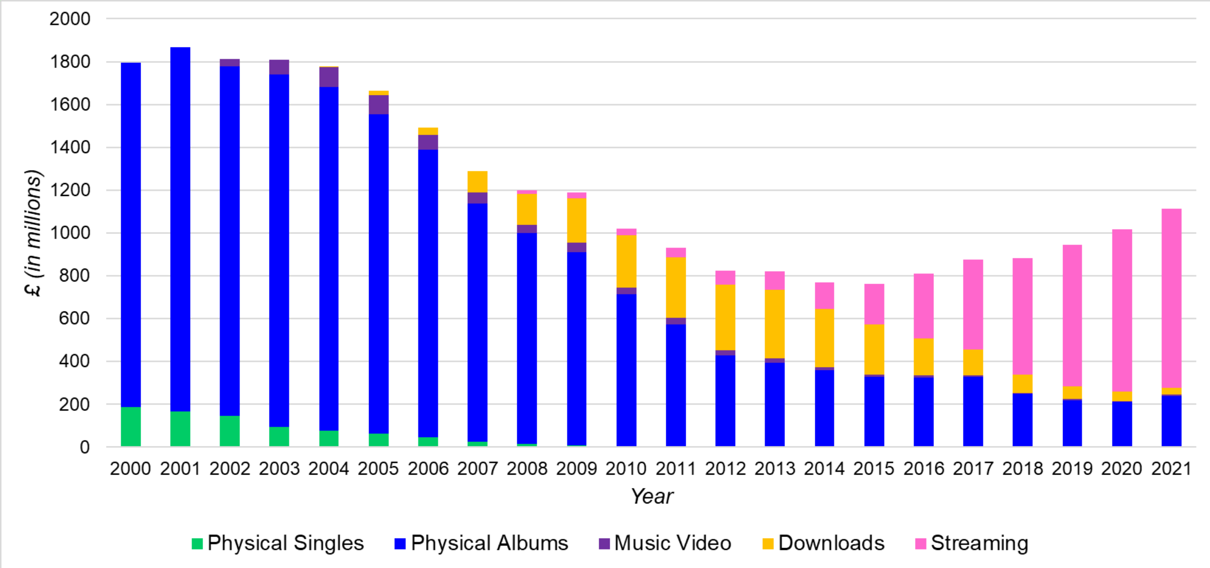
1.29 In response to this rise in piracy, new models for listening to music emerged. Initially this was in the form of legal downloads of music such as through Apple’s iTunes store. Consumers were able to purchase individual tracks or albums that they owned and could listen to when they liked. This had some limited success in reversing the revenue decline.

1.30 Music streaming services changed this picture again. The first of these in the UK was Spotify in 2008. In contrast to the ‘download’ model, streaming services give consumers ongoing, legal access to vast catalogues of music as part of a subscription or for free if they are willing to listen to advertisements. This has now become the dominant means of consuming music in the UK – in 2020, more than 80% of music sales were through streaming services.[19]

1.31 Importantly for the music industry, streaming has driven an increase in recorded music revenues from the low point of £761 million in 2015 to £1,115 million in 2021 (see Figure 1.1). Streaming now accounts for around three quarters of UK recorded music revenues. While revenues are increasing, recorded music revenues in real terms remain significantly below their peak in 2001.

[19] BPI (2021), *BPI publishes its yearbook “All About the Music 2021”.*

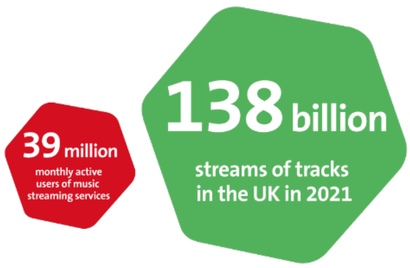
Figure 1.1: UK inflation-adjusted recorded music revenues between 2000 and 2021 by format type



Source: CMA analysis of data from the BPI.
Notes: Inflation adjustment using the *ONS CPI Index 22 June 2022, 2021 price year*

1.32 The predominant model for streaming services is 'all you can eat' – there are no additional charges for listening to lots of music. As we discuss below, this has implications for competition and the value chain. In December 2021, there were 39 million monthly active users of music streaming services in the UK.[20] In total, tracks were streamed more than 138 billion times[21] in 2021.[22]

Figure 1.2: Total number of monthly active users and streams in the UK, 2021



Source: CMA

Notes: When presenting the number of streams reported by Official Charts, the CMA caveats that some streams and tracks are excluded from the Official Charts' reporting. Official Charts excludes tracks with less than 100 streams on any given music

[20] CMA analysis of data from music streaming services. Monthly active users are the number of unique users who stream on the platform in a given month. If the same user streams on multiple streaming services they would be considered a monthly active user on each.
[21] This includes official ad-funded music streams on YouTube. See Table 2.11.
[22] CMA analysis of data from Official Charts. Official Charts is a joint venture operation owned by the BPI (representing the British recorded music industry) and the Entertainment Retailers Association (representing entertainment retailers and digital services from HMV, supermarkets and indie stores through to Amazon MP3, Spotify and Netflix). The role of the company is to commission, market, distribute and manage the UK's official music and video charts. Sales data is currently collected on Official Charts' behalf by the market research company Kantar. See Official Charts website.

streaming service and user generated content. It only includes streams where the user streams for over 30 seconds and, for some music streaming services, only 'top tracks' are collected. As a result, the data may represent a slight underestimation of the total number of streams in the market and affects the number of streams reported on some music streaming services more than others.

1.33 All the most popular streaming services offer a 'full catalogue' of music.[23] A single subscription or account allows consumers to listen to almost all the recorded music they know and love. It is not necessary to have a different subscription or account for different genres of music or for music owned by different music companies. Most major streaming services offer catalogues with more than 75 million tracks.

1.34 Streaming services also offer a range of features that are attractive to consumers. The vast catalogue of music that is available means there is value in its organisation so that consumers can more easily find what they want. Consumers can search for particular tracks or artists and they can create their own playlists of music they like. Streaming services themselves create playlists (both via algorithms and their editorial teams) around different artists, genres and themes, for instance to accompany workouts or focussed on new releases or new artists. They also have sophisticated tools to make recommendations of music that consumers may like based on what they have listened to previously. Consumers can share music with friends through streaming services and can follow artists or playlists they particularly like.

1.35 With a 'full catalogue', older music (the so-called 'back catalogue', which in our analysis we have taken to be music older than 12 months) is readily available and represents a very high proportion of streams (rising from 76% in 2017 to 86% in 2021).[24] Before streaming, since record shops had finite shelf space, such music would have had comparatively few options for ongoing monetisation. The value of the back catalogue has increased considerably in recent years. This is because of the rise of streaming as well as new ways to monetise music content.[25] As such, music back catalogue is now considered as an increasingly attractive class of assets. The rights for such music are being bought for large sums of money by music companies, private equity firms, and institutional investors.[26]

1.36 This change in the way music is consumed has also changed the profile of recoupment by music companies. In the past, sales in the first few weeks after

[23] Prime Music did offer a limited catalogue service but in November 2022 moved to a full catalogue offering, albeit this offering is shuffle mode only rather than on-demand. Some other services specialise in certain genres, for example Idagio.
[24] CMA analysis of data provided by Official Charts.
[25] New use cases for music licensing include fitness, gaming and social media. For example, see Music Business Worldwide (2021), *Welcome to the new record business: Warner Music Group is now generating over $270m from TikTok, Peloton, Facebook and other 'alternative' platforms annually*.
[26] For example, see Financial Times (2022), *Warner Music and BMG battle it out for Pink Floyd's back catalogue* and Financial Times (2021), *Song lyrics strike a chord with private equity*.

the release of an album would have been crucial. Now, those first few weeks after release are less critical as revenue and royalties can be earned over a much longer period of time. Music that is listened to repeatedly will be rewarded to a greater extent than previously. Before streaming, how often a track or album was listened to after it had been purchased had no impact on revenues (although how often it was played on the radio, for example, would have influenced revenues).

1.37 Digitisation has had other impacts on music companies and artists. The cost base of music companies has shifted away from the physical production and distribution of music to digital distribution. Promotion of artists is now much more digitally orientated, including on music streaming services but also through social media and 'user-uploaded content' (UUC) platforms such as YouTube.

1.38 Music companies now use social media and platforms such as YouTube to find new talent and spot emerging trends. Artists themselves (as well as music companies) can self-promote (and deliver music directly) through social media and build a fanbase. They are also able to by-pass traditional music companies and upload their music directly to streaming services. This has led to significant increases in the quantity of music being supplied – around 60,000 new tracks were added to Spotify every day in 2021.[27] The number of new tracks being uploaded also appears to be increasing over time.[28]

1.39 There is more data available than ever before about what music is being listened to, how often, and the characteristics of those listening. This can help artists demonstrate their value to music companies and it can inform decisions by music companies about their investments and promotions.

The market today

1.40 Given this context, we set out here some of the characteristics of the UK market today. In the following chapter we describe in more detail the value chain and the different types of firms within it.

The availability and use of streaming services

1.41 Following Spotify's entry in 2008 there are now multiple firms offering music streaming services, including Amazon, Apple Music and, more recently,

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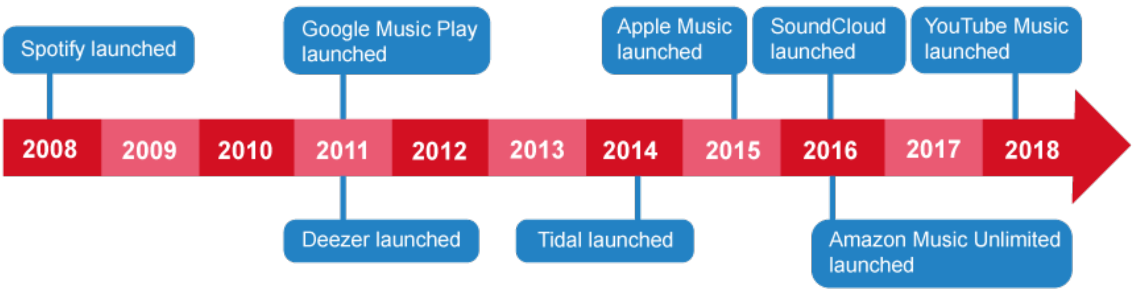
[27] Music Business Worldwide (2021), *Over 60,000 tracks are now uploaded to Spotify every day. That's nearly one per second*.
[28] Music Business Worldwide (2022), Why ingesting 100,000 tracks a day may not prove sustainable for Spotify's business in the long-term.

YouTube Music. Spotify is a standalone streaming service, whereas Amazon, Apple Music and YouTube Music are offerings amongst a much wider range of products and services by large integrated tech firms. The other main market participants are Deezer, Tidal and SoundCloud, all of which are dedicated streaming services. These services license music content from rightsholders on pre-agreed terms. When we refer to 'music streaming services' in this report, we mean this type of service.

1.42 UUC platforms, most significantly YouTube (as distinct from YouTube Music) but also SoundCloud, are another way consumers can access music. These platforms allow users themselves to upload content, including copyrighted content, for other people to consume. In the case of YouTube this content includes, but also stretches well beyond, music. While some UUC platforms have agreed in advance licences with music rightsholders, not all have – a situation that is possible due to the different legal framework (so called 'safe harbour') under which UUC platforms operate.

Figure 1.3: Timeline of entry to UK market by main music streaming services



Source: CMA analysis.

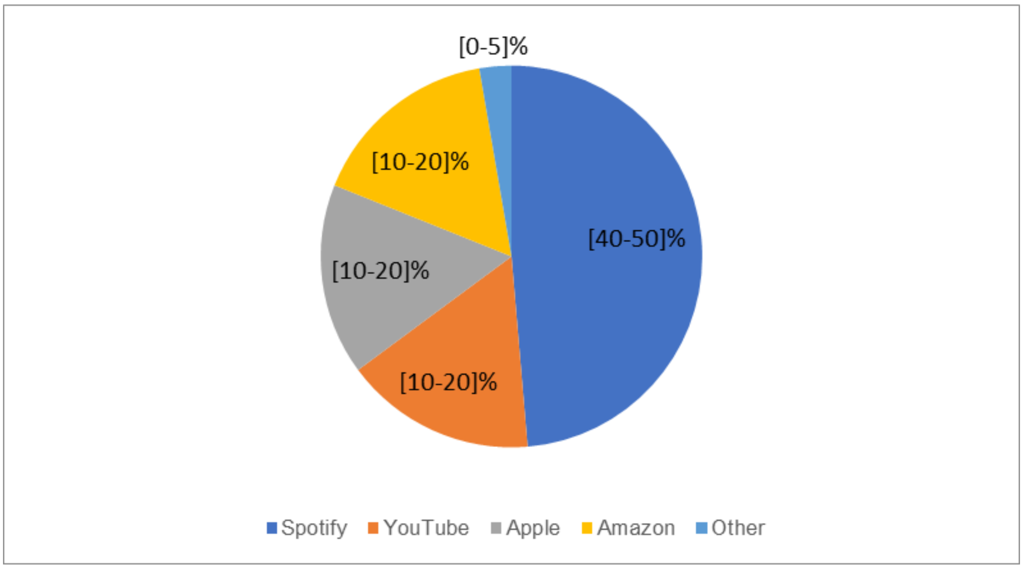
1.43 Each of the music streaming services offer premium subscription plans for consumers. The headline price of subscriptions for individual access to a standard tier is clustered around £9.99 a month. This has stayed remarkably stable over time. Price differentiation has occurred primarily via the offering of alternative tiers with different features (eg higher audio quality) or access (eg permitting 'family' use or limiting use to single devices).

1.44 Most streaming services also offer a service that is free to consumers, but which make money from advertisements – so-called ad-funded tiers. As well as requiring customers to hear ads, these tiers have reduced functionality compared to paid-for tiers. For instance, users may be limited in the number of tracks they can 'skip' or unable to download tracks for offline listening. The rationale for these tiers is to try to bring in customers who might not otherwise use streaming services and to seek to upsell them to paid-for tiers from which considerably more revenue is derived.

1.45 YouTube, as the main UUC platform, is primarily ad-funded. Parts of the music industry have argued that this access to music for free contributes to a sense that music does not need to be paid for, thereby decreasing people's willingness to pay, and depressing the pot of revenue available to music companies and creators.

1.46 The market share by revenue of the music streaming services and YouTube's UUC platform (Figure 1.4) shows the strong position that Spotify, Amazon, Google and Apple have in the market. Between them they account for [95-100]% of revenue. When we remove YouTube's UUC platform (Figure 1.5), Spotify's share of streaming revenues is [50-60]%.

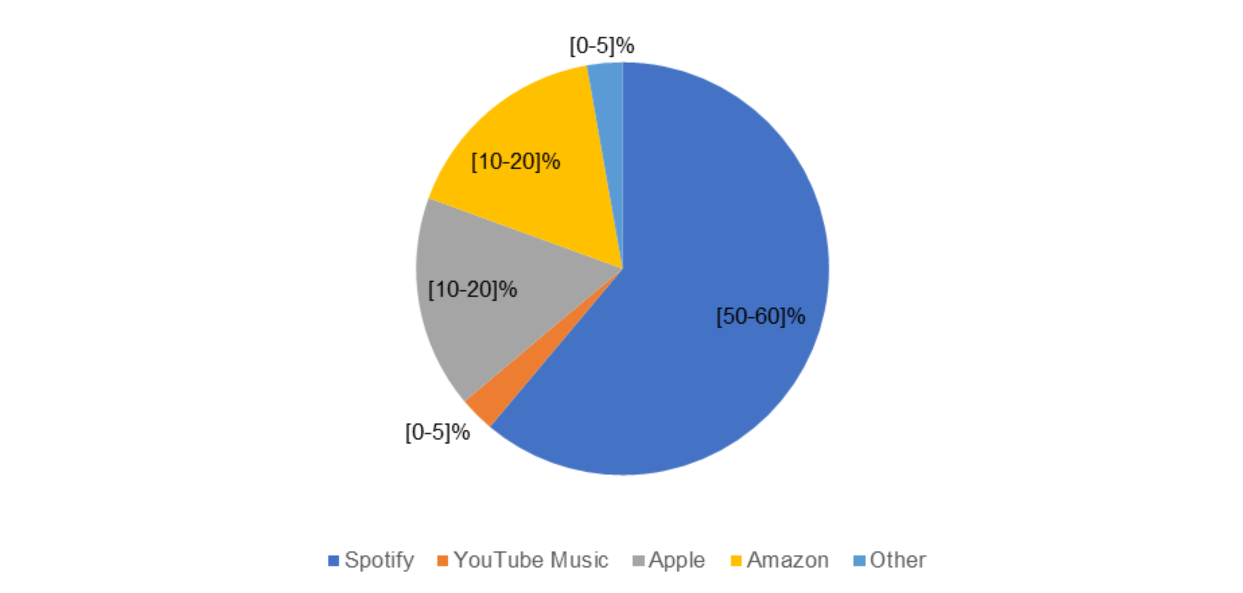
Figure 1.4: Share of UK streaming revenues, 2021



Source: CMA analysis of data from music streaming services.

Notes: This pie chart is for illustrative purposes only. Revenue shares only account for Spotify, YouTube, Apple, Amazon, Deezer, Soundcloud and Tidal which have a combined streaming share of over 99% according to CMA analysis of data provided by Official Charts. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. The midpoints of the ranges have been used to provide an illustration of relative size in the market. Where the sum of these midpoints does not equal 100%, we have scaled the pie chart so that the area segments represent the share of the sum of the midpoints.

Figure 1.5: Share of UK streaming revenues excluding YouTube's UUC platform, 2021



Source: CMA analysis of data from music streaming services.

Notes: This pie chart is for illustrative purposes only. This excludes YouTube Premium and YouTube ad-supported revenues (so YouTube Music only includes YouTube Music paid-for subscriptions). Revenue shares only account for Spotify, YouTube Music, Apple, Amazon, Deezer, SoundCloud and Tidal which have a combined streaming share of over 99% according to CMA analysis of data provided by Official Charts. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. The midpoints of the ranges have been used to provide an illustration of relative size in the market. Where the sum of these midpoints does not equal 100%, we have scaled the pie chart so that the area segments represent the share of the sum of the midpoints.

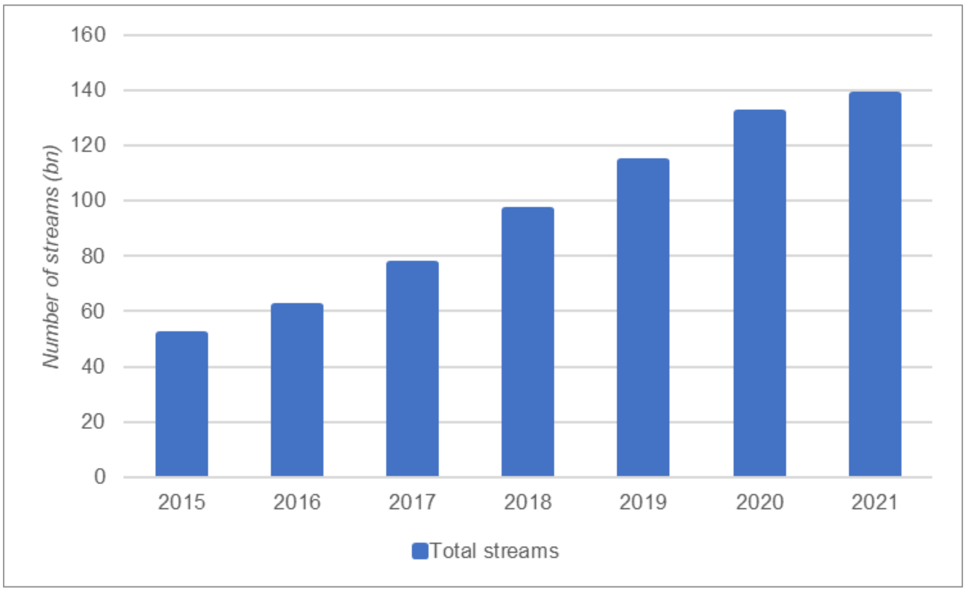
1.47 Given that most offer a 'full catalogue', music streaming services seek to differentiate themselves on the features they offer. These include the quality of the sound, the user interface, their playlists and increasingly through non-music content such as podcasts. Some also offer UUC alongside official music content.

1.48 The evidence shows the growing popularity of music streaming services. In Ofcom's most recent audio survey, the proportion of people reporting using a streaming service at least once a week was around one half. The only form of music consumption undertaken by a greater proportion of people on a weekly basis was listening to the radio.[29] Our analysis shows that the total number of monthly active users of streaming services is 39 million in 2022, up from just over 32 million in 2019.[30]

1.49 Unsurprisingly, with more people using streaming services the number of streams in the UK has risen. In 2015, there were around 50 billion streams per year, whereas in 2021 there were around 140 billion.

[29] Ofcom (2022), Audio Survey, question 1.
[30] CMA analysis of data from music streaming services.

Figure 1.6: Number of total UK streams



Source: CMA analysis of data from Official Charts.

Note: Includes music streams from all music streaming services counted by Official Charts including YouTube's UUC platform. For additional information about how Official Charts reports its stream count, see the note on Figure 1.2.

The supply of music

1.50 There are three major music companies – Sony, Warner and Universal, collectively 'the majors'. The role they play is explained in Chapter 2. In terms of their share (by volume) of total UK streams, the majors accounted for over 70% in 2021 – a similar proportion as in 2015.[31] Their music dominates the popular charts. The combination of the rights they hold in recordings along with the rights they hold in publishing, means that in 2021 they collectively had some form of rights in 98% of the top one thousand singles.[32]

1.51 Along with the major music companies there are many independent music publishers and hundreds of smaller independent labels. New types of providers helping artists self-release their music have also emerged in the wake of digital distribution. These include artist and label ('A&L') services companies, as well as 'DIY' distributors that focus on putting music onto streaming services at low cost, helping artists to by-pass the involvement of a traditional music company if they wish. Together these smaller labels and providers account for around one quarter of streams, although only 2 have a market share in excess of 1%.[33]

[31] See Table 2.2
[32] See Figure 2.3.
[33] BPI (2021), All about the music, p48.

1.52 Traditional labels – both major and independent – continue to play an important role in developing and ‘breaking’ artists. However, today there are more routes to market than ever before for artists, leading to a significant rise in artist numbers (with the numbers being streamed in the UK up from around 200,000 in 2014 to around 400,000 in 2020).[34] Some artists do not opt for a label, but for many this can still be very attractive for upfront financing and prestige. Without a label, artists may be able to keep more control of their music rights and thus earn more over the long term, but at the cost of greater risk in the event they are unsuccessful. For those noticed by a label, the terms on offer may be more beneficial than in the past given the wider range of options available to artists. But given the crowded artist marketplace, only a select few will catch the attention of any label, let alone receive competing offers, so for many the scope for negotiating better terms is limited.

1.53 Whichever path is taken, music remains a risky business. The growth in artist numbers under streaming has arguably made it even more difficult for artists to break through at scale. Even with label support, failure rates remain high, with the BPI noting that approximately only one in ten investments made by record labels breaks even on the upfront label investment.[35] Effective data analytics and social media marketing (including on UUC platforms) appear to be increasingly important factors in online success.

1.54 The surge in artist participation has also impacted upon remuneration. Prices for music streaming services have been relatively stable for some time and tend to take the form of flat monthly fees. This means that with more artists and more streams being played, the average value of each stream and the average earnings per artist fall. As such, thousands or even millions of streams are now commonplace – 12 million streams per year will earn an artist around £12,000 a year.[36] Further, as noted above, each artist is competing harder than ever before for each of these streams, both with new artists and old artists (via the back catalogue), all within the constraints of consumers’ finite time and attention. Artists on old contracts may also see more limited benefits from the uplifted value in back catalogue if the original royalty rate applied is significantly lower than standard streaming rates for new contracts, or if their physical sales had left them with costs initially financed by their label to be paid off or ‘recouped’ from ongoing royalties.

[34] IPO (2021), *Music Creators’ Earnings in the Digital Era*, Table 6.4, p201.
[35] BPI (2020), Submission to the DCMS Select Committee (EMS0208), p13.
[36] CMA analysis of data from the majors.

Some companies, including Beggars Group, BMG and the majors, have now set aside such unrecouped balances for some artists.[37]

1.55 However, streaming should also be considered within the wider music ecosystem. A presence on streaming services is key to building up an artist's brand, but its value has traditionally also been measured by its impact on their wider career. Many artists derive the main part of their income from live music and have found recent years exceptionally challenging as these income streams were shut down under the pandemic.

[37] See: Sony Music launches 'Legacy Unrecouped Balance Program' (musically.com); WMG follows Sony Music in tackling unrecouped artists problem - Music Ally; UMG wipes out unrecouped balances for legacy artists' royalties | Labels | Music Week.

2. Value Chain

Overview

2.1 Figure 2.1 provides an overview of the structure of the music streaming value chain. This is a complex landscape with a wide range of entities involved, firstly in developing the songwriters who write music and the artists who record that music, then distributing the recordings (typically under licence) to music streaming services who make this music available to consumers. Music is subject to various intellectual property rights: rightsholders can license their music directly, or via third parties such as music companies, collecting societies (also known as collective management organisations, or CMOs), Merlin[38] or IMPEL.[39] Some music streaming services obtain their music content from music companies ('music streaming services') while others ('UUC platforms') obtain their content from users (generally consumers, but also creators or music companies).

2.2 This value chain straddles both recorded music and music publishing, which involve distinct, but complementary, intellectual property rights and activities (wider than music streaming).

2.3 The creation, distribution and licensing of sound recordings is referred to as 'recorded music'. Record companies:

(a) sign and provide services to develop artists; and/or

(b) distribute and license rights in the sound recordings created by artists to retailers.

2.4 The music industry also includes 'music publishing', where companies:

(a) sign and provide services to develop songwriters; and

(b) manage and license the rights in their musical compositions ('songs'), including when sound recordings of the songs are played.

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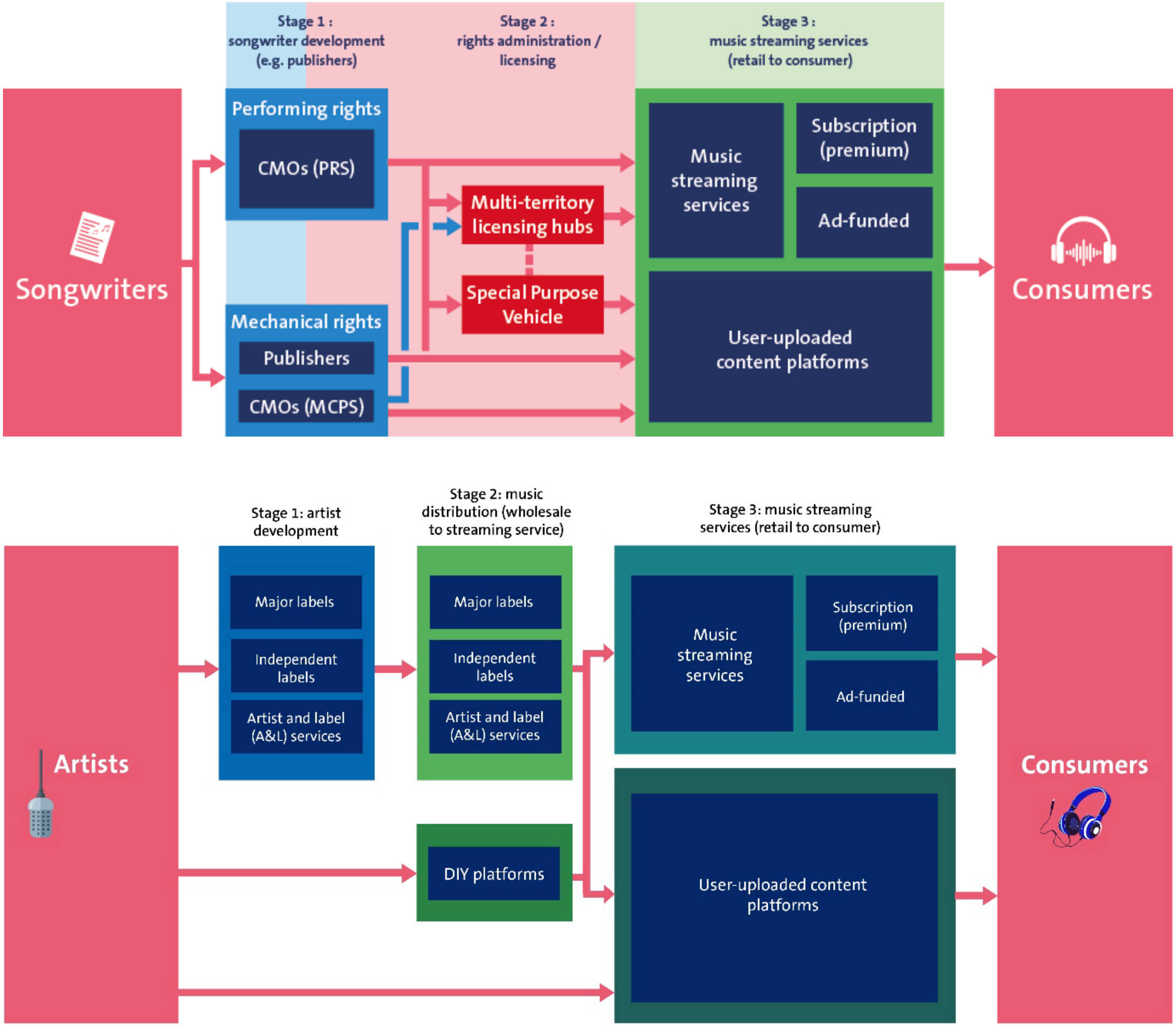
[38] Merlin is an organisation which negotiates with music streaming services on behalf of a collective of independent labels, charging a small administration fee (see the Merlin website).
[39] IMPEL is an international collective of independent music publishers who, together, license their mechanical rights to a wide range of music streaming services (see the IMPEL website).

Figure 2.1: Overview of the music streaming value chain



Source: CMA

2.5 Recorded music is monetised through five primary means:

(a) Streaming: payments by consumers for on-demand online access to music for example, as provided by music streaming services; payments by advertisers to place adverts alongside music content (or content containing music) listened to by consumers on music streaming services or UUC platforms.

(b) Physical sales: one-off payments by consumers for the purchase of physically reproduced sound recordings (on CDs, vinyl and cassettes).

(c) Downloads: one-off payments by consumers for the online purchase of music in digital format.

(d) Performance rights: these include payments by TV and radio stations for the right to use music as part of broadcasts; and payments for the public performance of music in venues such as shops and restaurants.

(e) Synchronisation (sync): payments for the use of music in (or 'synchronisation' of music with) film, TV shows, TV adverts, video games and other forms of audio-visual media.

2.6 In addition artists may generate income from live performances and tours and from the sale of merchandise. These sources of income may be separate from the terms of deals with their label or other distribution service provider or may be included in '360 degree deals'.

Music rights

2.7 Under UK copyright law (the Copyright, Design and Patents Act 1988 or CDPA), separate copyrights are associated with the musical composition (with separate copyrights in the music and in the lyrics) and the actual recording of a song. These copyrights are referred to, respectively, as 'song rights' or 'publishing rights', and 'sound recording rights' or 'master rights'.[40]

(a) Song/publishing rights last for the lifetime of the copyright owner plus 70 years.[41]

(b) Sound recording/master rights last for 50 years from the making of the recording or 70 years from the recording being published or made available to the public.[42]

2.8 Under UK copyright law, the copyrights in the song and the recording are automatically vested in the songwriter(s)[43] and producer(s) respectively. A producer, in this specific context, is defined as 'the person by whom the arrangements necessary for the making of the sound recording […] are undertaken'.[44] As such, the copyright to a sound recording may be owned by a music company that organises the recording on behalf of the performers it represents. Alternatively, the performer(s) may organise the production themselves and own the copyright to the recording.

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[40] For a more detailed discussion of music rights, see for example a report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era,* Chapter 2, and *Music Copyright Explained*, a guide commissioned by the IPO and produced by CMU Insights.
[41] CDPA 1988: s.12(1).
[42] CDPA 1988: s.13A.
[43] In this document, the term songwriters is used to refer to both composers and lyricists (as is common in the industry) notwithstanding that composers and lyricists have distinct rights under copyright law.
[44] CDPA 1988: s.178.

2.9 Copyright owners and performers have certain rights over their music. In the UK:

(a) The law specifies certain acts that only the copyright owner is entitled to undertake (or license or assign to another party to undertake): the reproduction right, the distribution right, the rental right, the public performance right, the communication to the public right (CTP, and its subsets, the broadcast right and the making available right), and the adaptation right.[45,46]

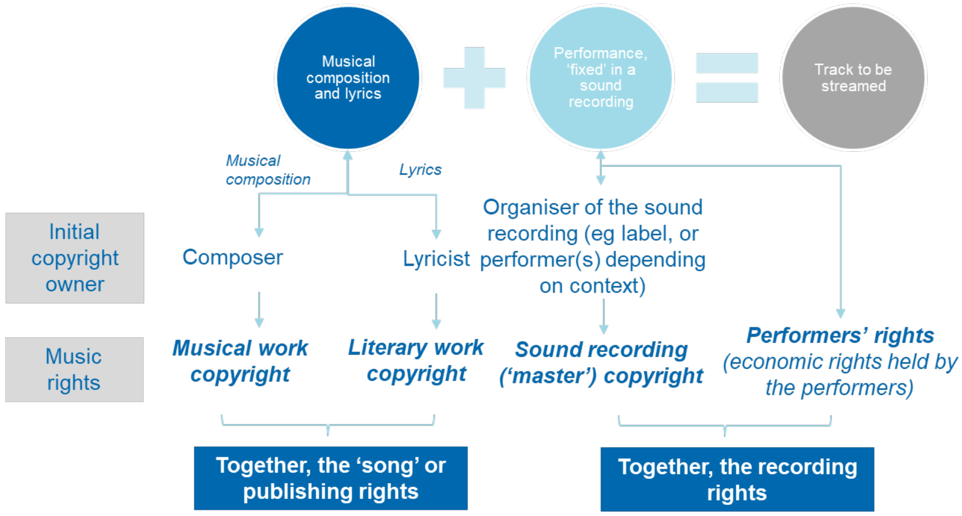
(b) Alongside copyright owners, performers are automatically granted a separate category of rights known as 'performers' rights'[47] that give the performer a number of moral and economic rights in the recording:

(i) in respect of the reproduction, making available, distribution, rental and lending rights, it is not possible to exploit a performers' work in recorded form without gaining their 'consent';[48] and

(ii) in respect of public performance and CTP rights (excluding the making available right), it is not possible to exploit a performers' work in recorded form without paying equitable remuneration.[49]

[45] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era,* p9 (see: *'Rights'*).
[46] The reproduction and distribution rights are sometimes grouped together and referred to as 'mechanical rights'. The public performance right and the CTP rights (both the broadcast right and the making available right) are sometimes grouped together and referred to as 'performing rights'. See *Music Copyright Explained*, p4.
[47] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era,* p8 (see: *'Performers' rights'*).
[48] CDPA 1988: s.180(1).
[49] CDPA 1988: s.182D(1). Equitable remuneration is not defined in law, so is worked out by the music industry. The UK industry norm is a 50/50 split between the artist and any corporate partners.

Figure 2.2: Music rights and the rightsholders for a stream



Source: CMA

2.10 Different rights are engaged depending on how the music is used. For on-demand music streaming,[50] the reproduction and CTP (making available) rights are generally understood to apply[51] and (to the extent that they are exclusive) can be licensed or assigned (transferred) by copyright holders and performers.

Music companies

The majors

2.11 Collectively, the three largest global music groups (Sony, Warner, and Universal) are generally referred to as 'the majors'. As is common among music companies,[52] they have both recorded music and music publishing businesses.

[50] For further detail, see for example the report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era,* p60-61.
[51] We note existing debate regarding whether the making available right is the appropriate right to apply in a music streaming context, for example in light of how consumers access music streaming services and the increasing prevalence of passive or 'lean-in' listening on these services such as via stations, autoplay and playlists. See for example House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Second Report of Session 2021-22,* paragraphs 61 to 69.
[52] Association of Independent Music (AIM) (2001), Submission to the DCMS Select Committee (EMS0157), p14.

Table 2.1: The major music companies

		Sony Music Group	*Warner Music Group*	*Universal Music Group*
Corporate structure		Sony Group Corporation is headquartered in Japan; and listed on the Tokyo Stock Exchange and the NYSE.	Warner is headquartered in the US and has been publicly traded on the NASDAQ since June 2020.[53]	Universal, previously owned by Vivendi, was listed on the Euronext Amsterdam in September 2021, with 60% of Universal's share capital distributed to Vivendi shareholders at the time. Universal's corporate headquarters are in the Netherlands and its operational headquarters are in the US.
Recorded music	Main business division	Sony Music Entertainment (Sony Music)	Warner Recorded Music	Universal Music Holdings Limited
	Other subsidiaries providing artist and label / digital distribution services	The Orchard; AWAL	ADA	Virgin Music Label & Artist Services; Ingrooves Music Group; Spinnup
	FY21 global revenues	$4.7 billion	$4.5 billion	€6.8 billion
Music publishing	Main business division	Sony Music Publishing	Warner Chappell Music	Universal Music Publishing Group
	FY21 global revenues	$1.4 billion	$0.8 billion	€1.3 billion

Source: CMA, based on information from the majors and published financial data.

2.12 As will be seen later in this chapter, the majors have a significant share of the music market – both globally and in the UK – which has arisen in part from consolidation over time.[54] Together, in 2021 they held overall market shares of 73% in recorded music (based on their shares of UK streaming revenues from the largest music streaming services – Apple, Amazon and Spotify) and [50-60]% in music publishing (based on PRS data).[55]

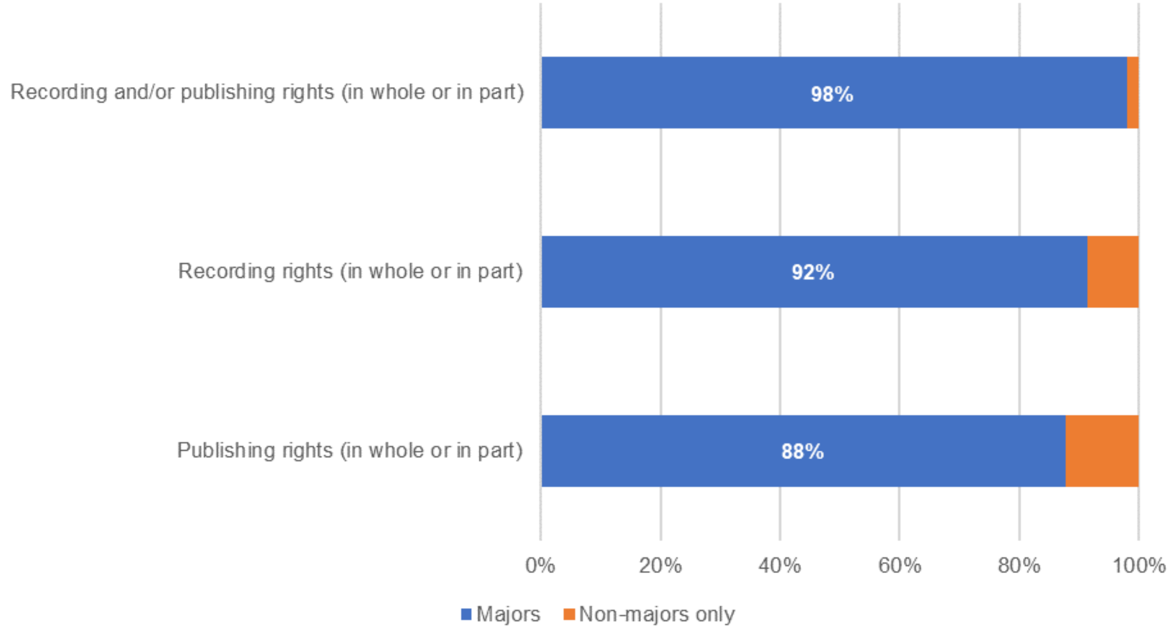
2.13 These shares increase significantly when focusing on rights to the top UK hits based on streams as shown in Figure 2.3.

[53] Warner Music was previously listed on the NYSE. It was privatised when acquired by Access Industries in 2011, and subsequently listed on the NASDAQ. See Warner Music Group - Access Industries and *What's Playing at Warner Music? | Nasdaq*.

[54] Over the last 25 years, the number of major record companies reduced from six (including Polygram, BMG and EMI) to three. In 1998, Polygram was acquired by Seagram (then Universal's parent company). BMG's recording operations merged with Sony in 2004, eventually becoming Sony Music Entertainment in 2008. In 2012, EMI was acquired by Universal, with its publishing operations sold to Sony, and some of the merged entity's recording labels sold to Warner.

[55] See Table 2.5.

Figure 2.3: Share of the Top 1000 UK singles in 2021 where the majors have recording or publishing rights



Source: CMA analysis of data from the majors.

2.14 The majors also have holdings in Spotify and/or other music streaming services. For Spotify, this dates back to its initial launch and initial shareholdings were in the region of 5%.[56]

2.15 When Spotify went public in 2018, Warner sold all of its shareholding for $504m and has paid its artists royalties on the proceeds from the sale.[57] Sony Music sold 49% of its shareholding and shared approximately $250 million of its gain with its artists and distributed labels, without regard to recoupment.[58] Universal did not divest its shares.[59] All say they have not had, and do not have, any undue influence or involvement in Spotify's governance or other strategic or operational decision-making.[60]

2.16 All the majors hold some limited financial interests in other small music streaming services. They affirm that these interests have not resulted in any undue influence or operational involvement with these firms.[61] Sony Music notes that: (i) its investments are very small and non-controlling financial interests; (ii) it has no ability to influence or gain any materially better terms; and (iii) it considers that the investments are advantageous to new music

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[56] See for example House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Second Report of Session 2021-22*, paragraph 106.
[57] WMG information provided to the CMA.
[58] Sony Music information provided to the CMA.
[59] Universal information provided to the CMA.
[60] Information provided by the majors to the CMA.
[61] Information provided by the majors to the CMA.

streaming services who will not otherwise be in a position to offer the necessary financial guarantees.[62]

Recorded music

2.17 Traditionally, securing a deal with a music label was the main route to market for an aspiring artist. The key role of such labels was the provision of so-called 'artist and repertoire' ('A&R') services.

2.18 A&R services relate to the discovery, signing and development of artists, as well as the recording of their music (for example: talent scouting, negotiating and signing artist contracts, payment of any capital advances, funding and provision of artistic and creative support and direction, organising tour support and other supporting services). Alongside A&R services a label will provide marketing and promotion, for example: digital marketing, advertising, publicity, radio promotion and playlist promotion; and distribute an artist's music, including to music streaming services.

2.19 There are several hundreds of labels operating in the UK, but the largest (major) labels are characterised by the following:

(a) worldwide presence;

(b) a full range of A&R, marketing and promotion services (with large budgets whereby the company funds the creation of artists' recordings and provides 'high-touch' levels of creative support), alongside wholesale distribution services; and

(c) focus on a limited number of 'headline acts' globally.

2.20 In the age of streaming, labels continue to play a significant role in signing new artists and investing in A&R. Our own analysis as presented in paragraph 2.70 as well as evidence provided to us by the BPI[63] indicates that A&R expenditure has increased since 2012 both in absolute terms and (to a much lesser extent) as a percentage of industry revenue. In addition, BPI data shows that this has been accompanied by increasing roster sizes (for example, with the number of new signings by majors having increased 38% since 2010 to 153 in 2019).[64] Labels take on a degree of risk in A&R, particularly with newer, less proven artists. [30-40]% of major labels' active

[62] Sony Music information provided to the CMA.
[63] BPI data provided to the CMA.
[64] BPI (2020), Submission to the DCMS Select Committee (EMS0208), p28.

UK artists are currently profitable on a global basis, with expectations that a further [5-10]% of this group will become profitable over the next five years.[65]

2.21 However, with the advent of streaming the role and economics of labels have changed along with the skills and services demanded of them, eg:

(a) Manufacturing/logistics no longer need to be factored into streaming distribution costs (and making music without a label is no longer impossible as you do not have to have physical product). Critically, this means that it is easier to split the distribution function from other services a label has traditionally provided.

(b) Before streaming, the key sales window centred almost exclusively on the short period around a record's release. While that initial window is still important for word of mouth and fan engagement, music has an increased longevity given that digital search and playlisting can continue to make a track readily accessible long past its launch. Labels have had to adapt to this reality, which has changed the nature of marketing as well as leading to renewed interest and viability for artists' back catalogues.

(c) Data management has become increasingly important as talent is emerging online, global licensing and management of rights have become paramount, and the influence of digital marketing increases. Labels are investing in effective data analytics and social media marketing, supporting their artists with data, and having to evolve to capitalise on fast-moving digital trends (such as the emergence of the metaverse).

2.22 With the rapid growth of self-releasing artists entering the market independently of a label under digitisation, new types of music companies have sprung up in support – for example, focusing on artist and label (A&L) services which are typically a scaled down version of A&R services (and can often be selected on an a la carte basis) provided to either artists or labels; or focusing on mass market distribution. In response, the majors have also started diversifying their offerings.

2.23 Presently, an artist typically has five options when releasing music. Depending on their circumstances, an artist may:

(a) sign with a major label;

[65] CMA analysis of data from the majors.

(b) sign with a smaller, independent label (such as Beggars Group, BMG Rights Management (BMG)[66] and Domino Recording Company);

(c) use an 'artist services' provider (such as Believe, PIAS and Empire). The majors and some indies also provide such services (eg Sony via AWAL and the Orchard, and Universal via Virgin);

(d) choose to distribute their music as a self-releasing artist using an established platform (known as 'DIY' platforms, for example TuneCore, Distrokid, CDBaby, ONErpm, DITTO, United Masters and Amuse); or

(e) secure the services of a manager and team for various levels of promotion and other support and arrange distribution via a 'label services' provider (see next paragraph).

2.24 In this report, references to 'indies' should be taken to mean independent record companies in general, including labels, A&L service providers and DIY platforms, unless otherwise specified (for example, by reference to an 'indie label').

2.25 Some indie labels may contract with a provider for a variety of 'label services' covering wholesale distribution, but also some A&R and promotion activities. The majors also provide these services to other labels, for example via ADA (Warner), Ingrooves (Universal) and the Orchard (Sony). However, CMA analysis suggests that distribution on behalf of other labels is a minority part of the majors' music streaming revenues in the UK (on average, around [10-20]%).[67]

2.26 The segments listed above have given artists three broad deal structures through which to bring their music to market:

(a) Traditional recording agreements with the major labels or indie labels offering high touch A&R, marketing and promotion, and distribution services. Typically, these deals involve significant upfront investment by the label (with higher advances offered to an artist that risk being unrecouped if the artist is not successful). This requires an artist to agree to long-term commitments, and sometimes assign their copyright for an extended period or in perpetuity. These deals are typically on a royalty basis (where the artist receives a share of the revenues and costs are refunded from those royalties). Some deals may operate on a profit share (where costs are deducted from total revenues and the remaining profits

[66] We note that in 2003, BMG merged its record label interests with Sony, but relaunched its own services again in 2008.
[67] CMA analysis of data from the majors.

split between the label and artist) and some are set up as a '360 deal' where the label takes a cut of all the artists' earnings (ie wider than recorded music).

(i) In the case of indie labels, some services may ultimately be contracted out to an A&L services provider. Indie labels may also not be able to provide the same scale of financing or scope of services as the majors.

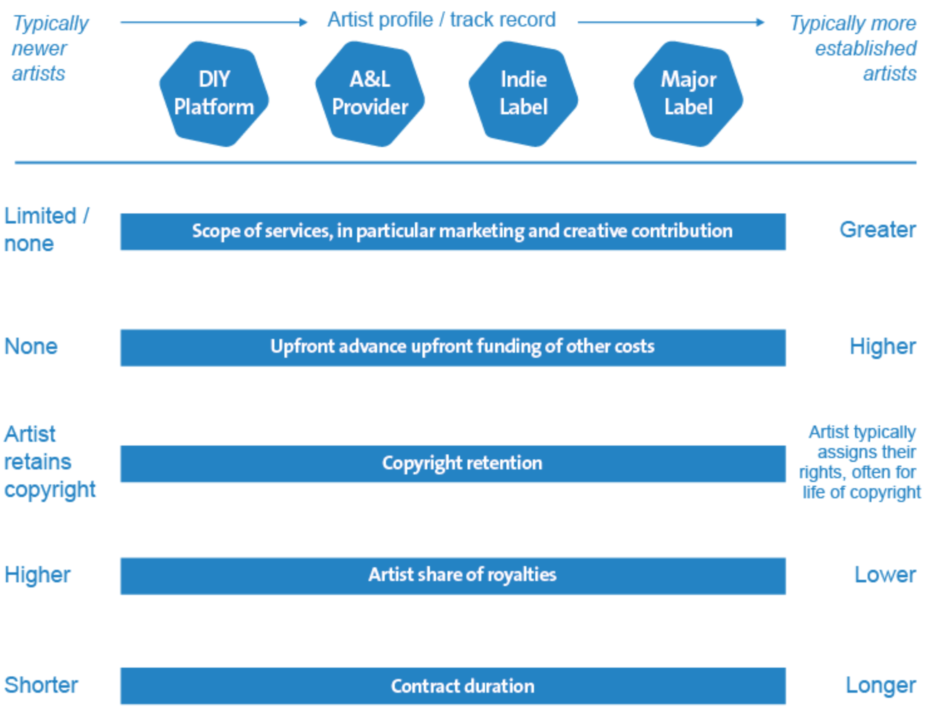
(b) Service deals with A&L service providers where an artist retains (licenses) their copyright and receives marketing and A&R services which were only historically available in traditional recording agreements. These deal structures typically involve smaller upfront investments (eg smaller advances) and less risk for the provider: providers are less likely to take on deals with a high risk of non-recoupment. On the other hand, these deals typically tie in artists for shorter periods and offer them (as the copyright holder) higher royalties from the revenues earned.

(c) Distribution only agreements with DIY providers offering distribution to streaming services and low touch (tech-driven) marketing and promotion services. These deal structures typically do not involve upfront investment and therefore do not incur risk for the provider. All revenues earned go to the artist, with the DIY provider charging a fixed fee (on an annual or monthly basis) for their services.

2.27 In practice, the terms within any deal structure can vary substantially, and there is some blurring of the boundaries between these options so they can be credible alternatives for some (but not all) artists. Some A&L service providers have multi-tier offerings which seek to cater for a wide range of artists at all stages of their career, and some providers offer more than one of these deal structures.[68]

[68] See, for example, CMA (2022), *Completed acquisition by Sony Music Entertainment of AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited Final report* (Sony/AWAL), paragraphs 2.57-2.58.

Figure 2.4: Differences in the artist propositions offered by the different options



Source: CMA

2.28 While the dynamics of the market are changing with the entry of new DIY platforms and A&L providers, this has not to date been substantially reflected in overall market shares. The majors' shares of streams remain significant and have stayed relatively stable over time.

Table 2.2: Label shares of total UK streams

	Universal	*Sony*	*Warner*	*Other*
2015	[30-40]%	[20-30]%	[10-20]%	24%
2016	[30-40]%	[20-30]%	[10-20]%	23%
2017	[30-40]%	[20-30]%	[10-20]%	21%
2018	[30-40]%	[20-30]%	[10-20]%	22%
2019	[30-40]%	[20-30]%	[10-20]%	23%
2020	[30-40]%	[20-30]%	[10-20]%	24%
2021	[30-40]%	[20-30]%	[10-20]%	25%

Source: CMA analysis of data from Official Charts.
Note: As detailed in Figure 1.2's note on Official Charts' reporting of stream count, some streams are excluded, and this may impact the label share presented in the table. In particular, Official Charts excludes tracks with less than 100 streams on any given music streaming service and, for some music streaming services, only 'top tracks' are collected. The 'top tracks' may be over-represented by the majors and, as a result, this table may overestimate the major record companies' share of UK streams.

2.29 A similar picture emerges when considering shares of recorded music revenues from UK music streaming. The majors had a combined share of 73% in 2021, compared to 78% in 2017.[69]

Profitability

Operating margins

2.30 In recent years, the increased prevalence of streaming has resulted in a change in the major labels' recording revenue mix. Due to the lower associated costs of streaming compared with traditional channels, the majors' recorded music operating margins[70] have risen.[71]

Table 2.3: Operating margins for major labels' UK recording businesses

	FY17	*FY18*	*FY19*	*FY20*	*FY21*
Universal	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%
Sony	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%	[20 to 30]%
Warner (Management Accounts)	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%
Warner (Statutory Accounts)	10%	11%	17%	11%	15%

Source: CMA analysis of management and statutory accounts of major labels.

Return on Capital Employed (ROCE)

2.31 ROCE is a useful measure to examine whether profits for a particular firm or sector are high, because it can be compared against an objective benchmark, the weighted average cost of capital (WACC). Another way of looking at this is that while all companies need to earn positive margins to be sustainable, margins themselves need to be considered alongside other measures in understanding whether a market is working well (eg levels of investment, risk profiles, etc). Some sectors with high asset investment and low operating costs will tend to have high margins, but in these circumstances that would not necessarily equate to high economic profitability.

2.32 A finding that ROCE is higher than the WACC is not in itself indicative of a competition problem. A firm that innovates and gains a competitive advantage

[69] CMA analysis of revenues from UK streaming paid out to the majors for recording rights, for the three largest UK music streaming services (Spotify, Amazon and Apple).
[70] Operating margins are calculated after deducting cost of sales and operating expenses such as marketing expenses, admin, and overheads.
[71] Our findings of improving operating margins for the major labels' UK recording businesses is consistent with the written evidence submitted by economist Will Page to the DCMS Select Committee Inquiry, which highlighted an increasing trend in operating profit margins for the three major record companies' UK recorded music businesses, from 2015 to 2019.

may earn higher ROCE for the period that it is able to sustain that competitive advantage. In a market characterised by effective competition, any excess of returns above the WACC would usually be expected to be eroded over time, as competitors would see an opportunity to react and earn higher returns on capital.

Our approach to estimating ROCE

2.33 We determine ROCE using earnings before interest and tax (EBIT) as the measure of return, divided by the value of capital employed (calculated as total assets minus current liabilities). The general principle is that all revenues, costs, assets, and liabilities necessarily arising from the operation of the business to supply the relevant activities should be included. In practice this means the following items should be excluded:

- exceptional items, these typically being one-off items arising from activities unrelated to the normal course of business, such as restructuring costs;
- financing costs, regardless of whether they are short- or long-term; and
- taxation on income and any associated corporation tax or deferred tax on assets and liabilities.

2.34 In calculating the capital employed of the majors, we have taken a top-down approach: first, an unadjusted capital employed was calculated by subtracting current liabilities from total assets, followed by adjustments in line with the above principles.[72]

2.35 We note that a large proportion of the majors' asset base relates to intangible assets (even after removing for goodwill) which are inherently difficult to value. For the purposes of this market study, a revaluation of the assets has

[72] As a result, the following have been removed from the capital employed of the majors: cash balances; intercompany financing and treasury balances; short-term borrowings; deferred tax assets and liabilities; restructuring balances; and financial instruments.

Goodwill balances have also been removed. Goodwill is an intangible asset which arises where the price paid for a business exceeds the fair value of tangible assets plus separately identifiable intangible assets. The CMA's Guidelines set out three recognition criteria when determining whether to recognise an intangible asset for the purposes of profitability analysis or not and goodwill does not meet all three recognition criteria. (See Guidelines for market investigations, Appendix A, paragraph 14. Goodwill does not meet the third recognition criterion of a separately identifiable asset.)

Where necessary, adjustments have also been made to EBIT, both for the purposes of the ROCE and EBIT margin calculations in accordance with the principles set out in paragraph 2.33. As a result the items relating to the following have been removed: restructuring and integration; foreign exchange gains and losses; and gains and losses on the sale of assets.

not been carried out and the results of the analysis are therefore potentially sensitive to changes to the valuation of the intangible asset base.

2.36 Furthermore, the three majors use different accounting policies for the management accounts of their UK recording businesses, which we have used to conduct our profitability analysis. Sony Music and Warner provided management accounts which are subject to specific accounting practice requirements (eg following US GAAP) and are typically subject to audit. Universal, as it is entitled to do, submitted management accounts with different accounting policies under which it recognises a significantly lower value for its assets than the other two majors. Universal's lower asset valuations mean we are unable to calculate a meaningful or credible ROCE for Universal. We have therefore excluded Universal's figures from our ROCE analysis. Universal's lower asset valuations lead to [✂] in some years (meaning [✂]) and in other years lead to [✂], which is not credible.

2.37 We note that our analysis also has limitations due to issues such as data availability and treatment. For example, management accounts are not available for streaming specifically (instead covering the recording business in the UK as a whole) and each major label uses its own accounting practices which may not be entirely consistent and may not perfectly reflect the economic realities of the businesses. In addition, Warner's EBIT calculations for its UK recorded music business did not include a full allocation of central overheads, and so its ROCE is likely to be overstated in Table 2.4 below.

2.38 Our profitability analysis is only an indicator and does not on its own provide conclusive evidence around the level of competition in the market.

2.39 Table 2.4 highlights our estimates of ROCE for Sony and Warner in the UK and compares this against the weighted average cost of capital (WACC) used by the major labels for internal decision making.[73]

Table 2.4: Sony and Warners' UK recording business ROCE vs estimated WACC

	FY17	*FY18*	*FY19*	*FY20*	*FY21*
Sony ROCE	[0 to 10]%	[0 to 10]%	[0 to 10]%	[0 to 10]%	[0 to 10]%
Warner ROCE	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%
Average ROCE (unweighted, excluding Universal)	[0 to 10%]	[0 to 10%]	[10 to 20%]	[10 to 20%]	[10 to 20%]
Average WACC*	9%	9%	9%	9%	9%

*This includes Universal's WACC as the Average WACC of the three majors is the most representative WACC figure available.

Source: CMA analysis of major labels' management accounts.

[73] We note that these figures are based on management accounts which generally include activities other than those directly related to music streaming.

2.40 Although only indicative, this analysis suggests that the majors are earning a healthy level of profit. We also observe a trend of profits increasing over time. While there are limitations with our profitability analysis (in particular a lack of suitable accounting data to assess Universal's profitability), we have not found evidence that the major record companies' profits in the UK are substantially and persistently in excess of the weighted average cost of capital.

Music publishing

2.41 Music publishing involves the promotion, licensing and administration of song rights, and the provision of services to songwriters in support of the above.

2.42 The majors along with BMG are the largest publishers in the UK, as shown in Table 2.5. They operate alongside a large number of other independent music publishers, for example Beggars Music, Kobalt Music Group, peermusic and Concord. These music publishers will often compete for many, if not all, of the deals that the majors are looking to secure, including for exclusive agreements with songwriters and the representation or acquisition of music publishing catalogues.

2.43 Other UK music publishers include Bucks Music, Domino Music Publishing, Mute Songs, Cooking Vinyl and Sentric Music. These music publishers may provide many of the same services as the majors; although they may not always have the international reach of a major (for example, they may often rely on a sub-publishing network[74] to represent their interests outside the UK). Some other music publishers also specialise in particular genres or types of songwriters, and others market themselves as not 'main-stream' and able to provide more personal attention to their clients. The level of A&R/creative services they offer may also differ.

2.44 There are also a number of investment vehicles and funds, such as Round Hill Music, Hipgnosis Songs Fund, Shamrock Holdings and Primary Wave Music, that target the purchase of legacy music publishing catalogues. These companies, which are typically funded via initial public offerings or through private equity funds, have acquired a number of music catalogues – for example Hipgnosis' acquisition of 50% of Neil Young's song rights and the

[74] A music publisher may sub-let its music catalogue to a foreign publisher that has the necessary contacts to expose works in that territory and the administrative skills to collect subsequent royalties. Also, a sub-publisher can, through membership in local mechanical and performing rights societies, collect and distribute income generated by an original recording. Major and established publishers with offices in many territories do not usually require sub-publishers.

Eliot Kennedy catalogue, Round Hill Music's acquisition of historic music publisher Carlin and Primary Wave Music's acquisition of KT Tunstall's publishing catalogue.

2.45 Combined, the PRS writer members published by the majors accounted for [50-60]% of the Multi-Territory Online (MTOL) streaming revenues (ie for performing right royalties) collected by PRS in 2021.[75] This combined share has been relatively stable, with similar figures in 2018, albeit the share of individual majors has fluctuated within this.

Table 2.5: Annual PRS songwriter and associated publisher Multi-Territory Online (MTOL) performing rights revenue shares by music publisher

Publisher	*2018*	*2019*	*2020*	*2021*
Sony	[30-40]%	[20-30]%	[10-20]%	[20-30]%
Universal	[10-20]%	[10-20]%	[10-20]%	[10-20]%
BMG	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Warner	[5-10]%	[0-5]%	[5-10]%	[5-10]%
Others	[40-50]%	[40-50]%	[50-60]%	[40-50]%
Total	100%	100%	100%	100%

Source: CMA analysis of data provided by PRS for Music, based on estimates for performing right revenues as a proxy for overall publishing rights shares.
Notes: (1) Figures for Universal have been estimated assuming that the publisher share is equivalent to the writer share.
(2) MTOL covers Europe, China, Middle East, North Africa, Commonwealth of Independent States and many of the territories in Sub-Saharan Africa, Latin America and Caribbean and Asia-Pacific.

2.46 Publishers earn revenue from developing, protecting, and valuing the rights to pieces of music, and licensing these rights for use in retail or other media. This will include revenues from music streaming. As described in paragraph 2.10, music streaming revenues derive from both reproduction and CTP (making available) rights.

2.47 Collective licensing offers an efficient way to manage rights on behalf of a large number of rightsholders. UK music falls within what is generally known as Anglo-American repertoire.[76] For such repertoire, songwriters typically assign their performing rights (which include the making available right)[77] to a collecting society, or CMO, to license their works and collect royalties on their behalf (charging an administrative fee for these services) but may license or assign their reproduction rights to a publisher. Both rights have traditionally

[75] CMA analysis of data from PRS for Music.
[76] This commonly refers to songs registered with collecting societies in the UK, Ireland, United States, Canada, Australia, New Zealand and South Africa. See Cooke, Chris (2020), Dissecting the Digital Dollar, Third Edition, p71.
[77] See footnote 46 for an explanation of the term 'performing rights'.

been licensed and collected by CMOs on a national basis on behalf of both publishers and songwriters.[78]

2.48 In the CD era, song rights would be licensed to the label who would then supply the CDs to retailers.[79] As streaming developed, streaming services became the licensees for both song and recording rights. The global nature of these services meant that multi-territorial licensing became an increasingly efficient option.

2.49 In response to this, some CMOs have opted to collaborate to set up multi-territorial licensing 'hubs' – for example ICE, a copyright hub that is owned by several CMOs (PRS, GEMA and STIM).[80] Further, some larger publishers (commonly referred to as 'Option 3' publishers further to European Commission recommendations on such options)[81] have opted to withdraw or otherwise reorganise their reproduction rights from CMOs and license these directly on a multi-territorial basis. As music streaming services require both the CTP and reproduction rights in musical works to lawfully include them in their services, for further efficiency and as a matter of commercial policy, PRS has allowed the performing rights in its repertoire to be licenced together with the reproduction rights. Option 3 publishers therefore typically select a CMO (or licensing sub-subsidiary of another CMO) to partner with for this purpose. These negotiations are usually led by the publishers but the CMO must approve the licensing terms. To establish this licensing structure, some publishers have set up special purpose vehicles (SPVs) with CMOs/hubs.[82]

2.50 It is common for a number of songwriters to be credited on any given song; hence song rights tend to be fragmented, with fractional ownership dispersed among multiple parties. Further, as noted in paragraph 2.47, song rights cover both reproduction and performing rights which may have different licensors and/or use a range of licensing structures.

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[78] Some CMOs (in the UK, Phonograph Performance Ltd (PPL)) are also involved in the administration of various rights on the recording side – but these do not generally include the rights which apply to on-demand music streaming, which performers usually assign or transfer to a music company. Hence, CMOs are not typically involved in the licensing of recording rights for on-demand music streaming.
[79] Cooke, Chris (2020), Dissecting the Digital Dollar, Third Edition, p84.
[80] See the PRS for Music website.
[81] PRS for Music information provided to the CMA. That term originates from the impact assessment that preceded the European Commission's 2005 Recommendation on the cross border collective management of copyright for online use. The 2005 so-called 'Option 3' Recommendation stated that holders of online rights should have the right to withdraw their online rights and transfer the multi-territorial management of those rights to a CMO of their choice. The Option 3 publishers considered it more efficient to approach the multi-territory market outside the traditional CMO network.
[82] See for example Cooke, Chris (2020), Dissecting the Digital Dollar, Third Edition, p73. Such SPVs 'include entities like SOLAR (for Sony/ATV), DEAL (for Universal), PEDL (for Warner), ARESA (for BMG) and IMPEL (for a consortium of indies). Kobalt works in partnership with its own collecting society AMRA' (Cooke, Chris (2020), Dissecting the Digital Dollar, Third Edition, p190).

2.51 While music streaming services will use their own data and/or data provided by rightsholders to calculate the share of revenues due to each recording licensor, due to the complexity of publishing rights they typically provide data on streams to a third party (usually a CMO, licensing hub or companies who specialise in such rights processing) to assess for claims. The third party will return a breakdown of where royalties are due so that the music streaming service can then pay out. It is therefore usual for publishing revenues to be paid later than recording revenues.

2.52 It is also not uncommon for a certain percentage of publishing revenues to be unclaimed by or on behalf of one or more right holders with an interest in a work, due to difficulty in identifying the rightsholder. This can arise from

(a) unmatched royalties which occur when the usage data (if any) supplied by the licensee cannot be matched to a registered work, and

(b) partially-matched royalties where the usage data supplied by the licensee can be matched to a registered work but 100% of the shares on the work are not claimed.

2.53 Such unclaimed royalties (often referred to within the industry as 'black box' income) are dealt with in line with PRS' Constitutional Rules and specified PRS for Music policies.[83]

2.54 The amount of unclaimed UK royalties distributed by PRS for Music (on behalf of both PRS and MCPS) was £[0-5]m in 2019, £[10-15]m in 2020, and £[10-15]m in 2021, representing less than 2% of royalties distributed each year by PRS for Music.[84] These figures are the MTOL values for unclaimed online royalties for performing and mechanical rights licensed and collected by ICE.[85]

2.55 Table 2.6 highlights publishing margins for the three majors over the review period. While provided as useful sector information, we note that such margins cannot be directly compared to recording margins as publishing and

[83] Unmatched royalties are held by PRS for Music, with 75% distributed pro rata in line with allocated royalties after one year and the remaining 25% after three years. Partially-matched royalties are held by PRS for three years, during which time PRS for Music members can register their shares and claim any missing royalties. The funds that remain are distributed pro rata after 3 years.
[84] PRS for Music information provided to the CMA. PRS do not recommend drawing conclusions from the percentage of annual royalties distributed that relate to unclaimed royalties, partially since these royalties are collected and distributed at different times and because of the requirement for licensors globally to have completed invoicing. Nevertheless, this percentage is the best indication we have of how prevalent unclaimed royalties are, albeit only an approximate indication.
[85] PRS for Music information provided to the CMA. See note (2) to Table 2.5 as regards the scope of MTOL.

recording are different businesses with different costs and capital requirements.

Table 2.6: Operating margins for major labels' UK publishing businesses

	FY17	*FY18*	*FY19*	*FY20*	*FY21*
Universal	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%	[10 to 20]%
Sony	[10 to 20]%	[10 to 20]%	[10 to 20]%	[0 to 10]%	[10 to 20]%
Warner	[10 to 20]%	[0 to 10]%	[0 to 10]%	[0 to 10]%	[0 to 10]%

Source: CMA analysis of major labels' management accounts.

2.56 In aggregate the trend in operating margins has been decreasing over the review period. This is driven almost entirely by an increase in the proportion of royalties paid out.

Creators

Artists

2.57 As noted in paragraph 1.52, streaming has reduced barriers to entry for artists, particularly newer or emerging artists. It is now possible for individuals to make a good quality sound recording using readily available and affordable online recording tools. New artists can also upload their music directly to social media or mass distribution platforms at no or low cost. More generally, social media has enabled artists to directly market themselves much more proactively and more readily develop a fan following. As a result, the industry has seen an explosion in the numbers of artists making music (see Table 2.7) and the volume of music made available (with around 60,000 tracks uploaded globally per day on Spotify alone).[86]

2.58 Streaming has also offered new opportunities for global reach in a way previously unimaginable. Further, it has reinvigorated the careers of many legacy artists by making it possible for their music to readily be discovered even if physically out of stock or otherwise hard to find. However, as described in paragraph 2.21, streaming has also changed the marketing and financial dynamics of music making. In an increasingly crowded space, it is arguably both easier than ever before to be heard but harder than ever to break through at scale.

2.59 All of this has also resulted in greater complexity for artists who increasingly have options to take more control of their own career but can find it challenging to track and understand their revenue data across millions of

[86] Music Business Worldwide (2021), *Over 60,000 tracks are now uploaded to Spotify every day. That's nearly one per second*.

(global) streams and to successfully navigate their marketing options. They rely largely on their music companies and streaming services to provide them with usable data for these purposes.

2.60 The experiences and outcomes for different artists vary widely. For the purposes of this report, we refer to low, mid and high-range artists, where: low-range refers to artists with limited financial success (these are emerging artists at the start of their career or artists who are not making a career from their music); mid-range refers to artists with some success and who are able to sustain music as their main occupation through to those who are reasonably successful; and high-range, which refers to artists who are very successful and considered to be at the top end. Other industry participants categorise artists into different tiers. However, we have not sought to provide precise definitions by artist revenue or other factors.

2.61 Artists may move between these ranges over time, for example moving up the tiers as they grow their fanbase. It is also important to distinguish between established artists who have a longer-term track record of success, emerging artists (who have built some track record, for example through social media) and new artists (who may be relatively unknown), as they are likely to have different needs and also represent different levels of risk to music companies when considering potential signings.

2.62 The data shows a large increase in the number of low and mid-range artists under streaming. However, in terms of share of streams the market remains heavily dominated by the few high-range artists who become successful, many of whom are generally contracted to the major labels. Research commissioned by the IPO found that between 2014 and 2020 the top 0.4% of artists account for 63-65% of streams, the top 1% for 78–80% of streams, and the top 10% for 98%.[87] While the number of successful artists and tracks are increasing,[88] the proportion of artists achieving more than 1 million streams per month (see Table 2.7) in the UK remains small (in 2020, around 0.4%).

[87] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era,* p198.
[88] BPI (2022), '*All About the Music' 2022 yearbook reveals more artists and tracks succeed on streaming than ever before*. For example, the BPI estimates that the top 100 UK tracks in 2021 made up 4.4% of streams (down from 10.3% in 2016).

Table 2.7: Total number of artists reaching streaming thresholds

	2014	2015	2016	2017	2018	2019	2020
10 million-99,999,999	3	11	34	55	78	104	110
1 million-9,999,999	187	340	533	825	1,212	1,441	1,613
100,000-999,999	1,610	2,471	3,536	4,895	6,528	7,518	8,322
10,000-99,999	7,026	10,144	13,080	16,455	19,937	24,138	27,180
1,000-9,999	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

Source: Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, Table 6.4.
Note: Based on number of artists reaching these streaming thresholds in a sample month corresponding more or less to October (weeks 40 to 43) in each of the years from 2014 to 2020.

2.63 While notable, this concentration of outcomes is to some extent a general feature of many creative industries and has pre-dated streaming. Popularity tends to coalesce around certain 'hits', given the finite attention available from consumers, notwithstanding that there are today more ways to access and market such hits. Further, the low barriers to making music (particularly in the digital age where access to a studio is less critical than before) mean that a 'long tail' of artists speculatively but unsuccessfully entering the market can be expected.

2.64 It has been argued that the 'pro rata' remuneration model adopted by most streaming services and music companies[89] helps to sustain this 'winner-takes-all' dynamic (as revenues are driven towards the tastes of consumers who listen more to music and the most popular music overall) and that artists would be better served by alternative models that could help to spread revenue more equitably. The Government is carrying out research on different remuneration models (including equitable remuneration)[90] in response to recommendations on this point from the DCMS Select Committee.

2.65 In terms of the importance of streaming for artists, while it is widely acknowledged as being key for their visibility and public profile, for all but the most popular artists it cannot sustain a living. A recent report commissioned by the IPO found, based on a survey of music creators,[91] that they gained income from many different sources but that, prior to the COVID-19 pandemic, live performances were the greatest source of income for artists. Streaming, despite being the biggest contributor to global recorded music

[89] This allocates revenues from a service to a given track according to its share of total streams on that service (in a given country).
[90] A statutory right that ensures performers are paid 'equitably' (i.e. fairly) from certain specific exploitations of their recordings and which cannot be waived or assigned in contract. In some contexts the law specifies that the right amounts to 50%. See definition and discussion in Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*. A Private Member's Bill proposing reforms to the rights and remuneration of musicians and other rightsholders, including the introduction of equitable remuneration for music streaming, was also tabled by Kevin Brennan MP but has not progressed following a debate in the House of Commons in December 2021.
[91] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p11-13. Survey respondents comprised various types of 'music creators', including songwriters and composers as well as performing artists.

revenues since 2017 (see Figure 1.1), contributed, on average, 6% of the survey respondents' music-related income.[92] The low revenues from streaming typically earned by individual artists are a clear source of tension within the industry.

2.66 Using data from the major labels, we have estimated the amounts that music recording artists earn from 12 million UK streams per year. We estimate that this would earn an artist around £12,000 per year. This analysis does not include earnings from overseas or from other sources such as live performance or publishing rights.[93] Evidence we have received from the majors suggest that more than half of their UK artists' streaming income comes from outside of the UK.[94]

2.67 There is evidence that the deal conditions available to artists (including from major labels) are improving on average. Royalty rates are rising, and increasingly some deals may feature shorter commitments (eg for single tracks as opposed to albums) and/or for shorter terms of copyright (if assigned or licensed at all). A&R investment has been increasing, largely offsetting reduced marketing expenditures over time.[95] We look at some of these developments in more detail in the following paragraphs.

New artist contractual terms

2.68 We collected contractual data from the majors on key artist outcomes for all new artist contracts (ie where the artists are new to their label) signed in the years 2012, 2017, 2019 and 2021. The data suggests that key contractual terms for these artists – in particular, financial and copyright terms – have on average improved in this period. The number of new artist contracts (both multi track and single track) increased from 158 in 2012 to 219 in 2021, although an increasing proportion of these are single track deals. In Table 2.8 below we set out an analysis of data on key contractual terms for the majors' multi-track deals with new artists. As this analysis is based on averages across all 3 majors, they do not show how the terms can vary significantly between artists, reflecting for example the different potential

[92] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p 171.
[93] CMA analysis of data from the majors.
[94] Based on estimates provided by the majors.
[95] Furthermore, all three majors have recently voluntarily written off unrecouped balances from pre-2000 contracts for their legacy artists (see 18 May 2022 letter from the Minister of State for Media, Data, and Digital Infrastructure, DCMS and the Minister for Science, Research and Innovation, BEIS, to the Chair of the DCMS Select Committee (page 1)) so that these artists are now receiving revenues from streaming.

financial rewards and risks based on the characteristics of individual artists (including by genre, potential, and stage of career).[96]

Table 2.8: Key artist outcomes in relation to new multi-track artist contracts across all majors

	2012	*2017*	*2019*	*2021*
Number of multi-track contracts	150	143	141	110
Average gross royalty rate	19.7%	21.4%	21.9%	23.3%
Average minimum number of commitment periods (with a commitment to produce a multi-track recording)[97]	3.8	3.3	3.4	3.0
Proportion of contracts where labels own copyright of recordings in perpetuity	66.0%	45.5%	44.7%	26.4%
Estimated average period (in years) copyright retained after initial recording contract expires	50.4	38.9	39.3	30.0
Average (mean) advance paid (2021 prices)	£147.5k	£133.8k	£140.6k	£153.2k

Source: CMA analysis of data from the majors.

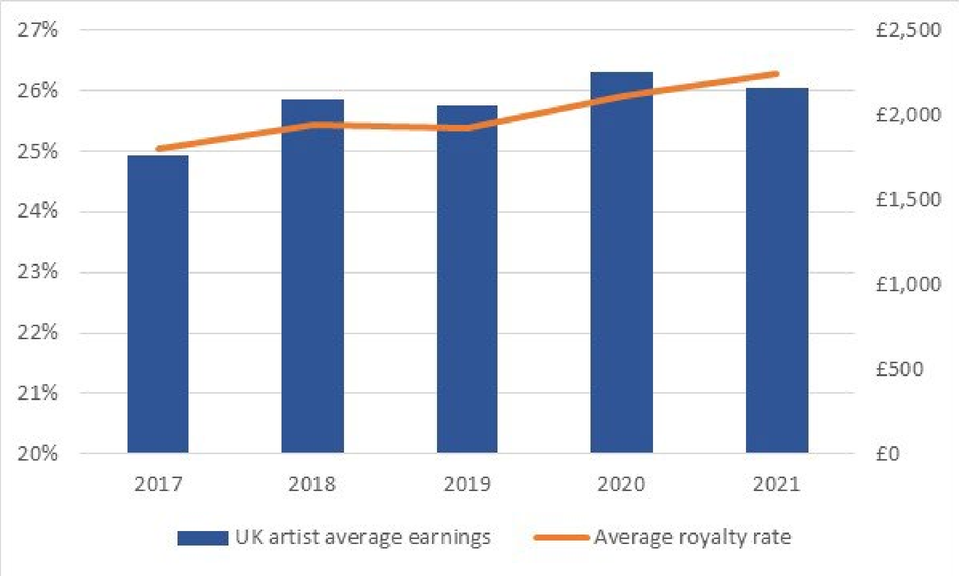
2.69 In addition, we requested data from the majors on the total earnings from UK streaming for all UK artists, prior to any recoupment for advances or recording costs, and the total UK streaming revenues received by the majors in relation to UK artists. This data shows that between 2017 and 2021:

- The average royalty rate (before recoupment)[98] for all UK artists signed to majors increased slightly from 25.0% to 26.3%.
- The vast majority of UK streaming income that is earned by UK artists is accrued by a relatively small number of artists and the evidence shows that the average earnings of these larger artists increased significantly.[99]
- There has also been a small increase in the real average earnings of all artists on the books of majors (it remains relatively low with the overall average annual income in 2021 at around £2,000).

[96] In addition, we note that these individual contractual terms should not be viewed in isolation, including from other aspects of the deal not captured here (eg marketing support provided by a record company). There may be trade-offs involved, for instance between the royalty rate, minimum commitment period and the amount of marketing support.
[97] For example, a commitment within a contract to produce a minimum of 3 albums is made up of 3 ‘commitment periods’, one for each album. The number of commitment periods typically comprises an ‘initial period’ (eg to produce the first album) followed by a number ‘option periods’ exercisable by the record company (not the artist) that commits an artist to produce further albums or tracks.
[98] Total earning for all majors’ UK artists before recoupment divided by total majors streaming income from UK artists.
[99] For the majors’ largest UK artists (those who were ranked in the top 400 of the majors’ largest artists, whether UK or global, by UK streaming revenue – in total these artists numbered 415 in 2012 and 387 in 2021): royalty rates increased from 25.4% in 2012 to 27.0% in 2021; real average earnings increased from £51,178 in 2012 to £99,615 in 2021; and total real earnings increased from £21.2 million in 2012 to £38.6m in 2021.

- The total number of UK artists who earn income from UK streaming and the total amount earned by UK artists from UK streaming both increased significantly.[100]

Figure 2.5: Average UK artist yearly streaming earnings from majors and average (mean) royalty rates (2021 prices)



Source: CMA analysis of data from the majors.

A&R and marketing expenditure

2.70 To understand how record companies' investment in artists is changing over time we requested evidence on the majors' expenditure on A&R[101] and marketing expenditure[102] over time. In Figure 2.6 we present analysis of how real A&R expenditure by the majors has changed over time, which shows that between 2012 and 2021:

- In real terms gross A&R expenditure increased from £103m to £235m and increased from 12% to 17% of total revenue;

[100] Increasing from £1,762 in 2017 to £2,158 in 2021. Note this is the average for all of the majors' UK artists who achieved any earnings from UK streaming, regardless of whether they are currently contracted to produce new recordings. In total this was 13,906 artists in 2017 and 21,882 in 2021. Total majors' UK artists earnings from streaming increased significantly in real terms from £24.6m in 2017 to 47.2m in 2021.
[101] These expenditures incudes advances, recording costs, tour support costs and video costs. Typically the majority of these costs are recoupable by the label from artist royalties.
[102] These costs included marketing costs for videos, tour support, press, promotions, and website & digital application costs; and advertising costs for TV, online, billboard & print, and co-op. Typically these costs are non-recoupable.

- In real terms net A&R expenditure (A&R expenditure in a year net of any recoupment of A&R expenditure through gross royalties) increased from £48m to £132m, and increased from 6% to 10% of total revenues;[103]

- In real terms marketing expenditure fell from £123m to £95m and fell from 14% to 7% of total revenues;[104]

- Combined net A&R and marketing expenditure as a percentage of revenues has fallen from 20% to 17%; and

- Combined gross A&R and marketing expenditure as a percentage of revenues has fallen from 26% to 24%.[105]

2.71 A&R and marketing costs are the most direct investment that is made by record companies in artists.[106] The evidence suggests that the level of this investment has remained broadly constant as a proportion of revenues during the period,[107] with A&R costs tending to increase over the period, and marketing costs tending to decrease.[108]

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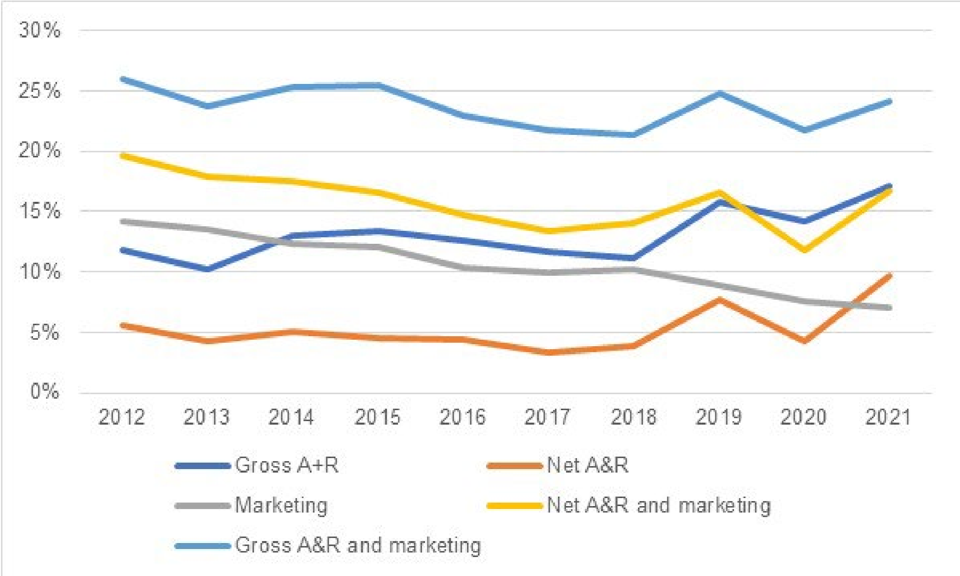
[103] A&R expenditure (gross and net) is typically only made for UK-signed artists, however the revenue base is worldwide revenue. Therefore, these estimates may represent an underestimate of the scale of this expenditure relative to the income generated by the artists in relation to which the expenditure is incurred.
[104] Typically marketing expenditure is conducted only locally (ie directed at the UK market) however, the revenue base is worldwide revenue. Therefore, these estimates may represent an underestimate of the scale of this expenditure relative to the income generated from the territory at which the expenditure is directed.
[105] We note that these trends apply to the aggregate data for all majors. For individual majors the trends in A&R or marketing expenditure may differ from that reported in this paragraph.
[106] We note that A&R and marketing expenditure are not the only expenditure which captures the level of investment in artists by record companies. A proportion of a company's overhead costs (mainly employee costs) will also be dedicated to artist services of various kinds.
[107] We note that it can be difficult to draw too many conclusions from relatively small year-on-year changes in these costs (as a proportion of revenues) as they can be very lumpy (A&R costs in particular) depending on the mix of contracts that a record company signs in any given year. In addition, external factors such as the covid pandemic will impact these levels of expenditure.
[108] One reason for this put forward by the BPI was that the decline in marketing costs is due in large part to the increasing use of online marketing instead of much more expensive television marketing.

Figure 2.6: Majors' expenditure on marketing and A&R as a percentage of revenue over time



Source: CMA analysis of data from the majors.

New artist actual earnings

2.72 We note that the annual earnings data that we have presented in this section will not be the same as the actual earnings.

2.73 Firstly, these earnings are based on artists' gross royalty rates and typically producer royalties in the region of 3-5% will be deducted from these.[109]

2.74 Secondly, these earnings will differ from the amounts actually received by an artist on an annual basis because of the way recoupment works.

(a) Where artists sign a traditional record deal, this typically involves a recoupable upfront financial commitment by the record company which consists largely of an advance on any future royalties earned by the artists and expenses involved in the recording of the music (such as studio and video costs).[110]

(b) Artists will earn royalties on sales or streams of the music once it is released. These earnings will initially be used to pay off or recoup the upfront commitment.

[109] Based on evidence provided by the majors.
[110] Recoupable expenses typically involve: artist advances, recording costs; video costs, TV advertising costs; support of artists' tours; and legal fees. Generally, these costs are fully recoupable, with the exception of TV advertising spend and video costs of which only a proportion is typically recoupable. The exact details regarding which costs are recoupable and the extent to which they are recoupable will vary on a case by case basis.

(c) Only when the upfront commitment is fully recouped will the artist start to receive earnings directly from their royalties.

2.75 The recoupment process will impact both annual artists' earnings[111] as well as the effective royalty rate they receive. By 'effective royalty rate', we mean the total earnings an artist actually receives after recoupable expenses[112] over a period of time,[113] as a percentage of the total revenues received by that label from music streaming services for the use of the artist's recording rights during the same period.

2.76 In Figure 2.7 below we set out a stylised example of how the recoupment process impacts an artist's actual annual earnings and effective actual royalty rate.[114] For simplicity, this example focuses solely on music streaming income whereas in practice, an artist's income will cover a range of income sources which will all go towards recoupment. The analysis shows:

- Whilst artists may receive significant income upfront in the form of an advance of royalty income in the first year of a recording deal, they may not receive any further income for a number of years afterwards until the upfront commitment of the record company has been recouped. The exact period before an artist begins to receive earnings paid directly from music streaming income depends significantly on how popular the music is over time.[115]

- The effect of producer royalties and recoupable upfront expenses such as recording costs will be to reduce the effective actual royalty rate earned by the artist below the headline royalty rate set out in an artist's contract. The extent of this reduction depends on the amount of recoupable expenses.

- The effective royalty rate earned by the artist is actually higher when the artist is less successful to the extent that they are unable to pay off the recoupable advance they have received from their royalty income. This is because in this situation the advance represents a proportionately higher

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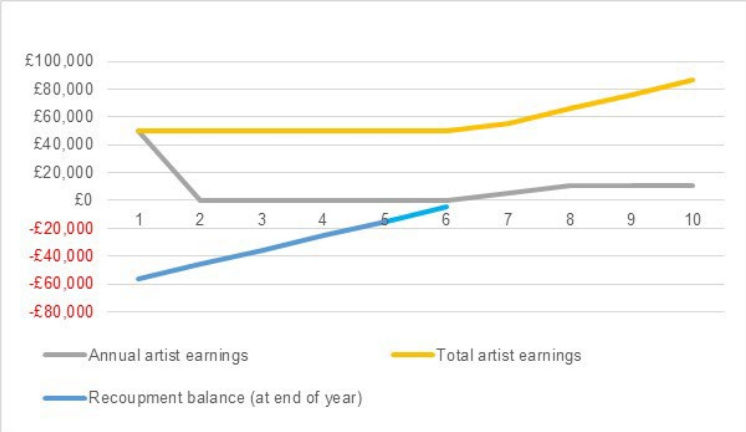
[111] In the first year of a record deal an artist will receive substantial earnings in the form of an advance. However, annual royalty payments will thereafter be much lower until the artist has recouped the upfront commitment.
[112] Where artist royalties are used to pay off expenses such as recording costs, this royalty income will not actually be retained by the artist thereby reducing their effective actual royalty rate.
[113] This could be the lifetime of the artist contract or a defined period such as 10 years.
[114] We have based the example on assumed levels of royalty rates, advances, recording costs and streams. These assumptions are based on the evidence that we have received during the market study but should be viewed as indicative rather than being an average or 'typical' artist experience.
[115] Artist success is not the only factor that can impact the time that will elapse before an artist begins to earn royalty income directly from music streaming. In the stylised example, we keep the level of the advance and gross royalty rate constant; however, variations in the level of advance paid and gross royalty rate can also affect artist earnings over time.

percentage of the overall music streaming revenue generated by the artist.

2.77 As such, under this traditional deal structure, the risk for an artist that they will be unsuccessful after signing a record deal is mitigated by the payment of an advance (as they are provided with an upfront advance of royalty income that will not need to be paid back). The extent to which (and when) an artist receives any money beyond the advance depends on the extent (and timing) of their success. As such, an artist may face a degree of income uncertainty and in their early years they may receive little or no royalty income even if their music is generating steady music streaming revenues. However, this must be assessed in the context of the significant upfront benefit of the advance which generates the effective royalty rate until such time as the advance to the artist is recouped.

Figure 2.7: Stylised example of artist actual annual earnings from UK music streaming and effective actual royalty rate over ten years from a 25% 'headline' gross royalty rate

Central case, where the artist achieves 1 million music streams per month for 10 years

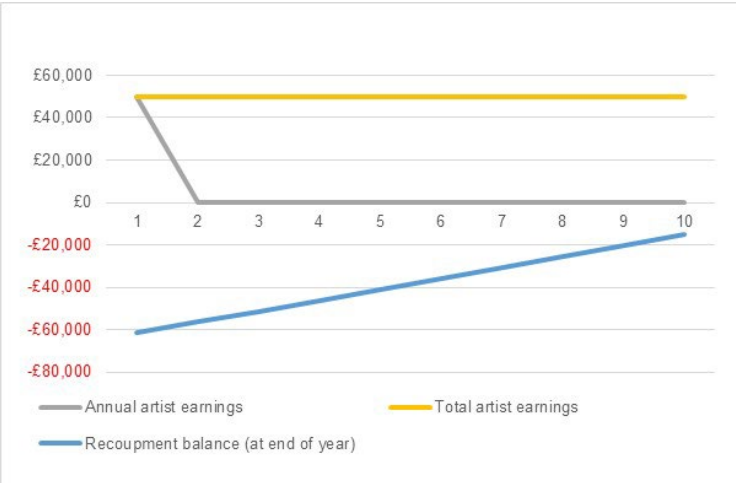


- Effective royalty rate is 19%
- Artist pays off their advance and recoupable expenses part way through the 6th year and starts to be paid royalties directly from music streaming revenue from this point
- The effective royalty rate is below the headline rate due to the artist paying off recoupable expenses such as recording costs
- Recoupable expenses represent around 19% of the total gross artist royalty income over the period
- The advance represents 58% of the total gross artist royalty income over the period

Upside case, where the artist achieves 2 million music streams per month for 10 years

- Effective royalty rate is 20%
- Artist pays off their advance and recoupable expenses part way through the 3rd year and starts to be paid royalties directly from streaming revenue
- Effective royalty rate higher than in the central case as recoupable expenses represent a lower proportion of the artist's gross royalties over the period
- Recoupable expenses are around 10% of the total gross artist royalty income over the period
- The advance represents 29% of the total gross artist royalty income over the period

Downside case, where the artist achieves 0.5 million music streams per month for 10 years



- Effective royalty rate is 24%
- Artist never pays off their advance and recoupable expenses, so is never paid royalties directly from streaming revenue
- The effective royalty rate is slightly higher than the other cases as the advance represents a larger proportion of the overall streaming incomes and artist gross royalties over the period
- Recoupable expenses represent around 39% of the total gross artist royalty income over the period
- The advance represents 117% of the total gross artist royalty income over the period

Source: CMA analysis. Assumptions based on evidence that we have received during the market study, but analysis should viewed as indicative rather than being an average or 'typical' artist experience.
Underlying assumptions: gross royalty rate of 25%; producer royalty rate of 3.5%; an advance of £50,000; and recording costs of £15,667 (or 25% of the total initial recoupable upfront commitment of £65,667).
An artist's UK streaming income will only provide a proportion of the artist's total streaming income. As we note above in 2.66, evidence from the majors suggests that more than half of an artist's total streaming earnings comes from outside of the UK.

Songwriters

2.78 Similar to artists, the number of songwriters has grown in recent times. According to a report commissioned by the IPO, PRS data 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%).[116]

2.79 As described in paragraph 1.35, through the 'full catalogue' music streaming model, older music is retaining its popularity for much longer and represents a very high proportion of streams (86% in 2021). This presents an increasing challenge to the writers of new songs. An examination of songwriters' earnings shows that these are heavily skewed towards a minority of successful individuals, with only 1,168 (2%) earning more than £50,000 in 2019. The vast majority (94%) of PRS' members that earned income in 2019 earned less than £10,000.[117] This picture has not changed significantly over time.[118]

2.80 However, in recent times there has been increasing interest in the acquisition of rights to publishing back catalogues (see paragraph 1.35), especially of older successful recording artists, which offers some established songwriters a new opportunity to monetise their content.

2.81 Alongside this there is a trend towards more songwriters being involved in each recording. For instance, in the past songwriters would traditionally work individually or in pairs, whereas it is now commonplace for successful songs to involve ten or more writers (for example, Beyoncé's 2022 album *Renaissance* includes ten or more songwriters on each of its 16 songs (with one ('Alien Superstar') including 24 contributors to its lyrics and music)[119] and 'Sicko Mode' by Travis Scott including contributions from 30 songwriters).[120]

Table 2.9: 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

Source: Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, Table 4.18.

2.82 Having multiple songwriters involved on a song can lead to challenges in ensuring that they are properly credited for their input. A number of

[116] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p211.
[117] See PRS for Music's response to the CMA's Statement of Scope.
[118] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p211-212.
[119] Beyonce's 'Renaissance' Songwriter Credits: Here's Who Wrote Each Song – Billboard.
[120] Sicko Mode - Wikipedia.

stakeholders have raised concerns about delays in payments, often exacerbated by missing or inaccurate metadata identifying song rightsholders as well as policies (for example within some collecting societies) to withhold payouts below a certain minimum threshold and limit the period for retrospective claims. There is widespread recognition that significant metadata issues exist in the music industry given the complex and fragmented royalty chains involved,[121] particularly on the publishing side,[122] and the IPO has established a cross-industry working group to tackle such issues.

Music streaming services and UUC platforms

2.83 Music streaming services emerged as a way to counter the threat of piracy. They obtain music content from rightsholders under licence on pre-agreed terms in order to make it readily and legitimately available to consumers (see paragraph 1.41).

2.84 These services are distinct from UUC platforms which allow users to upload content, including copyrighted content without rightsholders' knowledge, for other people to consume. The content on these platforms is skewed heavily towards video rather than audio. Music can be on UUC platforms in different forms, including an official video uploaded by a rightsholder, an unofficial video uploaded by a user, and as an accompaniment to a video whose primary content is not the music (for example, as background to another activity).

2.85 The majority of this document focuses on music streaming services. Therefore, unless otherwise specified, references to music streaming services should be taken as referring to these services (rather than UUC platforms).[123]

Music streaming services

2.86 The number of monthly active users of music streaming services has grown rapidly – between 2019 and 2021 alone it increased by 23%, from 32 million to 39 million. Spotify has the largest share of monthly active users by some distance – [50-60]%.

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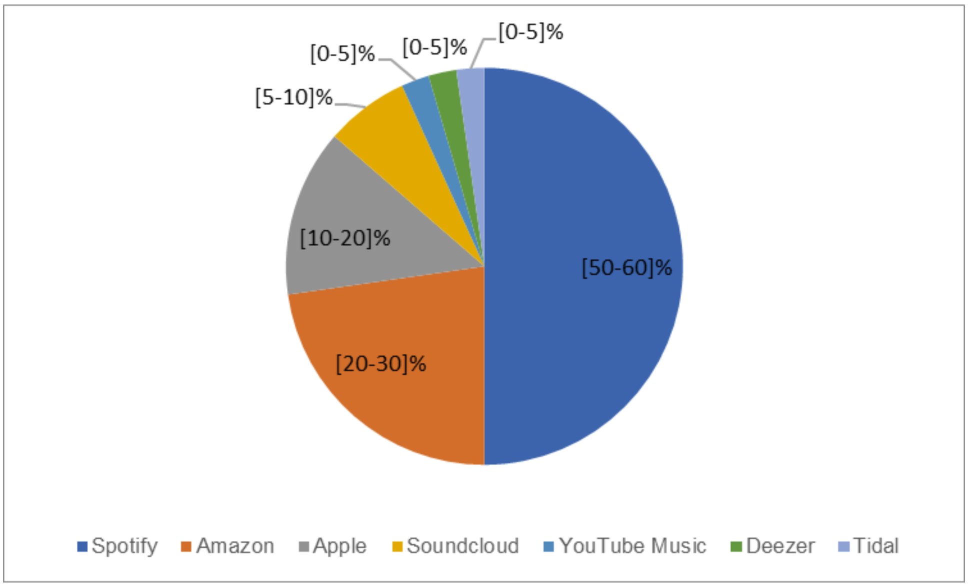
[121] For further explanation of metadata and related issues, see for example research commissioned by the IPO (2019), *Music 2025: the music data dilemma*.
[122] Refer for example to Cooke, Chris (2020), Dissecting the Digital Dollar, Third Edition, Appendix A, for a description of the royalty chains in music publishing.
[123] It should also be noted that some providers offer hybrid options, eg services that combine UUC and licensed music content or offer a UUC service alongside a music streaming service; so the distinction is not always clear cut.

Figure 2.8: Share of UK Monthly Active Users by music streaming service in December 2021, excluding YouTube's UUC platform



Source: CMA analysis of data from music streaming services.

Note: This pie chart is for illustrative purposes only. Monthly Active User shares only account for Spotify, YouTube Music, Apple, Amazon, Deezer, Soundcloud and Tidal which have a combined music streaming share of over 99% according to CMA analysis of data provided by Official Charts. YouTube Music users include YouTube Music premium Monthly Active Viewers and YouTube Music ad-funded Daily Active Viewers, meaning this figure will provide an underestimation of YouTube Music's actual users. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. The midpoints of the ranges have been used to provide an illustration of relative size in the market. Where the sum of these midpoints does not equal 100%, we have scaled the pie chart so that the area segments represent the share of the sum of the midpoints.

2.87 Spotify is also the largest in terms of the share of total streams. In 2021 it had [60-70]% of all UK streams, excluding those on YouTube's main UUC platform. This is followed by Amazon at [10-20]% and Apple at [10-20]%. Spotify's share has fallen since 2015, when it accounted for [80-90]% of streams; this is largely due to the increase in streams on Amazon and Apple.

Table 2.10: Share of total official streams by music streaming service, excluding YouTube UUC (%)

Year	*Spotify*	*Amazon*	*Apple*	*Google (excluding YouTube UUC)*	*Other*
2015	[80-90]%	[0-5]%	[5-10]%	[0-5]%	[5-10]%
2016	[70-80]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%
2017	[70-80]%	[0-5]%	[10-20]%	[0-5]%	[0-5]%
2018	[70-80]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%
2019	[60-70]%	[5-10]%	[10-20]%	[0-5]%	[0-5]%
2020	[60-70]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%
2021	[60-70]%	[10-20]%	[10-20]%	[0-5]%	[0-5]%

Source: CMA analysis of data from Official Charts.

Note: In this table we have excluded all ad-funded music video streams on YouTube's UUC platform but not premium video streams on the YouTube Premium platform; Official Charts do not collect separate music streaming data for the YouTube Premium platform (while this is also a platform that includes UUC content, this is a paid for service that is only offered as part of a bundle with YouTube Music Premium). Google consists of streams on YouTube Premium (including video streams), YouTube Music and Google Play. 'Other' consists of Blinkbox, Bloom.fm, Deezer, MusicQubed, Napster, Nokia, Now Music plus, Omnifone, Qobuz, Rdio, SoundCloud, Vevo, Vidzone and Zune.net. These figures are provided in a 5% range where the figure is below 10%, and a 10% range where the figure is between 10% and 100%. For additional information about how Official Charts reports its stream count, see the note on Figure 1.2. Official Charts data may underestimate some music streaming services' share of streams. Specifically for Spotify, we estimate that this difference is below 5 percentage points in each given year, whilst we expect the share of 'Other' music streaming services to remain broadly similar.

2.88 Even when official streams on YouTube's UUC platform are included, Spotify still has more streams than all other platforms combined. As Table 2.11 shows, the number of official streams[124] on YouTube's main UUC platform has declined since 2015 against a backdrop of the total number of streams more than doubling.[125]

Table 2.11: Total number of official music streams by music streaming service including YouTube UUC (billions)

Year	*Spotify*	*Amazon*	*Apple*	*Google (excluding YouTube UUC)*	*YouTube UUC*	*Other*	*Total*
2015	[20-30]	[0-5]	[0-5]	[0-5]	[20-30]	[0-5]	51.6
2016	[30-40]	[0-5]	[5-10]	[0-5]	[20-30]	[0-5]	61.8
2017	[40-50]	[0-5]	[10-20]	[0-5]	[10-20]	[0-5]	77.3
2018	[50-60]	[5-10]	[10-20]	[0-5]	[10-20]	[0-5]	96.5
2019	[70-80]	[5-10]	[10-20]	[0-5]	[10-20]	[0-5]	114.2
2020	[80-90]	[10-20]	[10-20]	[0-5]	[10-20]	[0-5]	131.9
2021	[80-90]	[10-20]	[10-20]	[0-5]	[10-20]	[0-5]	138.4

Source: CMA analysis of data from Official Charts.

Note: For YouTube UUC we report data from Official Charts on official ad-funded music streams on YouTube, which only includes streams from Premium and 'Art Track' music videos (Official Charts therefore exclude several types of streams on YouTube such as user generated content that includes music). Google consists of music streams on YouTube Premium (including video streams), YouTube Music and Google Play. 'Other' consists of Blinkbox, Bloom.fm, Deezer, MusicQubed, Napster, Nokia, Now Music plus, Omnifone, Qobuz, Rdio, SoundCloud, Vevo, Vidzone and Zune.net. For additional information about how Official Charts reports its stream count, see the note on Figure 1.2.

2.89 All of the main music streaming services offer a 'full catalogue' of content. The one exception to this was, until recently, Amazon Prime Music which offered a more limited catalogue of around two million tracks to Prime members. This has changed its offering so that users now have access to around 100 million tracks on shuffle. This means that the main music streaming services all look to offer the vast majority of available music – which, given the market share of each of the majors, means that it is key for them to license the majors' content. We understand this has been driven by consumer demand: early

[124] This data on official music streams excludes streams from user generated content. Official streams on YouTube are the closest equivalent to streams on a music streaming service, whereas user generated content includes streams of general interest videos with music in the background. We therefore focus on the trends in official streams on YouTube. We note that from 2018 to 2021 the total number of streams on YouTube with a music copyright claim reported by Google increased from [30-40] billion to [40-50] billion, an increase of 15%. Given that this includes content that is not equivalent to a music stream on music streaming services, we have not used this data from Google as part of our analysis. This data from Google also includes streams of less than 30s.
[125] There have been no changes to Official Charts' data collection methodology that would drive these trends in the number of streams from any one streaming service. While there was one change in 2019 to the methodology used to determine the streaming data for YouTube, such a one-off change cannot explain the year-on-year decline in official streams on YouTube since 2015.

experimentation with exclusive music content was not a success, but take-up improved when services moved towards making it easy to legally access a similar range of content as was freely available via piracy.

2.90 With similar content, the services seek to differentiate themselves by the features they offer. These include audio quality, the user interface, playlists and, increasingly, non-music content such as podcasts. Some also offer UUC content.

2.91 Music streaming services typically earn revenues primarily by charging a monthly subscription fee. These paid-for tiers are often referred to as 'premium' and many music streaming services offer free trials to encourage new subscriptions. The headline price of premium subscriptions (ie for an individual adult using the 'standard' premium tier) is £9.99 a month with the exception of Deezer and, until recently, Apple[126]. This price has stayed remarkably stable over time. There is more price variation in other tiers and some recent examples of price increases in some of these other tiers, for example family plans and single device plans.

Table 2.12: Monthly price of paid music streaming plans

Plan type	*Spotify*	*YouTube Music*	*YouTube Premium*	*Apple*	*Amazon*	*Deezer*	*SoundCloud*	*Tidal*[127]
Individual	£9.99	£9.99	£11.99	£10.99	£9.99[128]	£11.99[129]	£9.99	£9.99
Student	£5.99	£4.99	£6.99	£5.99	£4.99	£5.99	£4.99	£4.99
Family	£16.99	£14.99	£17.99	£16.99	£16.99[130]	£17.99	NA	£14.99
Single device	NA	NA	NA	NA	£4.99	NA	NA	NA
Voice	NA	NA	NA	£4.99	NA	NA	NA	NA
Duo	£13.99	NA	NA	NA	NA	NA	NA	NA
Trio	NA	NA	NA	NA	NA	£12.99	NA	NA
Mid-tier offer with limited content	NA	NA	NA	NA	NA	NA	£5.99	NA

Source: CMA analysis of data from music streaming services and various public sources (the price available on a music streaming service's website).

Note: In-app prices for some music streaming services are in some cases higher to reflect app store commissions.

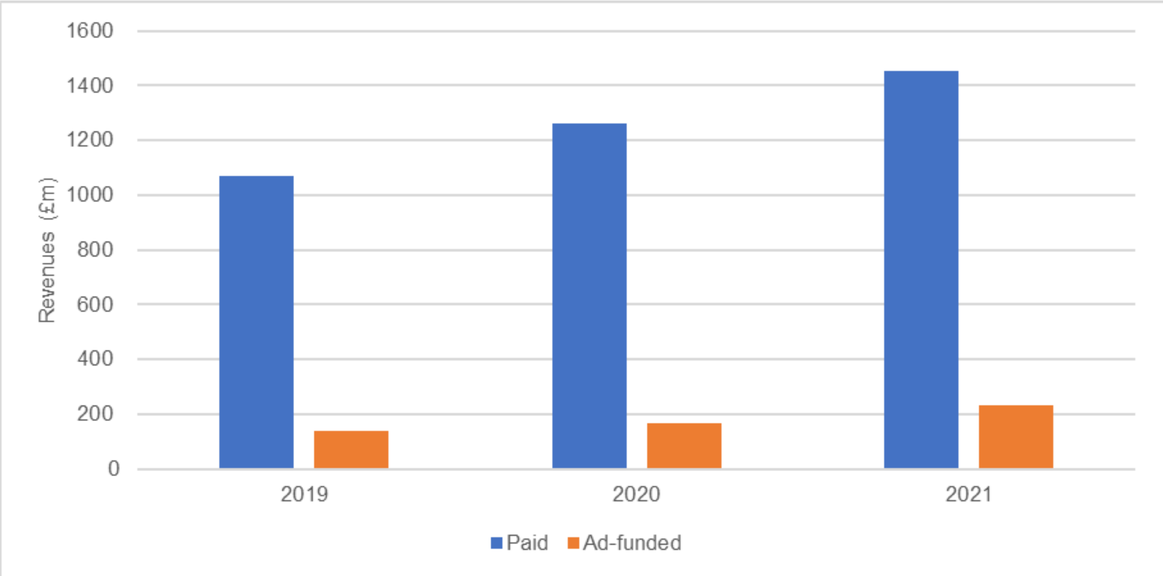
2.92 All of the main music streaming services apart from Apple Music and Tidal also offer some form of free, ad-funded tier. These tiers not only interrupt music through the playing of adverts, but they have more limitations than the paid-for tiers – for instance limiting the number of tracks a user can skip or not

126 At the end of 2021, Deezer increased the headline price of its monthly premium subscription from £9.99 to £11.99. Apple in November 2022 increased the price of its headline monthly premium subscription from £9.99 to £10.99. As expanded on in Chapter 4, real prices are decreasing despite these recent increases.
127 Tidal also includes each offering with even higher sound quality along with other features for approximately double the price on its HiFi Plus tier.
128 This is £8.99 or £89/year if a Prime member.
129 This is £8.99 if paid annually.
130 This is £169/year if paid annually.

allowing tracks to be downloaded and listened to offline. The rationale for these tiers is to try to bring in customers who might not otherwise use music streaming services and to seek to transition them to paid-for tiers.

2.93 As Figure 2.9 shows, the paid-for tiers generate considerably more revenue than the ad-funded tiers.

Figure 2.9: UK total aggregate music streaming revenues by plan type



Source: CMA analysis of data from music streaming services.

Note: The bar in this chart represents a sum of the total streaming revenues generated by paid or ad-funded plans of the following providers of music streaming services: Spotify, Google, Apple, Amazon, Deezer, SoundCloud and Tidal. This chart includes YouTube UUC ad-funded revenues.

2.94 Some music streaming services are provided by firms with other, wider offerings which could, as we discuss subsequently, affect competition. We refer to these as 'integrated' providers.

(a) There is bundling of streaming services with other products and free trial offers or discounts. In the case of Amazon, Apple and Google, bundling is seen with other products or services they offer. Examples include Prime Music with an Amazon Prime subscription and a reduced price for Amazon Music Unlimited for Prime subscribers, as well as Apple Music with Apple TV and its gaming, cloud storage, news and fitness offerings through an Apple One subscription. YouTube also offers ad-free access to its main platform in a bundle with its YouTube Music subscription.

(b) Apple and Google also act as distributors of competitors' streaming services via their wider mobile device hardware and software offerings (respectively, the App Store on Apple mobile devices and Google Play on Android mobile devices). Both, along with Amazon, also offer smart speakers.

2.95 As more consumers adopt streaming, music streaming services have been benefitting from increased scale that has also improved their profitability. However, this is in the context of a history of loss-making such that some are now starting to generate an operating profit[131] in large part as a result of increasing scale. Trends in operating margins for three of the main music streaming services are shown in Table 2.13:[132]

Table 2.13: Available operating margins for music streaming services

	2017	*2018*	*2019*	*2020*	*2021*
[Music streaming service 1]	[-80 to -60]%	[-60 to -40]%	[-40 to -20]%	[-20 to 0]%	[0 to +10]%
[Music streaming service 2]	[-10 to 0]%	[-10 to 0]%	[-10 to 0]%	[-10 to 0]%	[0 to +10]%
[Music streaming service 3]	[-30 to -20]%	[-10 to 0]%	[-20 to -10]%	[-20 to -10]%	[-10 to 0]%

Source: CMA analysis of music streaming services' management accounts.
[✂]

UUC platforms

2.96 Major UUC platforms include YouTube (as distinct from YouTube Music) and TikTok. Soundcloud and Mixcloud also offer UUC services specifically for music and podcasts, targeted at emerging artists and creators. UUC platforms are an important means by which consumers discover music (and can also be a means for music companies to discover artists) – from established as well as new artists. UUC platforms can contain official, licensed music from record labels as well as unofficial, unlicensed music from other sources. Official music streams on YouTube's ad funded video platform generated [10-20] billion music streams in 2021 in the UK, albeit this has declined from [20-30] billion in 2015.[133]

2.97 YouTube and TikTok have a focus on video (rather than audio) and user engagement, with music one of many forms of content available. They tend to offer a different music listening experience to music streaming services. They promote active rather than background listening – for instance, the website or app must be active and engaged with by a user. While on YouTube it is possible to select and stream specific music tracks, this is not the case on TikTok. As such, we do not consider TikTok currently to be a music streaming service.

[131] Operating margins are calculated after deducting cost of sales and operating expenses such as marketing expenses, admin, and overheads.
[132] One of the main music streaming services was not able to produce management accounts for its music streaming business. Due to the structuring of management accounts, figures for certain music streaming services are on a global basis, while others are UK-specific. Similarly, music streaming services are sometimes included as parts of wider bundles being offered and so are part of a set of wider management accounts.
[133] CMA analysis of data from Official Charts.

2.98 YouTube operates primarily on an ad-funded basis so that content is free to viewers in exchange for receiving advertisements. Rightsholders receive a share of the revenue associated with their content. YouTube has launched a subscription service called YouTube Premium which enables users to access all of its content (including YouTube Music) without ads.

2.99 UUC platforms are notable because they can operate under a separate legal framework – the so-called 'safe harbour' provisions that limit their liability for illegal content uploaded by their users in certain circumstances.[134] As such, they do not require a licence upfront from rightsholders for music played on them (although some UUC platforms, such as YouTube, now have licences with rightsholders to cover any music from those rightsholders that may appear on their platform). Instead, once they become aware of the use of copyrighted content, for which they do not have a licence, they must remove it. In the case of YouTube, in such circumstances it offers the rightsholder the choice of requiring the content to be taken down or monetising it. Monetising for rightsholders occurs as a result of taking a share of the revenue from advertising that appears alongside the content.

2.100 As a result of the implementation of the Copyright Directive in June 2021, UUC platforms in the EU are required to use 'best efforts' to obtain an authorisation from rightsholders for all copyright-protected content appearing on their services. They are also required to use 'best efforts' to prevent the appearance of unauthorised copyrighted material on their platforms, and to act expeditiously to remove content upon receipt of a notice from rightsholders.[135]

2.101 While these changes do not apply in the UK, some of the mechanisms implemented to comply with the Copyright Directive may have also been

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[134] 'Safe harbour' is a legal construct derived from Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive). Article 14 exempts online service providers from liability for illegal content uploaded by its users (the so-called 'hosting defence'), so long as the provider:
(a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; and
(b) upon obtaining such knowledge or awareness (for example via notification or their own detection systems), acts expeditiously to remove or disable access to the information.
European case law is clear that the exemption from liability only applies where the activity of the provider is of a mere technical, automatic and passive nature which means the provider has neither knowledge of, or control over the illegal content. See for example Judgment of 12 Jul 2011, C-324/09 (*L'Oréal*), and Judgment of 23 March 2010 *Google France and Google*, C-236/08 to C-238/08).
Further, the hosting defence will not be available where a service provider knows or ought to know, in a general sense, that users of its platform are making protected content available to the public illegally via its platform, and refrains from putting in place the appropriate technological measures that can be expected from a reasonably diligent operator in its situation in order to counter credibly and effectively copyright infringements on that platform. See joined cases C-682/18 and C-683/18, *Frank Peterson and Elsevier Inc. v. Google LLC and Others* (22 June 2021).
[135] The European Commission's guidance points out this requires rightsholders to provide 'relevant and necessary information' and hence cooperation between rightsholders and service providers is essential.

implemented within the UK operations of some UUC platforms (see Chapter 6 for further discussion). Nonetheless, the separate legal regime for UUC platforms is the cause of concern for some stakeholders and we consider its impact further in Chapter 6.

The music consumer

2.102 Streaming has made it easy and relatively inexpensive for a consumer to access a huge volume of music on demand. This is in line with consumer preferences, with Ofcom's most recent audio survey reporting that 79% of consumers indicate that range of content is important for online audio services.[136]

2.103 With the growth of music streaming, recorded music is now also costing consumers less overall compared to when CDs and other physical formats were more popular, as indicated by UK recorded music revenues falling by around 40% from £1.9 billion in 2001 to £1.1 billion in 2021 in real terms (see Figure 1.1 in Chapter 1 above).

2.104 We set out above the number of users and streams across the different streaming services. The number of monthly active users of services (39 million in 2021) suggests there is multi-homing by consumers, including people making use of ad-funded services and offers such as free trials.

2.105 According to recent Ofcom research, 51% of people listen to online music services at least once a week and 18% do so several times a day.[137]

2.106 In terms of the level of use, there are marked differences across age groups. Of online music service users aged 16 to 34, around 4 in 10 listen to a streaming service several times a day; that proportion is four times higher than for users aged 55 and over.[138] For most services captured in Ofcom's audio survey, this pattern of higher use by younger age groups is mirrored (with a notable exception of Amazon).[139]

2.107 Despite the growth in streaming, radio remains the form of listening done by the highest proportion of people on a weekly basis. However, in contrast to streaming, radio listening is declining over time – Ofcom data shows weekly

[136] Ofcom (2022), Audio Survey, question 17.
[137] Ofcom (2022), Audio Survey, question 1.
[138] CMA analysis of Ofcom (2022), Audio Survey, question 1.
[139] Online music service users aged 55+ are more likely to use Amazon than younger age groups. Ofcom (2022), Audio Survey, question 9c.

reach for listening to 'live radio on a radio set' fell from 79% of adults in 2017 to 65% in early 2022, while streamed music rose from 26% to 47%.[140]

2.108 Music recommendation systems in general and playlists specifically have a central role in how consumers discover and consume music on streaming services. As such, being on playlists can be very important to rightsholders and creators and therefore the way that music gets onto them is of great significance. There are different types of playlists. 'Editorial' playlists are those created by human curators usually from the streaming services, but some music streaming services also promote third party editorial playlists on their service. Editorial playlists contain the same tracks for all listeners. 'Algotorial' playlists are those determined by algorithms developed by music streaming services and tend to tailor the tracks based on what they know about the preferences of different listeners. 'Autoplay' or 'radio station' functions are also increasingly important in continuing to play tracks to users with minimal selections necessary.

2.109 Our analysis shows that, across all music streaming services, around 20% of streams were from playlists provided by the music streaming service (as opposed to playlists created by the user themselves) and a further 11% of streams were delivered through autoplay functions on music streaming services or 'stations/radio' provided by music streaming services. While the single largest mechanism through which music was streamed was 'user curated' playlists at 42%, in many cases these will be populated or added to after listening to tracks on music streaming service playlists or recommended by music streaming service autoplay functions.

2.110 This breakdown varies with different music streaming services and also depending on whether users are streaming through premium or ad-funded tiers. For instance, a far higher proportion of streams on Spotify are through user created playlists compared with other music streaming services. Streams on Amazon are much more likely to be through 'stations' than on other music streaming services.

[140] Data published by Ofcom (2022), Media Nations: UK 2022, Fig 76. Note that listening to online radio rose from 19% to 24% and on-demand radio rose from 7% to 9% during the same period.

Table 2.14: Streams by playlist type as a % of UK streams by music streaming service in 2021

	Spotify	*YouTube Music*	*Apple*	*Amazon*
Editorial	[5-10]%	[5-10]%	[10-20]%	[10-20]%
Algotorial	[10-20]%	[30-40]%	[5-10]%	[5-10]%
Station/ radio	[0-5]%	[0-5]%	[0-5]%	[20-30]%
Autoplay	[5-10]%	[0-5]%	[5-10]%	[5-10]%
User curated	[50-60]%	[10-20]%	[20-30]%	[10-20]%
Non-playlist	[10-20]%	[40-50]%	[40-50]%	[40-50]%

Source: CMA analysis of data from music streaming services.

Note: User curated includes playlists curated by individuals and commercially curated playlists not generated by the music streaming service.

2.111 The devices used to access music are also changing. While in-car radios and smartphones are the most used devices, smart speakers in particular are growing in popularity.[141] According to research by the Entertainment Retailers Association (ERA), the proportion of adults who use smart speakers to listen to music (although not necessarily through music streaming services) grew from 14% in 2019 to nearly 25% in 2021.[142] In Ofcom's 2022 Technology Tracker survey, 39% of adults claimed to have a smart speaker in their home and the most popular activity among those who used smart speakers (selected by 62%) was listening to music via streaming services.[143]

2.112 This trend is related to the introduction by some streaming services of voice only and single device plans. The ability to search or browse for music, and create playlists, is very different on smart speakers and voice only plans than through a smartphone.

2.113 Overall, consumers appear satisfied with the services they are getting. In Ofcom's recent audio survey, the majority of respondents rate their chosen streaming services as 'very good' or 'quite good' when asked to rate them on the basis of the service features most frequently reported as 'important'. For example, 87% of Spotify users rate it as 'very good' or 'quite good' on 'ease of use', 85% on 'ease of navigation' and 88% on 'range of content'.[144] The ERA's Quarterly Tracking Study found that 71% of those who use a music streaming service consider it to be good or very good value.[145]

[141] ERA Yearbook 2022.
[142] ERA (2022), Entertainment Consumer Tracking Study – Wave 33, Tracking the Changes 2019-21.
[143] Ofcom (2022), Technology Tracker, questions S1 and S7.
[144] Ofcom (2022), Audio Survey question 18.
[145] ERA Yearbook 2022, p91.

How different parts of the value chain interact

2.114 Creators, music companies, music streaming services and consumers are linked through a complex web of agreements and payments:

(a) **Creators may provide their rights to intermediaries.** Songwriters typically assign or license their rights to music publishers and CMOs to exploit on their behalf; similarly, artists typically assign or license their rights to record companies.

(b) **Intermediaries exploit these rights, including by distributing (licensing) them to music streaming services.** Music companies and CMOs license rights to music streaming services. Publishers may (like creators) opt to administer some of these rights via a CMO – or may license on behalf of a CMO. On the recording side, some providers may license via Merlin (a collective licensing organisation for smaller labels)[146] or use another label (such as the majors) for distribution.

(c) **Music streaming services use these rights to provide music to consumers.** They collect revenues for the services provided – either subscription revenue from consumers and/or ad revenue from advertisers on those services.

(d) **Music streaming services pay out under the terms of their music licences.** Music streaming services pay music companies and CMOs from those revenues. These intermediaries then account back to creators:

(i) **CMOs pay creators and music companies their share of the revenues they collect on their behalf, according to industry standards.** For music streaming, these typically relate to song rights (as music streaming recording rights are usually assigned or licensed to music companies rather than CMOs). Any song rights revenues collected by CMOs are paid down separate royalty chains. The CTP revenues are distributed 50%-50% between the creator and the music publisher, while reproduction rights revenues are passed on to the publisher – in both cases, subject to administrative charges. Publishers then account to their songwriters as described below.

(ii) **Music companies pay creators based on the individual agreements in place** between each company and its songwriters or artists. These deals are commercially agreed.

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[146] See the Merlin website.

2.115 Total revenues are usually split between music streaming services and rightsholders on the basis of a pre-determined, negotiated licence agreement, with the music streaming service retaining an agreed percentage of all revenues generated. The remaining revenues are then paid out to recording rightsholders and song rightsholders. Payments to individual rightsholders are typically made in accordance with the share of music streaming activity that is associated with the content of those rightsholders[24] (see Chapter 3 for further discussion of these agreements).

2.116 Figure 2.10 estimates how total streaming revenues are split among music streaming services, recording rightsholders and publishing rightsholders. This is based on data from the largest music streaming services (Amazon, Apple and Spotify) and the major music companies.

2.117 Firstly, total UK streaming revenues are allocated to recording and publishing rights based on aggregate data from these music streaming services on the amounts they receive in revenues and the amounts they pay out for recording and publishing rights. Secondly, the recording rights payments are allocated between recording companies and recording artists based on data from the majors and some independent record companies on the average gross royalty rates paid to UK artists from UK streaming revenues.[147] Thirdly, publishing rights payments are split between publishing companies and songwriters based on the average gross royalty rates paid to songwriters by all major UK music publishers.

2.118 It should be noted that this analysis focusses on revenues: record companies/music publishers and music streaming services will need to pay their respective operating costs from these revenues. Similarly, gross royalties will not be the same as the artists' actual earnings due to the effect of producer royalties and recoupment (see Figure 2.5 for an example of how these affect artists earnings).[148]

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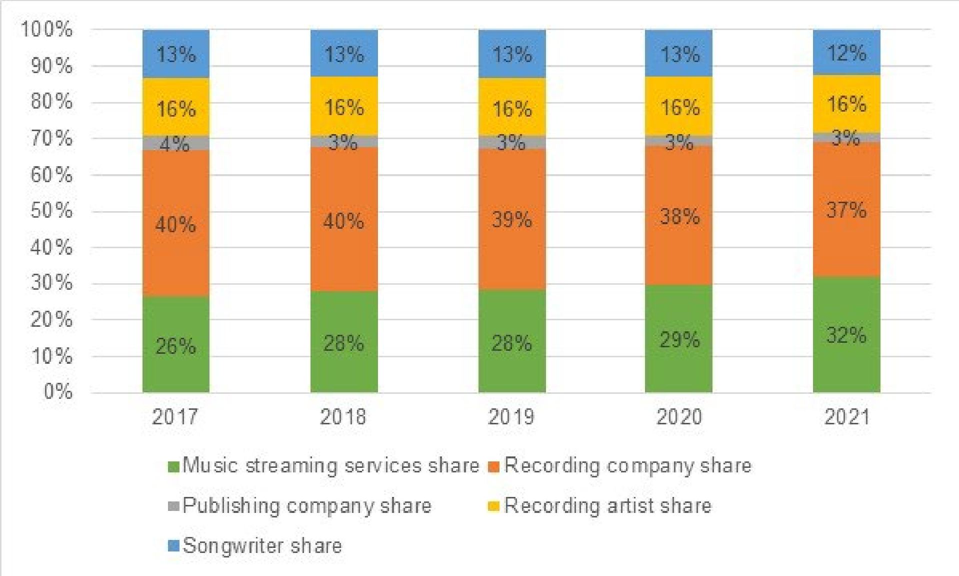
[147] These are the royalties paid out to UK artists, as a proportion of the total earnings received by the music companies, for the exploitation of those artists' rights on UK streaming services.
[148] In that example we present a central case alongside an upside case and a downside case. In the central case, the artist's share of streaming revenue after taking account of producer royalties and recoupable expenses would be 10%. In the upside case, it would also be 10% whilst in the downside case it would be 13%.

Figure 2.10: Share of streaming revenues across the value chain



Source: CMA analysis of data from the largest music streaming services (Amazon, Apple and Spotify), the major music companies and some independent labels.

2.119 Since 2017 the share of UK streaming revenues retained by music streaming services has increased from 26% to 32% in 2021. This is mainly at the expense of record companies whose combined share has fallen from 40% to 37% during the same period. The share of revenue paid to artists and to songwriters have both remained fairly constant during this period, with artists' shares a few percentage points higher than songwriters'.

2.120 It is also of interest to consider how the division of music streaming revenues above compares to the business models that pre-dated it. Analysis carried out in a report commissioned by the IPO, looking at historical data from 2008 onwards, suggests that compared to physical sales, under music streaming, artists' share of revenues has increased at the expense of labels; and the share allocated to publishing rights has increased significantly more than that of recording rights (with songwriters seeing a corresponding increase).[149]

[149] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, p132-136. The discussion at p137-139 of the report further explains that in real terms, both recording and publishing shares have fallen but publishing shares have fallen less than recording shares.

3. Agreements between record companies and streaming services

3.1 As discussed, in order to stream music, streaming services must enter into licensing agreements with rightsowners, typically record companies and music publishers (ie they need the full rights to both the recording and the song recorded).[150] Because the recording and song rights are typically held by a range of different parties, including record companies and composers, the two rights are typically negotiated separately.

3.2 These licensing agreements can be lengthy and complex. Typically, the agreements which music streaming services enter with the majors – who hold the rights to large catalogues of recording and publishing rights – can take longer to negotiate, tend to be longer documents, and contain more bespoke clauses than those between music streaming services and indies.

3.3 As set out in our Statement of Scope, the focus of our market study has been on the recorded music element of the value chain.[151] Therefore, this chapter describes, at a reasonably high level, the main features of recording agreements, with a particular focus on the majors' recording agreements.[152]

3.4 These agreements may help facilitate the widespread availability of music on music streaming services or give rise to other efficiency benefits. However, certain clauses within the agreements may also raise potential competition concerns. We therefore explain in this chapter which clauses may, in principle, raise such concerns (without discussion of any countervailing efficiencies which may be generated by such clauses).

Rights, payment terms and other common clauses

3.5 All recording licences grant the music streaming service rights to, at a minimum, store, reproduce, distribute, and stream the record labels' sound recordings, artwork and associated data and other ancillary materials. These licences will also contain provisions governing the payment mechanics for use of the granted rights. This will typically include a revenue share percentage which the record label receives, per subscriber minimum fees, and sometimes minimum guaranteed lump-sum payments. The agreements also contain

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[150] See paragraphs 2.1 to 2.10 above.
[151] See paragraph 85 of the CMA's Statement of Scope.
[152] While we have reviewed the majors' publishing agreements, given the scope of our market study, we do not address them in this report save to note that the contractual clauses which we discuss in respect of the recording agreements are (other than confidentiality restrictions) not seen, or seen very infrequently, in the majors' publishing agreements.

detailed provisions relating to the calculation of fees (eg which streams will be fee-bearing, arrangements for different tiers, the fees applicable in different territories, and the treatment of users participating in introductory offers).

3.6 Certain other clauses are also found in virtually all agreements. Beyond standard 'boiler plate' provisions (determining such matters as choice of law, jurisdiction, and termination) recording licences provide for the duration of the agreement and renewals, and they also contain warranties regarding ownership of the music content, provisions to deal with allegations of copyright infringement, and provisions concerning the reporting of data by the music streaming service and audit rights on the part of the record company.

Functionality clauses

3.7 We have observed that the majors' recording licences usually contain detailed specifications of the functionality parameters which authorise what the music streaming service is permitted to do within each 'tier' of its service. These clauses are more prescriptive than those found in indies' recording licences. These clauses are also more prescriptive in relation to 'free' (ad-funded) tiers. These specifications typically: (i) limit the functionality of the ad-funded tiers (as compared with the paid-for tiers); and (ii) impose minimum requirements concerning the prevalence and prominence of advertising on the ad-funded tier (which are not found in the paid-for tiers, as these are usually ad-free). Examples include:

(a) Clauses that limit the audio quality that a track must be delivered in. These clauses set a maximum audio quality that cannot be exceeded and which will generally be lower than that offered in the paid-for subscription tiers.

(b) Clauses that limit the number of times a listener can skip and/or repeat tracks during each hour of listening time.

(c) Clauses that set a minimum number of ad interruptions that must occur during each hour of listening time (a minimum of six interruptions per hour is typical).

3.8 Differences in tier functionality appear to encourage consumers to 'upgrade' to paid-for tiers by introducing friction in the ad-funded tiers, for example, by including setting a frequency for the number of ad interruptions. The differentiation between tiers may also in part reflect the different payment terms: record companies will seek higher payments for greater functionality. Nevertheless, given that less detailed specifications are included in agreements between music streaming services and non-major record companies, we think that these clauses indicate that the majors are able to exercise greater control over how their intellectual property is exploited. The need to renegotiate these clauses to innovate and change a music streaming service's offering could in principle weaken competition in the supply of music streaming.[153]

Most Favoured Nation clauses (MFNs) on prices (Price MFNs)

3.9 Some of the agreements in place between the majors and the music streaming services contain MFN clauses on the rates paid by the music streaming service ('price' MFNs). Under these clauses a music streaming service cannot pay a third-party record company a higher rate for its content without also offering to pay that higher rate for the content of the major who benefits from the MFN clause. These clauses likely provide reassurance to a major that it is obtaining terms that are no worse than those being offered to others.

3.10 Price MFNs are not typically found in agreements between music streaming services and indies, nor are they found in all agreements between each of the majors and each of the music streaming services. For example, the CMA has not seen any indication that Universal includes price MFN clauses applicable in the EEA or UK.[154] Further, some price MFNs are limited in scope such that they only apply to the rates offered to other majors.

3.11 We note that the MFN clauses discussed in this section do not relate to the price (or other terms) offered to the end-consumer. Accordingly, they are 'wholesale' rather than 'retail' MFN clauses. While wholesale MFNs may raise competition concerns, they do not directly prevent a supplier offering lower prices to consumers. In contrast, a retail MFN is more likely to raise serious competition concerns and can prevent a supplier offering consumers a lower price via another route to market. Certain types of such clause qualify as hardcore restrictions in the UK.[155]

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[153] The fact that the majors appear to insist upon inclusion of detailed functionality clauses when the indies do not may also reflect the majors' superior bargaining power.
[154] In 2012 UMG gave a behavioural commitment to the European Commission that it would not enter into certain MFN clauses with digital music service companies insofar as they apply to the EEA. See the decision in Case No COMP/M.6458 - *Universal Music Group/ EMI Music* at page 383, paragraphs 17-18.
[155] A hardcore restriction may not necessarily restrict competition, but its inclusion means that the agreement cannot benefit from a block exemption. Wide retail parity obligations are hardcore restrictions under UK law: see paragraphs 8(2)(f) and 8(7) of The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022. In summary, a wide retail parity obligation exists where a supplier ensures that the prices (or other terms) available through its sales channel are no worse than those offered via the sales channels of other suppliers. The CMA has previously prohibited wide retail parity obligations in the motor insurance sector: see the final order dated 18 March 2015 following the CMA's Private motor insurance market investigation (see the case page).

3.12 While they are not likely to be as problematic as certain types of retail MFN clauses, in principle the price MFN clauses we have seen could still dampen competition between record companies. If the majors know that they each have price MFNs in their agreements, this could help indicate to each other that they do not intend to compete on price, which may in turn soften price competition. Price MFNs – where they apply to the rates offered to smaller record labels – might also make it more difficult for music streaming services to facilitate new entry or expansion of smaller record labels by agreeing to pay them higher royalty rates for a short period (or higher rates in return for newer, more innovative features).

3.13 In principle these clauses might also dampen competition between music streaming services. They could act as a barrier to entry or expansion to smaller music streaming services, since a new entrant may face increased uncertainty regarding the financial terms of the deals it enters into with relevant counterparty majors (eg the licensing rate agreed with one major with a price MFN could increase if the music streaming service cannot negotiate the same licensing rate with other majors, which in turn could raise the overall licensing costs when entering).

Other MFNs, non-discrimination clauses, and playlisting clauses

3.14 We also identified a number of other clauses which may have the effect of protecting the position of the majors, which, again, are not typically found in agreements entered into by indies. Unlike the price MFN clauses referred to above, which generally 'bite' only on the financial terms offered to the majors, these clauses tend to be broader in scope and apply to all record companies, not just the majors:

(a) Some agreements contain a 'general' non-discrimination clause. These specify that the music streaming service must not discriminate against the counterparty major compared to one or more other record companies.

(b) Some agreements contain 'economic' non-discrimination clauses (also known as 'anti-steering' clauses). These clauses forbid a music streaming service from favouring the content of another record company, in particular on the basis that the other company's content is cheaper.

(c) Some agreements have MFN clauses that extend beyond the rates paid by a music streaming service. For example, we have seen certain MFN clauses which require the music streaming service to provide to the major the best level of data or the best level of marketing support which it provides to any other record company ('marketing' MFNs).

(d) Some agreements contain obligations on the music streaming service to ensure that a major's share of tracks within some playlists broadly corresponds to its overall share of streams. Beyond these high-level types of obligation, however, the CMA has not identified any contractual clauses which impinge upon the streaming services' ability to decide what music to include within playlists. We have been told that the majors do not have insight into the design or operation of the music streaming services' algorithms and so cannot determine the selections which the algorithms make.

3.15 The above-mentioned clauses could each impact competition (individually and collectively) between record companies:

(a) The 'economic' non-discrimination clauses and 'marketing' MFNs could weaken rival record companies' incentives to reduce their price in order to increase their volumes.

(b) All of the above-mentioned types of clause could impact competition by making it more difficult for emerging record companies to gain prominence for their artists. This in turn makes it more difficult for such record companies to make money and expand. Accordingly, the clauses may increase barriers to entry for, or expansion by, smaller record companies.

Must carry clauses

3.16 Many of the majors' agreements contain obligations on the music streaming service to provide subscribers access to the relevant major's entire catalogue of songs (ie the music streaming service is not allowed to de-list a major's track, except in specific circumstances, such as where a track is the subject of a copyright dispute). Such clauses are not typical in agreements between the music streaming services and indies. These 'must-carry' clauses may weaken the music streaming service's bargaining power with a major because it could not threaten to de-list a major's less popular songs. This, in turn, could hamper efforts on the part of music streaming services to drive stronger competition between the majors.

Change of business model

3.17 A few agreements contain clauses which empower a major to: (i) propose amended terms to its agreement with a counterparty music streaming service if that counterparty enters the upstream market (ie offers recording contracts to artists) and such entrance results in the counterparty music service owning more than a certain percentage of music on its own service; and (ii) terminate the agreement if the major and counterparty music streaming service are unable to agree on amended terms. Such clauses could impact downstream competition by weakening the music streaming service's bargaining power in respect of the relevant major, which in turn could hamper efforts on the part of music streaming services to drive stronger competition between the majors.[156]

Confidentiality / NDAs

3.18 Confidentiality provisions are very common in both the majors' and indies' recording licences and are not uncommon in private commercial contracts generally. The clauses generally prevent parties from disclosing the agreement's terms and conditions and data relating to the music streaming service (including financials) to third parties (other than a contractual party's professional advisers). The clauses are normally subject to carve-outs for disclosure required by law, information which is or comes into the public domain (other than through a breach of the confidentiality requirement), and disclosures made with the counterparty's consent.

3.19 Concerns have been raised with us regarding the fact that the majors' agreements with music streaming services are covered by confidentiality restrictions. We have been told this means that artists are unable to understand fully the financial value of their own agreements. It is argued that this lack of transparency hampers investment, promotional activities and prevents music creators obtaining the most competitive deals.

3.20 In some agreements the confidentiality requirements are qualified to allow licensors to disclose certain information. The disclosure, depending on the contracting parties and the nature of the agreement, generally can be to artists represented by the licensor and/or other rights holders. A licensor may be able to disclose this information provided the recipient enters into equivalent confidentiality undertakings. Alternatively, restrictions on the type and level of information might be imposed, for example the licensor may be restricted to providing information only on a 'need to know' basis or only the minimum financial information necessary for an artist to understand the royalty payments being made to them.

3.21 In principle, overly-broad confidentiality clauses could weaken artists' bargaining power with record companies because they will be less able to drive competition between record companies. However, weak or non-existent confidentiality restrictions might also lead to adverse effects such as weakening the bargaining power of music streaming companies in their

[156] See paragraph 4.31 for our analysis of these clauses.

negotiations with record companies (eg it could be revealed that a music streaming service has made a concession to one record company, which may in turn lead other record companies to demand a similar concession).

3.22 Although we have not come to any definitive conclusions (which would be for an inquiry group to consider in any market investigation), we consider the competition implications in the relevant markets of the above clauses in Chapter 4.

4. Analysis on how well competition is working for consumers

4.1 In this chapter we set out our analysis and emerging thinking on how well competition is working in the supply of recorded music and music streaming. We start by considering the upstream supply of recorded music to music streaming services, and then we consider the downstream supply of these music streaming services to consumers.

4.2 As part of our assessment, we consider both the current state of competition and how it might evolve.

The supply of recorded music to music streaming services

The nature and strength of competition

4.3 The largest music streaming services' business models are based on offering a wide range of music to consumers, covering all the content from the majors and most other record companies. This reflects consumer preferences for a wide range of content on online audio services (see paragraph 2.102). Music streaming services told us that having this range of content was critical to their service, and the majors have also noted the need for music streaming services to offer their music.

4.4 While consumers benefit from having all of the most popular music on their chosen music streaming service, this 'full catalogue' model appears to result in weak competition, particularly on price, in the supply of this music by record companies to music streaming services. Under this model, it is highly unlikely that a music streaming service would substitute one major's catalogue with any other content. This lack of substitutability results in weak incentives for record companies to compete on price when supplying music streaming services.

4.5 Setting lower prices for its repertoire could in principle help a record company increase its sales if it led consumers to listen to more of that record company's repertoire over others' repertoire. However, this type of price competition is weaker in music streaming than in other forms of music distribution such as a physical sale. By way of illustration, consider the effect of a record company discounting the wholesale price of a physical album as part of a retail promotion. A targeted promotional discount of this sort would likely drive up sales of that album. But there is no equivalent discount within streaming; the consumer pays a single price to access the service, no matter what they choose to listen to.[157]

4.6 The incentives to compete on price are likely to be particularly weak for the majors. There is a particularly low prospect of a music streaming service dropping the majors' content if their prices are not competitive because of the importance of their back catalogues and the popularity of the new artists on their rosters (compared to other record companies). The importance of the majors' content is reflected in their high share of streams (see Table 2.2).

4.7 If the majors had incentives to compete on price (eg by undercutting each other on price), the price MFNs (see Chapter 3) would not help a major ensure its prices were competitive (ie lower than other record companies) as the price MFNs instead ensure that a major's licensing rates are as high as its rivals. To the extent that there is weak price competition, this would seem to be due to the full catalogue model and lack of substitutability as referred to above, rather than due to the price MFNs (which we assess further below at paragraphs 4.27 to 4.29).

4.8 Record companies primarily compete for market share on streaming services by signing and investing in artists (see Chapter 5) and by raising the profile of these artists and their repertoire. This competition takes the form of majors seeking greater exposure for their artists through various means including securing marketing support commitments from music streaming services and promoting their artists on social media, radio, television and other media channels. However, in respect of marketing support from music streaming services, the majors do not typically pay for such support but appear instead to be able to use the importance of their repertoire and its lack of substitutability with rivals' content to negotiate significant marketing support from music streaming services, including through 'marketing' MFNs and playlisting clauses.[158]

4.9 Competition between record companies to supply music to music services appears overall to be weak, in particular, taking into account the limited incentives of record companies to compete on price with each other. However, competition of other kinds between record companies, for example to sign and invest in artists, may be limiting the profits that they can earn (see Chapter 2).

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[157] We discuss the extent to which record companies have incentives to compete on price in return for greater marketing support from music streaming services at paragraphs 4.21 to 4.26 below.

Bargaining position of music streaming services with record companies

4.10 The weak nature of competition in the supply of music to music streaming services set out in the previous section, particularly on price and between the majors, taken on its own, is likely to weaken the bargaining position of music streaming services with rightsholders. A customer's bargaining power depends on the availability of good alternatives that they can switch to. The lack of good alternatives, particularly for the majors' content, is therefore likely to weaken music streaming services' bargaining position in their licensing negotiations.

4.11 As a music streaming service grows in scale and becomes a more important source of revenues to record companies, the evidence appears to indicate that there is scope to negotiate improved terms with these rightsholders. For example, music streaming services indicated that growing in scale is important to negotiating improved terms with record companies. The increasing bargaining strength of some music streaming services is consistent with the increase in music streaming services' share of revenues in recent years (see Figure 2.10). As some music streaming services grow, their ability to negotiate improved terms may help lower their costs, which could be passed on to consumers in the form of lower prices of music streaming services or more investment in the quality of these services.

4.12 The increasing importance of music streaming and the expanding scale of some music streaming services appears to be increasing the degree of mutual dependence between record companies and music streaming services. Music streaming services must offer all music content from all labels in order to be competitive for consumers, while labels must license all content to all music streaming services to maximise their revenues. One major submitted that such mutual dependence results in a relatively balanced bargaining position between the majors and music streaming services.

4.13 Increasing mutual dependence does not necessarily result in equal bargaining power of the music streaming services and record companies. Even larger music streaming services could remain in a weak bargaining position with the majors due to the lack of good alternatives to the majors' content.

4.14 In contrast, the majors have a range of music streaming services through which they can distribute their music (at least seven including Spotify, Amazon, Apple, YouTube Music, Deezer, Tidal and SoundCloud), and this strengthens the majors' bargaining position.[159] A major would still face the risk of losing potentially substantial revenues from a failure to negotiate a licensing agreement with a music streaming service and this would potentially reduce the earnings of artists signed to that major unless the major compensates its artists. However, this loss in revenues by the major could be offset to some extent by the growth in revenues on other music streaming services.[160] Given the importance of a full catalogue to consumers, we would anticipate music streaming services that continue to offer this full catalogue would grow at the expense of any music streaming service that failed to license content from one of the majors.

4.15 Evidence on profitability of the majors and music streaming services, and how they split music streaming revenues between them, appears to be consistent with the majors being in a stronger bargaining position at present than the music streaming services. As set out in Chapter 2, the majors' UK record companies have higher operating profits compared to the low or negative operating profits of music streaming services in the UK, and the majors also take a higher share of music streaming revenues than music streaming services.

4.16 One major told us that it considers that the requirement for music streaming services to provide consumers with access to all music means the negotiating position of indies with music streaming services is no different from that of the majors. However, we note the majors are typically able to secure more favourable terms in their contracts than the indies (see Chapter 3 above).

4.17 Further, we were told that labels are under pressure from artists to ensure their content is available on music streaming services and that there would be negative consequences in terms of artist acquisition and retention if a label failed to do so, thereby further strengthening the bargaining position of music streaming services.

4.18 We acknowledge that labels would likely come under pressure from artists, but we consider that such pressure would not lead to equal bargaining power between labels and music streaming services. We think that any failure by a label to reach a licensing agreement is unlikely and we expect it would be short-lived. However, if a label failed to reach a licensing agreement and their artists' content was removed from a streaming service, we do not expect that this would precipitate artists immediately switching labels, not least because

[159] Given the extent to which the majors' repertoire drives their strong bargaining position, we consider the majors' small shareholdings in Spotify and other music streaming services (see Chapter 2) are unlikely to increase materially the majors' bargaining position.
[160] Although, in its consultation response a major commented this would not be a likely outcome in reality.

they typically have a longer-term contractual commitment to the label (which, in addition to contractual restrictions, may also mean that artists will have built up business and professional relationships which they would be reluctant to disrupt). Further, a label could guard against both the risk of losing an artist who was able to switch or failing to secure a new artist signing, by compensating artists for any temporary loss of royalties. The impact of temporarily failing to reach an agreement for a label on their ability to sign and retain artists is therefore likely to be limited, particularly for a major label given their strong position to sign artists.

4.19 In contrast, consumers would be able to switch their music streaming service more readily in the event the music they wanted to listen to was not available (see the discussion in paragraphs 4.67 to 4.76, notably the fact free trials are available, and consumers' premium subscription contracts are typically only month-to-month). Given the importance of offering a full catalogue and that a consumer's favourite artist(s)' music is unlikely to be substitutable, a music streaming service losing a significant portion of its catalogue could face a substantial risks of deterring prospective customers and of many existing customers switching (even in the context of some barriers to switching). This risk is exacerbated by the fact that, as explored in paragraphs 4.71 to 4.72 below, most music streaming services offer full catalogues, and so consumers may have little incentive to switch back even after a music streaming service has regained a full catalogue.

4.20 Overall, we find that music streaming services are currently in a weaker negotiating position than the majors. The impact of any temporary failure to reach an agreement is likely to be more harmful to a music streaming service than to a major. Music streaming services are also in a weaker negotiating position than they otherwise would be if they could switch away from a rightsholders' catalogue or could more easily shift streams away from this catalogue.

Impact of contractual clauses in licensing agreements on competition between record companies

The impact of marketing MFNs and 'economic' non-discrimination clauses

4.21 As noted in Chapter 3, contractual clauses such as 'economic' non-discrimination and 'marketing' MFNs can restrict music streaming services from promoting cheaper content. Without these clauses, it could be easier for music streaming services to get record companies to compete on price and for greater marketing support. This could in principle involve a record company offering better financial terms than its competitors for all or some of its content in return for, say, greater marketing support from the music streaming service.

4.22 However, in practice this type of price and marketing competition may not materialise in a significant way, even with the removal of certain clauses. In particular, some music streaming services indicated that offering greater marketing support as a way of pushing down licensing rates is not a strategy that music streaming services are generally seeking to implement. We consider this may reflect the inherent practical challenges involved in seeking the necessary agreement from a range of record companies, and music streaming services needing to ensure that a consumer is being presented with music that reflects their interests and preferences rather than promoting cheaper content.

4.23 In any event it is not clear whether music streaming services favouring cheaper content would be in consumers' interests. If it was effective at reducing music streaming services' costs, consumers may benefit to some extent if these cost savings were passed on through lower overall prices. Promoting cheaper content could come at the expense of music streaming services promoting the music that most engages consumers, however given the quality of music recommendations are a key way in which music streaming services compete, this risk is likely to be small. Also, given that consumers pay a fixed fee (or no fee at all) in music streaming, a consumer could also listen to this cheaper content on a music streaming service without being offered a discount or any other benefits for doing so (in contrast to the discounts offered on physical album promotions).

4.24 In our view the existence of these clauses is indicative of the strength of the majors' bargaining power. Further, whilst we have not investigated the extent of enforcement of these clauses by the majors, these are legally binding obligations which therefore may be capable of having an effect on competition.[161]

4.25 We do not think that music streaming services are currently able to stimulate competition between labels. Spotify's trial of its Discovery Mode marketing tool indicates some of the issues music streaming services may face when seeking to introduce price and marketing competition between record

[161] See *BGL v CMA* [2022] CAT 36, paragraph 171(3): 'Contracts are made to be followed, and in our judgment competition law should be slow to dismiss as ineffective, and so irrelevant to an effects analysis, what are binding obligations that are – at the very least – capable of being enforced' (emphasis in the original) and paragraph 242: 'We do not consider that it is an answer to an allegation of competition law infringement to say that there is no infringement because the clause in question was disregarded, when there would be an infringement if the clause in question was complied with (emphasis in the original).

companies. Discovery Mode allows a record company to prioritise a track for increased likelihood of discovery via the algorithms that determine personalized listening sessions, in return for Spotify charging a commission on subsequent streams. However, this marketing tool is only activated in some areas of Spotify where it says listeners are most open to discovery, and when a listener does not engage with a track, the tool pulls back from recommending that track to similar listeners.[162]

4.26 Discovery Mode may assist in promoting content from some artists and their record companies, but the extent to which such a tool can in itself generate strong and widespread price competition between record companies has thus far been limited by [✂].[163] The effectiveness of the tool in increasing price and marketing competition could also depend on how well it identifies and presents content that consumers engage with. But Discovery Mode (and any other similar tools) could play a role in addressing the concerns raised by some artists and their representatives about the challenge of getting their music discovered if they are not signed to a major.

The impact of price MFNs

4.27 Some creator stakeholders agreed with the statement we made in our Update Paper[164] that if majors knew of the presence of price MFNs in their agreements this could help them to signal to each other that they did not intend to compete on price. However, given the full catalogue model of music streaming, the incentives for the majors to compete on price are limited. This means that the effect of the presence of price MFNs is also likely to be limited.

4.28 While the price MFN clauses in contracts between record companies and music streaming services may have dampening effects on competition (as set out in Chapter 3), price MFN clauses in isolation would not prevent record companies from competing on price: as no MFN clause would be able to restrict other majors from *accepting* a *lower* payment per stream, only that they cannot be *paid more* per *stream*. If a record company had incentives to lower its prices relative to its competitors in return for, say, more marketing support as noted above, the record company could simply remove the price MFN or waive the right to higher prices under such an MFN. Where there is a lack of incentive to lower prices, the price MFN is a contractual tool that can be used to ensure that a record company gets a price as high as its peers.

[162] Spotify website (accessed on 5 October 2022).
[163] Spotify information provided to the CMA.
[164] Ivors Academy response to CMA Update Paper and Musicians Union response to CMA Update Paper, commenting on paragraph 4.11 of the Update Paper.

4.29 Hipgnosis also told us[165] that it considered that price MFNs (and pro-rata share agreements) disincentivised majors from competing with one another for streaming volumes and investing. In our view, however, if a major increased its share of streams over time then the application of the pro-rata model would mean that it would increase its revenues. Each major is therefore incentivised to continue investing in its artist offering in order to increase its share of streams over time (or to ensure its share is not eroded in response to investments made by others).

The impact of other clauses

4.30 Must carry clauses could in principle weaken competition between record companies as they prevent a music streaming service from removing certain content from their service where the associated royalty rate was uncompetitive or the content itself was considered to be low quality. However, stakeholders have noted the importance of offering a wide range of content on a music streaming service, and services that have launched with partial catalogues have not grown to the same size as 'full catalogue' services (see Chapter 2). So, giving a music streaming service the option to remove content may only marginally increase price competition to supply them with music. Removing content could also harm consumers as it would reduce the range of music available to them on a music streaming service. Conversely, the inclusion of content that would otherwise not have been carried is also unlikely to harm the consumer experience, especially where there are no other clauses promoting this content over preferable alternatives. We received somewhat conflicting submissions from the majors on the importance and purpose of must carry clauses (but this does not affect our overall analysis). One major told us that must carry clauses are one of many fiercely negotiated terms given the importance of ensuring music is not unfairly removed from a music streaming service. Further, that they existed to ensure that they could discharge their contractual duty to their artists to ensure that their music is available on reasonable terms on all legitimate music streaming services.[166] Universal told us that these clauses are included as part of a 'belt and braces' approach but in reality do not have any practical competitive effect.[167]

4.31 Similarly, the removal of 'change of business model' clauses is unlikely to enable music streaming services credibly to threaten to switch away from licensing the majors' content by self-supplying its own alternative content given the need to offer a 'full catalogue' on music streaming services. The

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[165] Hipgnosis response to CMA Update Paper.
[166] SME response to CMA Update Paper.
[167] UMG response to CMA Update Paper.

majors, if they fear disintermediation by music streaming services, ultimately appear able to stymie such efforts without resorting to enforcement of contractual provisions – for example, by stalling negotiations on other matters that could support the growth of a music streaming service.

The combined impact of price, marketing MFNs and other clauses

4.32 As explained in the previous section, there is no credible threat of a music streaming service switching from one record company's repertoire to another's, particularly a major's repertoire. Given this, our view is that the nature of competition between record companies to supply music to music streaming services would remain weak even absent the combined effect of the contractual clauses discussed above. Whilst a slight strengthening of competition might be expected by their removal (individually or in combination), it is not clear any improvement would be more than marginal. The majors could continue to use the particular importance of their content to a 'full catalogue' music streaming service as a way of securing high licensing rates and significant marketing support from music streaming services.

Majors' combined activities in licensing recording and publishing rights

4.33 Music groups own and control rights to music through both their record companies and their publishing companies. A music streaming service needs to license both sets of rights to offer a given track on its service. Together, the majors hold one or more of these rights (in recording or publishing) for 98% of the top 1000 singles in the UK in 2021 (Figure 2.3). This indicates the importance of the majors' repertoire to music streaming services.

4.34 Stakeholders raised concerns over how the majors' combined activities in music recording and music publishing gives them a stronger bargaining position with music streaming services. Some stakeholders allege that the majors can, by threatening not to license their publishing rights (or holding up these licences), utilise their large publishing repertoire to impose higher recording rates on the music streaming services (or other unfavourable terms and conditions). Against this, we have been told that such a threat would not be credible given the importance of the music streaming services to the majors' publishing businesses and the damage that implementing the threat would cause to the majors' reputation in the wider industry (as songwriters who are not represented by the majors but have co-authored songs to which the majors hold publishing rights would also be affected by any hold-up by the majors which could prevent their songs being played on music streaming services).

4.35 Our view is that the majors' activities in publishing are unlikely to increase their bargaining position in a material way. Even without these activities in music publishing, the majors would likely remain in a strong bargaining position with music streaming services due to the importance of their recording rights and the weak competition in the supply of these recording rights to music streaming services, as noted above. In particular, the majors' record companies together hold almost all of the rights to the most popular music, that is without even taking into account the majors' activities in music publishing. The majors have a 92% combined share of recording rights for the top 1000 singles in the UK in 2021 (Figure 2.3).

Conclusions

4.36 There appears to be weak competition, particularly on price, to supply music to music streaming services. However, as we explain later in this section, stronger competition elsewhere in the value chain is helping to ensure positive outcomes for consumers. Competition between music streaming services is contributing to declining consumer prices (after adjusting for inflation) and substantial innovation in music streaming. In addition, competition on the artist side involves record companies competing for streams by seeking to acquire, invest in and develop content that will engage consumers. We consider competition in these areas further in the sections below.

4.37 Music streaming services have been able to reduce the share of revenues that they pay out to rights holders from 73% in 2017 to 68% in 2021 (see Figure 2.10). This indicates that costs for licensing content can fall, notwithstanding the weak competition between record companies on the prices they charge music streaming services.

4.38 Our profitability analysis has also not found evidence of substantial and sustained excess profits by the majors that could be competed away to benefit consumers, for example through more investment in music (see Chapter 2). While there are limitations with the profitability analysis, the results of this analysis are consistent with our overall finding that competition elsewhere in the value chain is helping to ensure positive outcomes for consumers.

4.39 The weakness of competition to supply music to music streaming services, particularly on price, appears to be an inherent feature of the 'full catalogue' music streaming model. It does not appear straightforward to change the nature of upstream competition in a material way without a change to the model of music streaming itself, for example a shift away from 'full catalogue' content offerings to a more limited range of content.

4.40 Such models are available to consumers, for example genre-specific services. Consumers can also opt to buy a more limited range of content using digital downloads instead of using a music streaming service. However, there appears to be far less demand for these types of services, which can be a more expensive way for consumers to access music than a 'full catalogue' music streaming services. So, the logical consequence of meeting consumer demand for 'full catalogue' music streaming services at a relatively low price (which appears to be a reasonably good outcome that many consumers seem to prefer to alternatives) appears to be less intense competition upstream to supply music to these services (since, in summary, for each streaming service, all major sources of music need to be licensed).

4.41 Given this evidence and our analysis above, our view is that the limited competition in the supply of music to music streaming services is not a substantial cause for concern. We discuss how this view could change in a section below on future competitive dynamics.

The supply of music streaming services to consumers

Nature and strength of competition

4.42 The market leader in the UK in terms of users, streams and revenues is Spotify. It was the first to enter the market in 2008. The three other largest music streaming services are provided by Apple, Amazon and YouTube (which is part of Google) offering a choice of services to consumers, alongside a range of other smaller providers. Apple, Amazon and Google all have wider ecosystems and provide other related products and services. We refer to music streaming services that are part of these wider structures as 'integrated' streaming services.

4.43 Evidence gathered from music streaming services demonstrates that, as music streaming revenues are still growing, an important dimension for competition between music streaming services is acquiring new premium users (in particular, encouraging users to upgrade from ad-funded to paid-for premium tiers). This competition for new premium users is evident from what music streaming services have told us and their internal documents.[168]

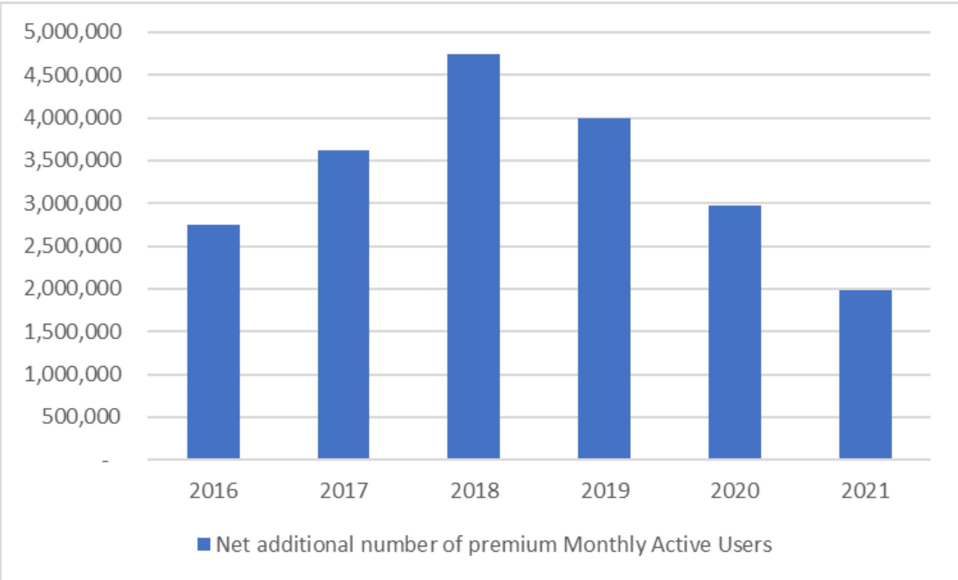
4.44 In 2021, six million consumers signed up for free trials of premium services and the number of premium users grew by nearly two million.[169] This significant growth and the large number of free trials offered is consistent with

[168] This includes evidence from meetings with music streaming services.
[169] CMA analysis of data provided by music streaming services.

music streaming services' focus on competition for new users. Also, data from one music streaming service indicates that [30-40%] of total premium plans in 2021 were additional new plans.[170] Such a high percentage of new premium plans indicates how important signing up new premium users is likely to be as a driver of competition.

4.45 While competition is currently focused on these new users, this may not continue indefinitely given that user growth is now falling. There has been a decline in the growth of premium users from its peak in 2018. In 2018, the net number of premium users grew by 4.7 million – i.e. there were 4.7 million more users signing up to premium plans than there were users cancelling premium plans. In 2021, this number of 'net additional premium users' dropped to 2 million (see Figure 4.1 below).

Figure 4.1: Annual net additional number of premium users



Source: CMA analysis of data from music streaming services.

Notes: The number of annual net additional premium users is defined as the total number of premium monthly active users in a given year minus the total number of premium monthly active users in the previous year. This is based on data on Premium users only for Spotify, YouTube Music Premium[171], Apple, Amazon, Deezer, Soundcloud and Tidal which have a combined streaming share of over 99% according to CMA analysis of data provided by Official Charts.

4.46 The fall in user growth may not be a concern given the scope for the market to continue growing further, but it does indicate that the focus of music streaming services may at some point, potentially soon, shift away from attracting new users towards retaining their existing customers and seeking to win customers from rival services.

[170] CMA analysis of data provided by a music streaming service [✂].
[171] Subscribers to YouTube's main subscription offering 'YouTube Premium', which also provides users with access to the same music content via both the YouTube and YouTube Music apps, have been excluded from this calculation and therefore the aggregate figure will be an underestimate.

4.47 We have also currently found no evidence of streaming services earning excess profits – indeed, we find low or negative operating margins for the music streaming services whose accounts we have been able to analyse. This profitability evidence is consistent with strong competition between music streaming services to provide services to consumers.

4.48 #Broken Record Campaign and a record company raised the concern that music streaming services may not be generating excess profits due to investments in unrelated services that are being cross-subsidised by music streaming (notably Spotify's entry into new formats such as podcasts and audiobooks).[172] Investments in other content formats might partially explain the lower margins of music streaming services. However, investment by music streaming services to expand the range of content a music streaming service offers is also consistent with strong competition. Further, offering new bundles of audio-formats may also serve to expand the market of those attracted to music streaming services and we note that streaming services anticipate that over time those additional services will become profitable.[173]

4.49 As described earlier, the prevailing model of music streaming is for a 'full catalogue', 'all you can eat' model. The offer to consumers from the most popular music streaming services is thus very similar in terms of their content as well as their headline prices – around £9.99 a month for individual, ad-free access.

4.50 We heard from streaming services that they thought it would be hard to move away from this price point for their individual tier. They explained that they were wary of increasing prices, even to keep pace with inflation, because of competition and consumer anchoring on the £9.99 a month price point. The £9.99 anchoring has remained stable over time meaning that the cost to consumers of these tiers has in fact reduced by 22% in real terms between 2009 (Spotify's launch of the £9.99 tier) and 2021.[174] However, we have observed price increases in student and multi-subscription tiers, and Apple has recently increased the price of its standard premium tier (see paragraph 2.91).

4.51 Music streaming services seek to differentiate themselves in ways other than their music content and price, including through their playlists, user functionality, and features such as audio quality or additional content such as

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172 Evidence from: #BrokenRecord Campaign response to Update Paper 22 August 2022.
173 We would expect this to occur if these new formats have higher anticipated margins than music, as Spotify has outlined to be the case for podcasts and audiobooks in their 2022 investor day transcript.
174 As referenced in Chapter 2, there have been a couple of increases from the £9.99 a month price point, however consumer prices have still been decreasing in real terms even in-light of these increases. Note: Inflation adjustment of £9.99 uses the *ONS CPI Index 22 June 2022 and is stated 2021 price year.*

podcasts. New price points are being introduced both above and below the headline premium price. These include student plans, family plans, voice-only and single device plans. Overall, consumer satisfaction with music streaming services is high (see para 2.113).

4.52 The ad-funded plans available on most music streaming services offer consumers access to broadly the same content as on the premium tiers. Their user interfaces, features and playlists are also similar, albeit more limited as described in Chapter 2. The rationale for these tiers is, broadly, to disincentivise consumers from opting for pirated content and to encourage them to pay for a premium subscription which provides much higher revenues that can be distributed across the value chain.

Barriers to entry and expansion

4.53 New music streaming services entering the market face large upfront costs, in terms of infrastructure and software investment, time and expertise to negotiate licences, as well as the ability to cover any minimum guarantees in the contracts with record companies. These upfront costs are likely to be a barrier to entry.

4.54 There also appear to have been early-mover advantages. These are likely to include brand recognition as well as switching costs and data advantage (more users leading to more data with which to continue to improve the service).

4.55 In addition, these early-mover advantages, combined with economies of scope arising from integration with other services and self-preferencing (as set out below) can help a music streaming service expand and consequentially benefit from economies of scale.

4.56 Integrated music streaming services control various combinations of the devices (smartphones, tablets, smart speakers), operating systems, app stores and search engines through which consumers discover and use music streaming services. This wider control provides the integrated music streaming services with competitive advantages over other music streaming services.

4.57 Through these devices, app stores and other access points they can offer their own music streaming services preferential placement, advantageous default positions,[175] and marketing privileges for cross-selling (all of which we

[175] Defaults may be particularly important on smart speakers – Ofcom found that 68% of respondents who use a smart speaker have not changed the default music provider. Ofcom (2022), Audio Survey question 8.

refer to as self-preferencing). They also have access to valuable data on consumer behaviour they can use to target customers, for instance those who have cancelled. Further, they can impose costs on the users of rival music streaming services that users of their own streaming service are not exposed to, for example through app store commission fees.[176] The European Commission is investigating Apple's rules for the distribution of music streaming services through its App Store.[177] The CMA is also conducting investigations into certain terms imposed by Apple and Google on app developers through their app stores.[178]

4.58 Integrated music streaming services can offer consumers bundles of their services. These can reduce the firms' costs of customer acquisition and enable them to realise efficiencies in, for example, the costs of administration or product development. In Chapter 2 we set out examples of bundles provided by integrated streaming services.

4.59 Non-integrated music streaming services have entered into partnerships with providers of other services such as mobile phones which can help them sign up new consumers and replicate some of the benefits of bundling and other cross-selling strategies used by integrated music streaming services.

4.60 Given the full catalogue model and the similarities in price points between music streaming services, bundling is a way for services to differentiate themselves and compete to acquire new users. While this and self-preferencing more broadly could support competition in the supply of music streaming services by enabling integrated music streaming services to help attain economies of scale (explored below), there is a risk that these strategies make it more difficult for smaller non-integrated music streaming services to remain in the market.

4.61 A particular concern expressed by some music streaming services about barriers to entry and expansion relates to potential cross-subsidisation of

[176] Commissions on in-app subscriptions would not impact consumer choice of music streaming service if costs were not passed on in the form of higher prices, or if subscribing outside of app presented no additional frictions. However, most music streaming services charge higher subscription prices in-app (ie YouTube Music, Amazon Music Unlimited, Soundcloud Go, etc.) and those not offering the ability to subscribe in-app (ie Spotify on iOS, Tidal on Google Play) require consumers to sign-up on a website instead which introduces additional friction into the sign-up process.

[177] See European Commission press release IP/21/2061: *Antitrust: Commission sends Statement of Objections to Apple on App Store rules for music streaming providers.*

[178] On 10 June 2022, the CMA launched an investigation under Chapter II of the Competition Act 1998 into suspected breaches of competition law by Google. The investigation concerns Google's distribution of apps on Android devices in the UK, in particular Google's Play Store rules which oblige app developers offering digital content to use Google's own payment system (Google Play Billing) for in-app purchases. On 3 March 2021, the CMA launched an investigation under Chapter II of the Competition Act 1998 into suspected breaches of competition law by Apple. The investigation concerns Apple's conduct in relation to the distribution of apps on iOS and iPadOS devices in the UK, in particular, the terms and conditions governing app developers' access to Apple's App Store.

music streaming services by the integrated providers, including the prospect that those integrated music streaming services do not need to run their streaming businesses profitably. If this were the case over the longer term, then it might create a barrier to smaller, non-integrated music streaming services entering and expanding in the market, as well as making it more difficult for existing non-integrated music streaming services to remain in the market. While cross-subsidisation could put downward pressure on prices, it could also inhibit innovation, choice and quality.

4.62 Both of the integrated music streaming services whose accounts we have analysed, have low or negative operating margins. However, we have not seen any evidence to suggest there is currently cross-subsidisation, nor that the integrated music streaming services are planning to continue running their music streaming businesses at a loss over the longer term, rather their current strategies are consistent with large upfront costs and the ability to improve profitability with further scale.

4.63 Spotify as a non-integrated service historically has also not been profitable and, based on its statutory filings, had a 1% operating margin across its entire business in 2021.[179] This suggests that a temporary period of loss making by an integrated music streaming service is not necessarily unusual or a cause for concern. Indeed, a temporary period of loss making (that could be recovered over a longer period) may be necessary to support market entry and is consistent with growing markets where there are economies of scale – it does not necessarily mean there is long-term cross-subsidisation.

4.64 Economies of scale also matter to competition between music streaming services. We have been told that in order to get better financial terms with rights holders or permission to introduce new features, a music streaming service needs to have sufficient scale in terms of its users to convince rights holders that agreeing to these new features is worthwhile. But, paradoxically, it is likely to be the ability to introduce new features that would enable new services to grow and reach such scale.

4.65 Given this, integrated music streaming services appear to be best placed to grow through the self-preferencing and bundling strategies described above. This is reflected by their recent growth in the UK (see Table 2.10).

4.66 Spotify (as the largest music streaming service in the UK) and growing integrated music streaming services are therefore more likely to be able to benefit from lower rates for music content and also more likely to be able to

[179] Spotify 2021 annual report.

introduce new features. This could in principle weaken competition by giving them a competitive advantage over smaller services, inhibiting the ability of smaller services to expand.

Barriers to switching

4.67 Consumer switching, or the threat of it, is important in maintaining effective competition within markets. At present we see limited evidence of consumers switching between paid-for music streaming services. However, we do observe some multi-homing (which is likely to be particularly driven by the use of ad-funded tiers), free trials, cancellation of premium subscriptions, and different music streaming services being better integrated on certain platforms.

4.68 Our analysis of cancellation rates for premium services estimates that the average cancellation rates for the four largest music streaming services to be above 4% each month over the last few years, suggesting quite high levels of engagement with subscriptions.[180] There are various reasons why people might cancel their premium service, including coming to the end of free trials, moving from the premium service to the ad-funded service with the same provider and switching between premium services offered by different providers.

4.69 As part of the process of cancellation, [✂] a music streaming service asks its outgoing customers the reason for cancelling their premium accounts.[181] Of the customers who chose to provide their rationale for cancellation, by far the most common responses related to the affordability of the service or to low levels of usage. Just [5-10]% of respondents said they had found another music service they prefer. This suggests that most people cancelling their premium subscription were ceasing to pay for a premium service altogether, rather than switching directly to another premium service. This should be treated with caution, however, as only a small proportion of users who cancel respond to the cancellation survey and due to the survey question asking for the main reason for cancellation rather than explicitly asking whether or not a customer switched.

[180] CMA analysis of data from music streaming services. The monthly cancellation rate is the total number of active cancellations (a user explicitly took an action to cancel, such as changing their account settings) and passive cancellations (a payment method fails to process and so the user can no longer access a paid-for plan in a given month) divided by the total number of paid-for-plans in that month. Where only annual figures are available, the CMA has used the annual number of users as an approximate estimate for monthly users to provide the lower bound of the monthly cancelation rate.
[181] CMA analysis of data provided by a music streaming service [✂]. Data relates to UK [✂] customers cancelling their [✂] subscription between [✂] 2022 and [✂] 2022.

4.70 There are other factors suggesting that the prevalence of switching between premium streaming services is quite limited at this stage. In particular, as noted earlier, we understand that music streaming services have been primarily focussed on attracting new users (ie those who do not already use a paid-for streaming service) rather than prioritising switching, given the expectations that the market would grow further.

4.71 The ‘full catalogue’ offer of the biggest music streaming services and high satisfaction rates with these services – and the fact that they all offer very similar pricing – also suggests there could be limited incentive for consumers to spend time on switching between services, which could partly explain the lack of switching. If consumers of one service believed that they were not getting a competitive offer and were considering switching, there are regular free trials, as well as ad-funded tiers, to enable them to try out different services whilst retaining their data on services they might potentially switch from. Paid subscriptions are typically on a month-by-month basis.

4.72 While it is reasonably easy to subscribe to a new music streaming service, consumers may be reluctant to switch when they have curated their own playlists or where their streaming service has developed a good understanding of the music they like, resulting in highly valued personalised recommendations which a different streaming service may not be able to replicate.

4.73 There are a few music data portability services which facilitate the transfer of playlists, music data history and downloads between customer accounts on different platforms.[182] These services are offered direct-to-consumer with free and premium options, and they could help address consumer caution regarding switching associated with wishing to retain their listening history. We note that while some smaller music streaming services provide data portability services for free to customers that switch to them, none of the larger ones do so. This suggests that most switching and data porting could still involve some costs or frictions for consumers.[183]

4.74 Currently, consumer awareness of the availability of data portability services appears to be low – one of these services (Soundiiz)[184] cited this as a reason why some consumers may not have tried to switch from their streaming providers. Limits to the functionality of these services – for example, they may not have access to the full ‘playback’ music history of the consumer (which helps to determine the personalised recommendations and playlists offered by

[182] See, for example: Plans guide - Soundiiz, last.fm and Plans - TunemyMusic.
[183] See, for example, Transfer your playlists and music to Deezer for free and Playlist Import | TIDAL.
[184] Evidence from meeting with Soundiiz.

the music streaming services) – may also reduce usage of these services at this stage. It is difficult to predict how switching services, and consumer awareness of them, will evolve as switching may become more important to competition as growth opportunities from new users decline.

4.75 The social dimension of music streaming services, where consumers can share and co-create playlists and connect with friends on the platform, may incentivise switching to services with these offerings initially, but also limit propensity to switch longer term.

4.76 Our view is that, while there may be some barriers to switching, they are not currently a major problem to the functioning of the market given the focus of competition on new users. This could change, for instance when market penetration stabilises and the threat of switching becomes more important for effective competition. In that scenario, data portability issues may play a bigger role in ensuring competition works effectively. We would also be concerned if there were changes to pricing structures that meant long-standing or less active customers who had not switched ended up paying significantly more than new customers, as we have seen in some other markets.

Barriers to innovation

4.77 There has been substantial innovation in music streaming over time across a range of music streaming services, indicating strong rivalry between music streaming services.

4.78 One key dimension in which we see firms differentiating is improving the consumer experience. Examples of this in recent years include advances in audio quality across multiple music streaming services[185] alongside a variety of widely adopted functionality improvements such as the introduction of song lyrics[186] and other new features which are specific to only one or a few music streaming services, such as SoundCloud mastering.[187] Music streaming services compete to improve the options for how consumers are able to listen to and discover music from new types of editorial playlists[188] to using algorithms to offer consumers personalised playlists.[189] Streaming services

[185] Tidal has seen its *HiFi audio quality* as a major selling point, however almost all major music streaming platforms have launched some form of high quality audio in recent years. Amazon appear to have taken this a step further by launching *'Ultra HD' audio* on millions of songs in 2020.
[186] Spotify (2021), *You Can Now Find the Lyrics to Your Favorite Songs in Spotify. Here's How.*
[187] SoundCloud (2020), *Mastering on SoundCloud Powered by Dolby*
[188] For example, Amazon *[RE]DISCOVER* is a regular feature that promotes users to reconnect with 'loved' music.
[189] For example, Deezer's *'Flow moods'* feature offers users personalised playlists based on their selected mood using algorithms and editorial suggestions.

have also varied their product offerings through the introduction of different price plans such as family plans, DUO and voice-only access.[190]

4.79 Some innovations are also aimed at improving the experience for artists, with all major music streaming services now offering artist analytics features as well as additional artist services like YouTube's 'Creator in Residence' program.[191]

4.80 Despite the level of innovation observed in the market, we also have heard concerns that, as a result of the balance of power between music streaming services and major labels, and the contractual agreements between them, there has been less innovation than there might otherwise have been. There are two main aspects to this.

4.81 First, is the sheer complexity and quantity of contracts required which can slow the pace of innovation within music streaming services. Music streaming services have described how the introduction of any potential innovation will necessarily involve negotiating with a large number of counterparties. Further, in relation to each individual counterparty, identifying the relevant contractual clauses for amendment and then agreeing on suitable changes with music companies can be burdensome. Some music streaming services also told us that to gain a major's agreement to a potential innovation the corresponding concessions required by music companies can appear unrelated to the change they are attempting, especially when the streaming service views the innovation as beneficial for all parties.

4.82 Second, specific service level specifications or restrictions limit the ability of streaming services to differentiate their service offering and functionality, particularly on the ad-funded tiers. Both record companies and music streaming services have an incentive to encourage consumers to move from ad-funded tiers to premium subscription tiers because they get more revenue that way. However, the majors may be less enthusiastic about the ad-funded tiers than the streaming services as they might consider it undervalues their content and because of their past experience of the impact of piracy on revenues. This would appear to translate to them requiring that the ad-funded tiers are sufficiently limited that consumers are incentivised to upgrade.

4.83 Contractual restrictions, and more generally the need for a music streaming service to negotiate with rightsholders what key features it offers, appears to be an inherent part of the licensing process, with the financial terms negotiated depending on the features agreed. Premium tiers offer consumers

[190] See Table 2.12 for details on different price plans introduced by music streaming services.
[191] YouTube's *Creator in Residence* programme provides creators a direct feedback mechanism.

additional features compared to ad-funded tiers, and the financial terms agreed reflect this. The result is that music streaming services pay rightsholders more to offer premium tiers. As such, in order to introduce new features, a music streaming service may need to make a financial concession to rightsholders, for example through higher per stream minimum fees. This can mean the introduction of certain features on such plans is sometimes abandoned if a mutually acceptable commercial outcome is not achievable.

4.84 It is also true that innovations usually involve some degree of risk, and music companies may have lower risk appetites than music streaming services, given their experience of piracy and the impact that it had on revenues.

4.85 We have seen very few specific examples of blocked innovation in music streaming. Our view is that while innovation in music streaming may be restricted to some extent by contractual clauses, interventions to remove or relax contractual restrictions are not likely to have a significant impact on innovation or competition in music streaming (and could have unintended consequences). In particular, music streaming services would still need to negotiate with multiple rightsholders on the financial terms over how their content can be used. It is these complex negotiations that appear to be the main barrier to even greater innovation, but these negotiations appear to be an inherent part of the licensing process.

Impact and transparency of playlists

4.86 Given the vast amount of music available on music streaming services, it is vital that the catalogue is appropriately organised and easy for consumers to navigate. Music streaming services have developed recommendation systems, including a range of playlists, to help consumers navigate their content and find the music they want. The quality of the experience of finding music is also a key way that music streaming services differentiate themselves.

4.87 Consumer research suggests user satisfaction with music recommendation systems. CDEI research found that most people who have listened to recommended songs / playlists on streaming services are happy with the recommendations (59% mostly happy, 14% always happy). Users also generally agree that these recommendations mean they now listen to a wider variety of music (net agreement +68) and to more ‘lesser known’ artists (net agreement +58) than before they used music streaming services.[192]

[192] CDEI Deltapoll survey, QCD15,16 (forthcoming).

4.88 However, some stakeholders raised concerns about the lack of transparency regarding the use of algorithms by music streaming services, how the composition of playlists is shaped, and how this influences the music that consumers listen to.[193]

4.89 We also received submissions on the importance of editorial playlists to music discovery and hence their importance to artists. Concerns were raised about a lack of fairness or transparency as to how tracks are selected for inclusion on them, with suggestions that the majors get preferential treatment (see Chapter 5 for further discussion of how playlisting impacts on competition for artists).

4.90 We have considered the available evidence on what consumers think of the recommendation systems music streaming services provide. CDEI research found most people who have listened to recommended song / playlists agree (61%) that they would like more information about why they get given specific recommendations. Views were evenly split as to whether people are concerned about unfair bias in the recommendations and the impact it might have on listening habits. There was also an even split in the proportion of people agreeing and disagreeing that they are concerned about unfair bias and the impact it might have on artists.[194]

4.91 The main music streaming services have outlined their approach to making recommendations is to satisfy users (see also Chapter 5). For example, Spotify told us that it has an editorial team of music experts and genre specialists who curate and manage its editorial playlists, which include its most popular playlists.[195] Spotify added that it provides listeners with many customised and general playlist options, but it does not generally enter into arrangements with third parties that dictate the placement of content on playlists. Apple told us it does not have promoted playlists, where someone pays Apple money to influence what content consumers listen to on Apple Music.[196]

4.92 In relation to the use of algorithms in recommendation systems, music streaming services have highlighted how they can help consumers discover tracks they may enjoy. One music streaming service, for example, said it measures the success of an algorithmically generated playlist by the level of customer engagement (based on number of customers played, volume of plays, and engagement with playlist features, such as adds to library, follows, and skips).[197] Google added that through its algorithmically-generated

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[193] See, for example, Believe and #BrokenRecord Campaign responses to the Update Paper.
[194] CDEI Deltapoll survey, QCD23 (forthcoming).
[195] Spotify information provided to the CMA.
[196] Apple information provided to the CMA.
[197] [✂] Music streaming service information provided to the CMA.

playlists and recommendation tools, YouTube and YouTube Music offer music companies the opportunity to access new audiences that were not already familiar with the content they hold rights to.[198]

4.93 As discussed in Chapter 5, we have not found evidence of contractual clauses which significantly impinge upon the ability of streaming services to decide what music to include within playlists. We are mindful that users of streaming services have multiple routes they can take to discover and consume music, each time that they access their service. It therefore seems unlikely that consumer choice will be unduly restricted or biased, and we would expect competing streaming services to have incentives to help match users with music that they enjoy listening to.

4.94 While we have not been presented with evidence of independent labels and their artists being treated unfavourably, we consider that transparency regarding playlisting, and recommendation systems more broadly, could help to address stakeholder uncertainty about how these systems work. It could also aid informed consumer choice: first, between streaming services; and, second, between different ways of accessing music when using these services.

4.95 Spotify, for example, does provide some information for artists about its approach to playlisting, although the descriptions of how algorithmic playlists are put together are limited and high-level.[199] Noting CDEI's research findings above, we would encourage music streaming services to consider providing more insights on their approach to playlisting, including specific examples of how they use algorithms. This type of information could be directed not only at artists, but also at consumers of streaming services.

Conclusions

4.96 The evidence we have seen indicates that competition between music streaming services is working reasonably well for consumers, at least insofar as there remains competition for new users. Consumers have a choice of music streaming services, new features and additional content have been introduced, and consumer satisfaction with music streaming services is high. Moreover, consumers are able to use music streaming services for a fixed monthly price, which has fallen in real terms, or for free via ad-funded services. Issues such as high entry costs, barriers to switching, and barriers to innovation, do not currently raise substantial competition concerns; in the next

[198] Google information provided to the CMA.
[199] https://artists.spotify.com/playlisting.

section, we discuss some potential future developments that could affect competition.

4.97 We have found no suggestion of sustained excess profits – indeed, the music streaming services whose accounts we have analysed show low or negative operating margins.

4.98 There may be high upfront entry costs and, in particular, greater barriers to entry and expansion for smaller non-integrated music streaming services. These services have neither the early-mover advantages or the economies of scale of the market leader, Spotify, nor the economies of scope and ability to self-preference that the integrated music streaming services have. The main competition to Spotify appears to be coming from the integrated streaming services. This may be, in part, because of their economies of scope and ability to self-preference. In light of the continued evolution of the market for the supply of music streaming, we have not, at this stage in the sector's development, reached a view on how substantial the competition concerns are from barriers to entry and expansion in music streaming including those that may arise from self-preferencing. However, we discuss in the section below what could lead to substantial competition concerns in the future.

4.99 While there are potential barriers to consumer switching, these are not a significant competition concern at present given the focus on attracting new users. This could change as the pool of potential new users continues to decline.

4.100 There are some barriers to innovation in the market due to the way music companies seek to exercise their intellectual property rights and their associated bargaining power. At present there is limited evidence of blocked innovation, though there is greater evidence around the concern that the pace at which innovation can be brought to market is being slowed.

4.101 It may be inevitable that there will be some constraints on the way in which the recordings and songs can be used, given the music streaming services seeking to innovate are using the intellectual property licensed by music companies. Those music companies can reasonably expect some control over the exploitation of their rights in order to protect their investments and artists. The sheer number of rights holders from whom the music streaming services license music may limit the speed at which changes to the status quo can be agreed, restricting innovation.

Future competitive dynamics

4.102 Although our view is that competition appears to be working reasonably well, there are some future developments that could influence how effectively it continues to operate.

4.103 Spotify, the current market leader, faces the strongest competition, at present, from integrated streaming services. As described above, these integrated services could make it more difficult for other streaming services to enter, expand or even remain in the market. If the strength of these integrated services were to grow, including through consolidation or the exit of competitors, that could exacerbate any difficulties that non-integrated streaming services have to enter or expand in the market. In that scenario, the focus would be to consider how the apparent benefits of integration should be considered in light of the interactions between the music streaming service and the integrated firm's wider digital ecosystems.

4.104 While the indicators of competition between music streaming service providers we have considered suggest the market is relatively healthy at present, it is possible that competitive pressure between music streaming services could lessen, due to market exit, consolidation, exclusionary behaviour by integrated providers, lack of switching or market saturation, leading to sustained and substantial excess profits. While the majors may still have significant influence over some of the features of these services, less competition between music streaming services could, for example, lead to higher consumer prices of these services. Similarly, there could be lower levels of innovation, either due to reduced competitive pressure, or because music companies and music streaming services fail to reach agreement on licensing terms for particular services.

4.105 We highlighted above that an important dimension of competition at present is attracting new customers. As the proportion of people using music streaming services continues to increase, the pool of potential new users will diminish, as indicated by Figure 4.1 above. In the future, the pool of potential new users may reach a point where a greater emphasis on switching between streaming services is needed to drive effective competition. The extent to which the barriers to switching that may exist limit the willingness or ability of consumers to switch will influence how effectively competition drives positive outcomes for consumers. If social features were to become more important to consumers' choice of music streaming service, this could potentially impact competition by introducing stronger network effects that established music streaming services or existing social network-based services could leverage. We might also have concerns if music streaming services sought to charge loyal customers more and only offer more competitive deals to new users or those customers that switch.

4.106 Record companies' incentives to support the growth in premium users may also change when there is no longer significant growth potential in the market. For example, record companies may currently be supportive of premium plans being priced at a level that encourages new users to sign up to them. A possible risk is that with fewer potential new users, record companies may have weaker incentives to be as supportive as they have been. In the future, record companies could shift their focus in licensing negotiations away from terms that could help expand the premium user base towards terms that maximise revenues from existing users, for example by increasing the minimum fee a record company receives per subscriber. This, in turn, could lead to higher consumer prices. To discourage consumers from switching back to ad-funded offerings in response to higher prices, record companies could also seek to reduce the quality of ad-funded services, for example through licensing restrictions on the features they can offer. While record companies may not engage in these type of strategies (for example because it remains important to ensure new users take up premium music streaming services), the risk of them materialising is greater when there is weak competition between record companies to supply music to music streaming services.

4.107 Another matter of importance to future competition is the way that consumers access music streaming services – in particular, the degree to which there is integration between services and devices. There has been growth in both the ownership of smart speakers and in the volume of streaming that takes place through them. The primary providers of smart speakers are the same integrated tech firms that supply music streaming services – Apple, Amazon and Google. If the growth and use of smart speakers continues, whether and how easily consumers are able to use music streaming services other than those provided by the provider of the smart speaker could impact competition in the streaming services market.[200]

4.108 Data collection by providers of smart speakers on, for instance, the use of streaming services or listening habits and the extent to which such data is shared with streaming services could also affect competition.

4.109 There are other means of accessing music streaming services, for instance through in-car infotainment systems, and new developments could see others. As with smart speakers, the interaction between these, the providers of

[200] There are parallels here with some of the issues considered in the CMA's Mobile ecosystems market study.

streaming services and how consumers use them is another area that may affect future competition.

4.110 It is also possible that greater use of smart speakers, other devices and related 'voice-only' plans being offered by some music streaming services influences how and what people listen to. For example, it may be that playlists, autoplay and recommendations are more prevalent means of consuming music on smart speakers compared to accessing a streaming service through a mobile app. In turn, this might be expected to have implications for music companies, creators and competition between them. Some of the contractual clauses we have described above related to non-discrimination and playlisting could become more significant to what consumers hear and the functioning of the market. The greater use of these mechanisms for music discovery and consumption could be a cause for uncertainty and concern for consumers and artists if their operation, including any underlying algorithms, is not fair and transparent.

5. Analysis on how well competition is working for creators

5.1 In this chapter we assess how well competition between record companies is working at serving artists, and between music publishers at serving songwriters. For songwriters, we focus on whether there are any competition issues arising from music publishers' integration with record companies.

5.2 As part of our assessment, we consider both the current state of competition and how it might evolve.

Artists

5.3 Stakeholders raised concerns that artists are poorly compensated while elsewhere in the value chain substantial profits are being made. Some stakeholders were concerned that this was due to the concentrated nature of the market, particularly the majors' high share of streams on music streaming services, which in turn puts artists in a weak bargaining position when they sign a record deal. Another particular concern was that artists do not have enough information to effectively evaluate and choose between offers they may receive from recording companies.

Market concentration

5.4 As set out in Chapter 2, the majors have high and relatively stable shares of music streams in the UK, and their combined share has been consistently over 70% since 2015 (see Table 2.2). Over more recent years indies have steadily grown their market share from 21% in 2017 to 25% in 2021, but the overall share of the majors remains large.

5.5 Despite this growth, individually the indies have not been able to achieve significant scale. While there are many indies operating in the markets and whilst there are some larger independent labels (eg BMG, Beggars), artist service providers (eg Believe, BMG) and DIY distributors (e.g. TuneCore, DistroKid, CD Baby), of these only BMG and Beggars had a share in excess of 1% and none in excess of 3%.[201] In addition, there have been a number of recent mergers and acquisitions of smaller record companies by the majors, particularly in the area of A&L services.[202]

[201] BPI (2021), All About The Music, p48.
[202] Such as UMG's acquisition of Ingrooves in 2019 (See: UNIVERSAL MUSIC GROUP TO ACQUIRE INGROOVES MUSIC GROUP - UMG) and Sony Music's recently competed acquisition of AWAL (See: CMA 16

How competition to sign artists has evolved in the streaming era

5.6 Notwithstanding the stable shares of supply, there has been an increase in competition to sign certain artists.

5.7 Internal documents from the majors suggest that there is increasingly strong competition between majors for artists who have a track record of success or have been identified as having high potential. Competition for these artists has intensified due to the increased availability of data on artist performance from music streaming services, social media and UUC services. For example, the strategy documents of one major state that the 'Major label competitive landscape is fierce', that 'widespread availability of streaming and other data has increased bidding wars'[203] and that increased competition for signings is 'particularly for artists identified by data available to all labels as high-potential or proven'.[204] This is supported by evidence set out below that shows that the average terms offered by majors to new artists has improved across a range of measures since 2012.

5.8 While competition has intensified for high-potential and proven artists, we also found evidence that lesser-known artists may not have benefited to the same extent from increased competition. For example, one of the major's strategy documents referred to 'smaller deals proving easier to hold our traditional terms on.'[205]

5.9 Independent record companies, particularly alternative business models such as service deals from A&L service providers,[206] have emerged as competitors to the majors, although a range of evidence indicates that this threat may be limited. In particular, A&L service providers are often competing to sign different types of artists to the majors:[207]

- In the strategy documents of the majors, A&L service providers were described as a competitive threat. For example, in the strategy presentation to its board, one major noted that the emergence of new

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March 2022: *Completed acquisition by Sony Music Entertainment of AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited Final report*.

[203] [✂] information provided to the CMA.

[204] [✂] information provided to the CMA.

[205] [✂] information provided to the CMA.

[206] As we discuss in Chapter 2 there have been changes to the mix of business models used to serve artists, in particular the emergence of service deals from A&L service providers and also DIY platforms that offer artists and smaller labels distribution to music streaming services.

[207] The Sony/Awal merger inquiry concluded that whilst music companies outside the majors, notably the artists service providers do provide some competitive constraint on the majors this constraint was relatively limited (paragraph 8.59). The inquiry also found that that competition between a major and artists services providers occurred outside of the largest artists (paragraph 8.20). CMA 16 March 2022: *Completed acquisition by Sony Music Entertainment of AWAL and Kobalt Neighbouring rights businesses from Kobalt Music Group Limited.*

business models (amongst other things) represented a competitive threat.[208]

- However, the threat from A&L services was considered to be a limited one. In another strategy document, focused more specifically on competition on the artist side of the market, the same major noted that distribution or A&L services options were thought to be a limited substitute for the traditional record deal.[209]

- Evidence from indies indicated whilst there is competition between majors and indies to sign some artists, they are often competing in different parts of the market, with independents being more likely to sign mid-tier artists than top-tier artists. For example, one stated that 'Our main competitors are other independent labels operating in the same musical area as ourselves, and also the three majors in some instances',[210] whilst the AIM stated that 'It is interesting to observe that, whilst majors almost completely dominate the top 1,000 artists in streaming, the independents over-index in the top 10,000 artists'.[211]

5.10 We discuss in the next section on barriers to expansion why the competitive constraint from the indies (including the A&L services they offer) on the majors is limited by factors such as the financial and commercial strength of the majors and their ability to fund larger advances and global marketing campaigns. We also discuss in the section on the bargaining power of artists how an increase in competitive intensity appears to have improved the financial and contractual outcomes achieved by some artists, notably those who have a track record of success or are of high potential.

Barriers to expansion in recorded music

5.11 The persistent high market shares enjoyed by the majors, as well as the fragmented nature of the shares of music companies outside of the majors, are indicative of significant barriers to expansion within the market. The evidence suggests that the majors' scale provides them with significant advantages over the indies, which limits the prospects of their significant expansion. In particular, in the streaming age, the majors' ownership of large back catalogues of music provides them with revenue streams from which

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[208] [✂] information provided to the CMA.
[209] [✂] information provided to the CMA.
[210] [✂] Information provided to the CMA.
[211] AIM response to CMA's Statement of Scope.

they can fund large advance payments to artists and global marketing campaigns.

5.12 In 2021, 86% of streams were for back catalogue music (which we define as any musical work first streamed in previous years) and as a result it accounted for a high proportion of streaming revenues. In 2021, 76% of those streams were of music owned by the majors.[212] The revenue from this catalogue music can be highly profitable as it generally requires significantly less expenditure on A&R and marketing costs than new music. The internal budget documents of one major show that, whilst catalogue music contributed a slightly higher level of overall revenues compared to new music, it required [60-70]% of ongoing annual direct expenditure (which includes expenditure on artist royalties and direct overhead in addition to A&R and direct marketing). One reason for this is because, as catalogue music has already been released, it already has an established listener base.[213]

5.13 Indies, without the benefit of large cashflows generated by catalogue music, can struggle to compete with the majors. AIM's submission to the DCMS Committee reflects these challenges and the wider views we received on them from stakeholders in the independent sector:

'Independent labels are often less able to benefit from large parent company balance sheets or the robust streaming cashflows from large catalogues of recordings and so compete on reputation, expertise and specificity where they cannot write the same size cheques as the biggest players.'[214]

5.14 In addition, the majors have a wider global presence than independent labels, which gives the majors a competitive advantage in promoting artists on a global basis. For example, when asked why some artists would prefer to sign for a major, one independent record label listed various reasons which included their size and international scale.[215] In a presentation to investors one major stated that 'It would be difficult, if not impossible, for anyone else to do what a major does as they don't have the expertise, the global reach and the infrastructure.' [216]

Impact of terms in majors' contracts with music streaming services

5.15 A number of concerns were raised with us about how the terms of the majors' contracts with music streaming services may provide them with a competitive

[212] CMA analysis of Official Charts data.
[213] [✂] information provided to the CMA.
[214] https://committees.parliament.uk/writtenevidence/15352/pdf/.
[215] Evidence from meeting with one independent record company 17 March 2022.
[216] [✂] information provided to the CMA.

advantage over non-majors. These concerns were about the placement and prominence of artists on music streaming services, the ability of the majors to achieve better commercial terms, and their ability to secure preferential access to data.

Placement and prominence of artists on music streaming services

5.16 A particular concern raised with us was the impact of licensing arrangements and the market power of the majors on the placement and prominence of their artists on music streaming services.

5.17 The #BrokenRecord Campaign, for example, said we should investigate the power of editorial playlisting and the extent to which the majors are favoured in this process of discovery of new music, making it difficult for other artists to get promoted and discovered by listeners.[217] IMPALA raised similar concerns about the compiling of playlists stating the inclusion of repertoire on them is extremely opaque. It claimed the overwhelming presence of content belonging to major labels is linked to their negotiating position when licences are entered into.[218]

5.18 There are various factors that influence the prominence of artists on music streaming services which can be hard to distinguish, but we have sought to assess different pieces of evidence on what opportunities there are for indies to promote their music. As part of this, we have considered whether the majors' playlisting clauses (see Chapter 3) are significantly disadvantaging other record companies from promoting their artists and facilitating their discovery.

Music discovery and the role of playlists

5.19 In addition to music streaming services themselves, there are a number of other important channels for music discovery. For example, CDEI research found that while 22% of people typically get new music recommendations from streaming platforms, more people referenced the radio (39%), friends / family (31%) and social media (25%).[219]

[217] #BrokenRecord Campaign response to the Update Paper.
[218] IMPALA response to the Update Paper.
[219] CDEI Deltapoll Survey, QCD3 (forthcoming).

Figure 5.1: Multiple channels of music discovery

5.20 Meanwhile, Ofcom research found that among those who listen to online music, the most common way of choosing what music to listen to was ‘my own playlists’ (60%), compared to 29% who said they used the ‘playlists provided by the service’.[220] As set out in Chapter 2, our research found 42% of streams are from playlists that users have put together themselves, and hence the direct impacts of promotions on listening may be limited.

5.21 However, as stakeholders have highlighted, some of the tracks on these playlists will initially have been discovered by users as a result of listening to editorial or algorithmic / algotorial playlists put together by the streaming services. In addition, ERA research found that around 40% of its consumer panel stated that service-curated playlists are either important or very important to them.[221] We therefore consider that access to playlisting on music streaming services is important for artists and their labels to promote their music. In particular, playlists that are promoted as enabling listeners to discover newly released music, now play a significant role (alongside other channels) in helping artists to build new audiences.

[220] Ofcom (2022), Audio Survey, question 16.
[221] ERA Yearbook 2022, p89.

External research on playlists

5.22 We have reviewed some external research and analysis into playlisting, as well as evidence collected directly from streaming services using our formal information gathering powers.

5.23 Research referenced in academic analysis exploring access to playlists suggests that the majors' recordings made up 81% of the tracks on Spotify's Top 100 playlists in 2020.[222] This share is comparable to the majors' combined share of 76% of total UK streams in 2020 and 77% in 2019 (see Table 2.2). Based on the same academic analysis, the majors' representation drops to 77% of tracks on Spotify's Top 1,000 playlists, with a further drop to 65% for Spotify's Top 100,000 playlists.

5.24 We recognise that the majors are likely to have a substantial share of the most streamed playlists - particularly those that are positioned as, and/or derived by, being made up of the top hits in the most popular genres. This is as a result of the majors' high share of the recorded music market over many years and having signed many of the most popular artists. Regardless of the contractual arrangements, music streaming services are likely to have an incentive to facilitate easy access to music that has proven to be popular.

5.25 Other external research suggests that the share of independent record company artists' tracks on Spotify's leading discovery playlist 'New Music Friday' has been broadly comparable to, or greater than, their overall share of streams.[223] Another study found that 53.5% of all the music content promoted on Spotify's Twitter account was major label content, suggesting that the share of 'non-major' music promoted in this way exceeded its overall market share.[224]

Evidence from music streaming services on recommendation systems and playlists

5.26 We asked the four main streaming services to explain how their recommendation systems and processes enable consumers to discover new and catalogue music from artists that do not have a recording deal with major

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[222] Music streaming: Is it a level playing field?, Daniel Antal, Amelia Fletcher & Peter Ormosi, Competition Policy International Antitrust Chronicle (2021). This analysis was based on a sample of tracks on Spotify in the UK.
[223] Research conducted by Parth Sinha & Pavel Telica, and analysed / reported by Julie Knibbe, found the majors accounted for 70% of tracks on Spotify's New Music Friday global playlist and 65% of tracks on New Music Friday UK between 2018 and 2021, *Is the Spotify Editorial Playlist Landscape Fair to Emerging Artists?*, Music Tomorrow Blog, 27 April 2022.
[224] *Platform pop: disentangling Spotify's intermediary role in the music industry*, Robert Prey, Marc Esteve Del Valle & Leslie Zwerner, Published by Information, Communication & Society, 22 May 2020.

labels ('non-major artists') and also whether these artists have reasonable access to promotional opportunities.[225] In summary, they told us:

- It was generally stated that their recommendation systems and processes enable consumers to discover new and catalogue music regardless of label status. Whether or not an artist has a recording deal with a major label was said to not determine the overall design of recommendation systems and processes. Their focus instead is on listener engagement and user satisfaction.
- In relation to editorial playlisting, it was generally highlighted that they operate submission and selection processes which are equally open to all artists, with label status not factoring into decisions.
- Google added that songs from artists who choose to upload their music directly to YouTube without a label are included in YouTube's 'algorithmic playlist', 'autoplay' and home recommendation algorithms.

5.27 We also asked the main streaming services to what extent any contractual obligations they have agreed with the major labels could disadvantage non-major artists in terms of access to promotion on their service and how this is managed. In response:

- Two music streaming services said they do not have contractual obligations with any label that would require them to promote their music on the music streaming service.
- One music streaming service said that, while its contractual agreements with the major labels do contain certain obligations relating to playlisting and marketing for major artists, which seek to ensure that they are each reflected in a way that is commensurate to their respective market segment share, it has so far retained its ability to programme its service based on customer preferences and thus in a way that is record-label-agnostic which does not disadvantage non-major artists.
- One music streaming service stated that it is bound by certain contractual obligations that govern the balance of content from major and non-major artists within playlists. However, it added that when determining the composition of individual playlists (ie the representation of tracks within playlists) or when recommending and/or promoting playlists to users, it applies the same principles regardless of whether the relevant

[225] Information provided by Amazon, Apple, Google and Spotify to the CMA.

rightsholder is a major or a non-major, or whether the playlist is user-generated, editorial, or algorithmic.

5.28 In addition, we asked the four main streaming services to identify their top editorial or algotorial non-personalised playlists (i.e. playlists that contain the same tracks for all users) designed for the discovery of newly released music. For each of these playlists, we asked for a breakdown of the respective shares of the tracks listed in 2021 for the majors and for non-major artists. The key findings are below:

- For the top cross-genre playlists that focus on newly released tracks, the share of indie music listed on these playlists was in the range of 30-45%. This exceeds the 25% share for indies' of all music streamed in 2021 (see Table 2.2), suggesting the indies' artists do not appear to be under-represented on the main discovery playlists if compared to their overall streaming market share. [226]

- Where the main discovery playlists focus on specific genres, the majors' share of listing on these playlists varies depending on the genre of the playlist – it is much higher for pop playlists than for indie genre music playlists, for example. This may indicate that where the repertoires of independent labels have particular areas of strength – e.g. in indie music – that this is reflected in the composition of discovery playlists.

- Specifically, for Amazon Music, across its [✂] UK-relevant new music editorial playlists, repertoire from indies accounted for [40-50]% of the [✂] total distinct track selections in 2021.

5.29 Alongside editorial playlists, algorithmic playlists have an important role in enabling users of streaming services to discover new music. Spotify's algorithmic Discover Weekly playlist had over 700m streams in 2021, for example. Spotify said this consists of 30 tracks refreshed every Monday which seek to reflect the user's taste and are new to that user. It added the playlist composition considers several signals, including what Spotify users are listening to and the listening habits of people that have similar tastes.[227] Meanwhile, we were told the share of indie tracks streamed via Amazon Music's algorithmic playlist My Discovery Mix was [30-40]% in 2021.[228]

[226] As noted in Chapter 3, some agreements contain obligations on the music streaming service to ensure that a major's share of tracks within some playlists broadly corresponds to its overall share of streams.
[227] Spotify information provided to the CMA.
[228] My Discovery Mix is an algorithmic playlist that provides per-customer recommendations for music discovery (although not confined to new music) based on their listening preferences, specifically highlighting songs they have not listened to from similar artists to those they have.

Our assessment

5.30 Overall, this evidence suggests that while the majority of tracks listed on discovery playlists are licensed by the majors, the proportion is lower than the majors' combined share of total streams. Artists that are not signed to a major do have reasonable opportunities to reach new listeners via discovery playlists and they do not appear to be significantly disadvantaged on playlists relative to artists signed to majors. In addition, as noted above, Spotify's Discovery Mode is an example of an initiative that offers all labels a commercial opportunity to promote specific tracks on parts of the service.

5.31 More broadly, we consider that streaming services have an incentive to match users with music that they like, regardless of whether or not it is from a major, and this is in part due to competition between music streaming services to attract and retain users. So, these services are unlikely to significantly under-represent music from their playlists or recommendations on the basis that the recording rights are not held by a major, particularly if their usage data indicates some level of popularity among their user base.

5.32 As discussed in Chapter 3, our analysis of majors' licensing and marketing arrangements with music streaming services shows that the majors do seek to influence the placement and prominence of their repertoire on music streaming services. This includes some use of contractual playlisting clauses that broadly base a major's representation on some playlists on its share of streams.

5.33 Taking account of the evidence discussed above, we conclude that the contractual clauses that relate to playlisting do not significantly constrain the approach taken by streaming services on the prominence and placement of music on their service. The streaming services have told us they still have flexibility to promote content from indies. Consistent with this, we found evidence of significant variation of the majors' and indies' representation across different playlists, for example depending on the genre of music on the playlist or the extent to which the playlist focuses on newly released music. In this respect, the clauses could therefore be more of a 'safety net' on what minimum representation the majors will get on playlists, rather than being a key driver of how music streaming services produce playlists.

5.34 More broadly, majors do seek to influence streaming services via their artist marketing teams, and they may be in a stronger position to market their content than independent labels given scale advantages. But we have also received evidence that indies have opportunities to promote and market their artists on streaming services, alongside a range of other media channels. In conclusion, we have not identified a significant distortion of competition between majors and independent labels as a result of the placement and prominence of artists on streaming services.

Commercial terms

5.35 Another area of possible concern raised in responses to the Update Paper was that majors may be able to extract better financial terms from music streaming services and that this can limit the ability of indies to compete with them to sign artists. As one independent record company explained 'some DSP's take a 2 tiered approach to commercial terms….We have lost out to a number of new artists deals in the UK, due to the majors offering unrealistic advances, which are partly funded with Advances that the majors have obtained through commercial terms with DSP's.[229] Submissions from a number of creator stakeholders and one independent record company[230] suggested that that the presence of price MFNs in the majors' contracts with music streaming services contributed to independent record companies ending up with worse commercial terms.

5.36 However, this view was not held by all independent record companies. We also note that indies can improve their ability to extract better financial terms by combining their individual negotiating power by licensing with music streaming services through Merlin[231] or through one of the majors' distribution services such as ADA.[232]

5.37 Evidence we requested from music streaming services supports the view that majors can in some instances achieve favourable commercial terms, either through higher headline rates of revenue sharing, higher minimum revenue guarantees or a wider definition of revenues which are eligible for sharing[233], although this varies depending on the music steaming service. [234] Our analysis shows that between 2017 and 2021 the majors' earnings per stream were significantly greater on average than those of other record companies (independent labels, A&L service providers, and DIY platforms).

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229 [✂] response to the Update Paper.
230 [✂] response to the Update Paper.
231 Merlin is a digital rights music licensing partner for independent record labels, distributors, and other music rights holders around the world. Music | Merlin (merlinnetwork.org).
232 ADA Worldwide is the independent music distribution section of Warner Music Group, ADA provides worldwide marketing, merchandising, promotion, and music licensing services: ADA (ada-music.com).
233 CMA analysis of data from music streaming services.
234 Note that not all music streaming services offer different commercial terms to majors and indies: for example, we note that Apple have publicly stated that they pay the same headline rate of 52% to all record labels. See: Apple Music Insights: Royalties - Apple Music for Artists).

Table 5.1: How much more on average the majors are paid per stream compared to the indies

Year	Percentage difference
2017	+31%
2018	+25%
2019	+30%
2020	+35%
2021	+42%

Source: CMA analysis of data from music streaming services

5.38 The ability of the larger or more commercially important firms to secure better commercial terms is a feature of many markets. The majors negotiating better commercial terms from music streaming services relative to other recording companies is consistent with our findings set out in paragraph 4.6 regarding the size and importance of majors' catalogues to music streaming services. The majors' content is likely to be more commercially valuable given its size and importance, whereas content from some other record companies may not be as critical to a music streaming service.

5.39 The ability of majors to secure significantly better commercial terms reinforces the significant barriers to expansion of independent record companies that we discuss above regarding the financial advantages of the majors. However, the advantage in commercial terms enjoyed by the majors over some indies may be more limited than suggested by the average figures presented Table 5.1. There are significant differences in the characteristics of indies, for example the catalogue of a large indie label compared to that of a DIY platform which may contribute to a difference in bargaining power with music streaming services. It may be the case that some larger indies (eg larger indie labels who may have some large global artists on their books compared to a DIY platform whose repertoire consists almost entirely of small self-releasing artists or a small indie label) are able to secure relatively better commercial terms than other indies. For these larger indies the difference in earnings per stream with the majors may be much less than the average.

5.40 In terms of the point made by stakeholders about price MFNs, it is not clear to us how the presence of the price MFNs in the majors' agreements would operate to prevent indies from obtaining the same or similar commercial terms as those achieved by the majors. These price MFNs ensure that the majors receive no worse terms than other parties but do not prevent other parties achieving similar terms to them.

Access to data from music streaming services

5.41 Some indies raised the possibility that music streaming services may give majors preferential access to commercially valuable data about the performance of their artists and that this would provide them with a competitive advantage over indies. However, we have not found any significant differences in the data provided to record companies that would raise substantial competition concerns.

5.42 The evidence that we have received from both majors and indies indicates that both receive significant amounts of data from music streaming services and the data is broadly similar in term of the categories, granularity and volumes provided.[235] Furthermore, evidence from music streaming services largely confirms that both majors and indies are provided with broadly equivalent access to data from music streaming services. Any advantages larger labels have over access to data appear limited to, for example, receiving data in a bespoke format or through receiving more regular data reporting, rather than access to the data per se.[236]

Bargaining position and outcomes for artists

5.43 Many stakeholders were concerned that artists are in a weak bargaining position with record companies, and that in particular this was due to the majors' high market share on music streaming services (as discussed above). These stakeholders were concerned that artists' weak bargaining position was leading to a low allocation of music streaming revenue to artists.[237]

5.44 Our understanding from engagement with stakeholders is that the extent of competition for an artist depends on the popularity of the artist and what stage they are at in their career, which in turn impacts the bargaining position of artists with record companies.

5.45 For certain artists who are already popular or are particularly likely to be so, competition to sign them can be very intense with offers from many labels, as set out at paragraph 5.7 above. In addition, the majors have submitted they face intense competition for many of the artists that they have signed, which would be consistent with the majors focusing on top-tier artists.[238] Such competition has increased in the age of streaming where a large amount of data is available and accessible and can help identify artists that trend, for example, on social media and UUC platforms.[239]

5.46 Nevertheless, there can also be little competition to sign many artists, particularly lesser-known artists, as set out at paragraph 5.8 above. As we discuss below it appears that there is an increasing supply of artists who are

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[235] Information provided by the majors and some independent recording companies.
[236] Information provided by music streaming services.
[237] For example, responses to the CMA Statement of Scope from #BrokenRecord Campaign, p5; Ivors Academy of Music Creators, p2; Hipgnosis, para 17.
[238] See for example page 26 of UMG response to the Update Paper.
[239] As noted above this is feature of the market that was mentioned in the internal strategy documents of the majors.

willing and able to produce recorded music and overall consumer preferences tend to tip towards a relatively small number of artists accounting for the vast majority of streams. In addition, there is significant uncertainty over which new artists will be successful,[240] so it is common for new artists to receive only one offer (if any) to sign a traditional record deal from a major or indie label. Other promising alternatives such as higher-touch service deals (and the higher advances associated with them) can also be limited for new artists, with access to these deals depending on the popularity of the artist.[241] Without a significant number of attractive options, many artists may experience weak competition to sign them and find themselves in a weak negotiating position, particularly at the early stages of their career when they do not have a track record to build on.

5.47 One issue raised by artists is that due to the weak bargaining position that many face early in their careers, they may need to agree to long-term contractual commitments (eg to produce multiple albums) and assign the copyright to their work for a long period of time if they wish to secure a traditional record deal. Once they have achieved some initial success, or where new or growing modes of exploitation of the copyright of the recordings are developed and achieve popularity (such as streaming or, looking forward, NFTs or gaming), their bargaining position may not necessarily improve due to these long-term contractual commitments. The concern is that it could take many years for such artists to fulfil their initial contractual obligations and be able to negotiate improved terms.

5.48 The majors have submitted that many of the artists they sign are subsequently able to successfully renegotiate their contracts.[242] Data we requested from majors shows that a proportion of their artists have been able to successfully renegotiate their contracts but this varies significantly year-on-year and between majors (between 5% and 25% of contracts).[243] These renegotiations may be more likely where the artists are expected to continue to make successful recordings in the future. The renegotiations tend to agree not only to improved terms and conditions but also require a commitment on

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240 As we note in paragraph 2.20 less than half the active UK artists on major label rosters are likely to be profitable for the label (as measured by direct artist income being greater than direct artist expenditure – a label will still need to cover overhead costs on top of the direct expenses) In addition, these figures are likely to overstate the number of artists newly signed to a recording company who go on to be profitable as the active roster will tend to include many successful artists who are more likely to have been retained on the roster, with unsuccessful artists more likely to be dropped after the expiry of their initial contracts.
241 Evidence from meeting with MMF and FAC including artists and artist representatives.
242 For example Paragraph 3.70 of UMG response to the Update Paper states 'Having achieved success, the initial agreement will typically be renegotiated to secure e.g., increased royalty rates for catalogue, increased royalty rates for future commitments and further advances.
243 CMA analysis of data from majors from 2017 to 2021. Note these renegotiation numbers only apply to active artist recording contracts and not artists who are not actively recording but for whom the recording company retains the copyright to their back catalogue.

behalf of the artists to produce additional music recordings exclusively for the record company.[244] In contrast, the scope for a substantive renegotiation is less likely for artists when demand for any future recordings they might make is perceived to be limited.

5.49 The use of service deals and other alternative business models have disrupted the majors' businesses models based on the traditional record deal. The consequent increase in the number of options available may have increased the bargaining positions of some artists. New artists can use these models, which are often shorter-term, to build up a track record and put them in a stronger position when negotiating future deals. Stakeholders also told us that established artists can switch to these business models when the contract term of their traditional record deal ends. Doing so can give these artists greater ownership and control of the new music they make, although this can involve the artist taking on more risk. However, whilst these options do represent an alternative for some artists, they may not be a direct substitute for a traditional record deal from the majors in many cases, especially for more successful artists who are in stronger position to secure higher advances and higher-touch services from a traditional record deal than a service deal offers.[245]

5.50 The stronger bargaining position of some artists appears to be reflected in improving royalty rates and terms. As set out in Chapter 2, data from the majors shows that between 2012 and 2021 there have been significant improvements in the average terms and conditions included in new artists' contracts including:

- higher gross royalty rates (increasing from 19.7% in 2012 to 23.3% in 2021);
- shorter contract terms (minimum number of commitments fell from 3.8 to 3.0)[246] ;
- fewer contracts where the label take ownership of the copyright in perpetuity (this fell from 66.0% to 26.4%); and
- shorter average periods for the retention of recording rights by labels (this fell from 50.4 years to 30.0 years).

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[244] Paragraph 3.70 of UMG response to the Update Paper.
[245] As we discuss above, whilst these alternative business models have disrupted the majors' business model based on the traditional record deal, there is evidence that competition between the majors and these alternative models may be limited (see paragraph 5.9).
[246] Where the commitment is to produce a multi-track recording. So a commitment of 3 means that the contract requires the artist to produce 3 albums or EPs.

5.51 During the same time period our analysis shows that average advances paid to new artists remained broadly constant in real terms. Therefore, the improvements set out above do not appear to have been offset by a reduction in the advances paid to artists.

5.52 As these new contracts are a fraction of all contracts (existing and new), it will take time for their impact to show up in overall outcomes for artists. Nevertheless, there has already been a small increase in the average royalty rates that artists earn from UK music streaming, with rates increasing slightly from 25% to 26% between 2017 and 2021 for artists contracted to the majors' UK arms.[247]

5.53 While competition and changes to technology appear to be delivering positive outcomes for some artists, the vast majority of artists achieve a relatively small number of streams and hence will earn relatively little income from music streaming (see Chapter 2). Some of these will be among the long tail of smaller artists who utilise services such as DIY distribution platforms. Such artists will typically make very little from music streaming and are unlikely to progress beyond DIY distribution.[248] However, there will also be a significant number of artists below the higher tier who already have a recording deal or have the potential to achieve one, whose income from streaming is also modest.

5.54 The underlying causes of outcomes for artists overall appear to be largely unrelated to competition issues in the market. Rather, these outcomes can be attributed to factors more inherent to how music streaming works. As we describe above, music streaming has reduced barriers to entry for artists, particularly at the low- or mid-range with the number of artists being streamed in the UK almost doubling between 2014 and 2020 from around 200,000 to 400,000. This, along with competition from the widespread availability of back catalogue music on music streaming services, creates further challenges for artists looking to compete to generate streams on music streaming services. In addition, the music streaming market is dominated by a relatively small number of artists who account for the vast majority of music streams. Research commissioned by the IPO indicates that in 2020 the top 1% (approximately 4,200 artists) accounted for in excess of 75% of total streams.[249]

[247] CMA analysis of data from the majors.
[248] One DIY platform told us that 99% of their clients earned streaming revenues of less than $200 per year and that 99% of creators on their DIY platform will never progress beyond a DIY platform.
[249] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, Section 6.1.

5.55 It appears that there is a large and increasing number of artists who are competing to generate streams on music streaming services and overall consumer preferences tend to tip towards a relatively small number of artists (although consumer tastes do vary, and some are attracted to less popular acts). The combination of these market features is likely to result in competition between record companies being focused on a relatively limited number of artists and market outcomes where the majority of the benefits are accrued by a minority of artists.

5.56 Based on the evidence above, it appears that the weak bargaining position of many artists is likely driven to a large extent by these market features as well as the significant uncertainty over whether artists will be successful and recoup the record label's investment. This limits the interest and competition between record companies to sign them and offer them attractive deals. This applies to both new artists and those more established artists whose recent work has not been as popular as previous hits. As such, the scope to materially improve outcomes for artists through interventions aimed at increasing competition to sign artists is likely to be limited as these underlying market features will remain unchanged.

5.57 A number of proposals for changes to the copyright framework which may address the weak bargaining position of some artists have been put to us. These include contractual reform (eg limiting the period for which record companies can retain the copyright to recordings or introducing / strengthening a right to switch for an artist if their content is not being appropriately exploited) or changes to the classification of streaming revenue so that it would become subject to the principle of equitable remuneration. Such wider interventions may have more potential to improve outcomes for artists compared to measures targeted at increasing competition overall such as reducing market concentration. However, policy makers would also need to assess the risk of wider interventions having unintended consequences, for example whether they would affect advances and investments made in new UK artists or whether higher royalties to artists could be passed on down the value chain and lead to higher consumer prices for music streaming services.

5.58 A detailed understanding of whether the suggested interventions would lead to material improvements for artists would require more in-depth analysis than we have undertaken. However, such issues are beyond the scope of the CMA's study given our focus on competition. We note that this is an area where the Government is conducting further research on the impacts of legislative interventions on equitable remuneration, contractual adjustment mechanisms, and rights reversion.[250]

5.59 A number of respondents also argued that there was a potential long term impact on consumers in terms of the quantity, quality and diversity of music if the music streaming business fails to support the careers of artists, songwriters and session musicians who may then be forced to exit the market.[251] We understand there is a potential link between the terms and conditions of artists and the supply of music to consumers; however, we have received no clear evidence of any risks to the supply. On the contrary, the evidence we have indicates that supply is growing with the number of tracks being uploaded to music streaming services running into the tens of thousands a day and increasing over time.

Information asymmetry, artist representation and transparency

5.60 Below we discuss the issue of information provision to artists and consider the responses we received to the Update Paper on this. We also discuss a number of other issues that were raised during the market study including the adequacy of artist representation, the adequacy of the arrangements for auditing artist earnings and the level and allocation of music company earnings from streaming that are not directly attributable to a specific artist (sometimes referred to as 'breakage').

Information available to artists

5.61 Responses to the Update Paper findings on whether artists receive sufficient information to help them choose between different offers were mixed. Some told us that artists were already provided with significant amounts of data and also highlighted the IPO led industry process for developing a transparency code of practice.[252] However, others argued that the amount of information provided to artists still remained a concern and expressed scepticism as to whether the IPO process would lead to a satisfactory outcome as the IPO lack the CMA's powers to make directions mandating transparency for artists.[253]

5.62 Issues around what information is made available to artists and how this information is presented to them, particularly in relation to their actual and

[250] *Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report*, p4.
[251] For example, the MU response to the Update Paper states 'We would like to see consideration of the risks to consumers in the longer term if artists cannot sustain a living and are lost to the industry'.
[252] Each of the majors emphasised the amount on information that they already provided to artists and their participation in the IPO process for developing an industry transparency code of practice. See for example, paragraphs 7 to 11 of Sony response to the Update Paper.
[253] See for example page 2 of the #BrokenRecord Campaign response to the Update Paper.

expected earnings, may weaken competition to sign artists by limiting their ability to assess and choose between offers of recording contracts. In general, there are aspects of contracts between record companies and third parties such as music streaming services that may not be relevant to artists' understanding of what they are paid, which we would not expect artists to have access to. However, we do expect artists to have relevant information about the basis for calculating their earnings. We understand from our engagement with stakeholders that offers from record companies to artists set out the advance and royalty rate, but do not typically include sales forecasts or information on average payments per stream which could be made to artists.

5.63 One potentially important source of information for artists to understand their potential future earnings is data on their current and historical performance and earnings which can be used to calibrate expectations of future performance. In the case of new artists that have not yet produced and released a record with a record company, less information is available to help them understand their expected earnings compared to established artists already signed with a record company as they have less of a track record of performance which can be used to calibrate expectations of future performance and earnings. However, provision of key performance metrics through digital distribution and social media, for example on UUC platforms such as YouTube and TikTok and music streaming services' online artist portals, means that far more information than ever is available to new artists about their performance prior to any engagement they might have with a music company about a recording contract. Furthermore, a possible lack of information is not only an issue for artists but also for record companies which will face very significant uncertainty about whether these new artists will be successful due to their lack of track record. Consequently, the ability of record companies to improve information provision to new artists (those not yet signed to a record company) regarding their likely performance is inherently limited.

5.64 More information is made available to established artists. This can include granular information on their royalties and streams, in particular via the online royalty portals offered by the majors and detailed periodic royalty statements. Through these portals and royalty statements, it appears possible to find out relatively granular data on earnings including:

- volumes of streams;
- revenues received from music streaming services in relation to these streams;

- royalty rates; and
- amounts that are ultimately paid out to the artists.

5.65 This data is generally made available disaggregated by the territory in which the stream occurred and the music streaming service on which it occurred.

5.66 Overall, for many established artists, there appears to be a significant amount of information made available to them to enable them to understand their level of performance and earnings on music streaming services. However, this was not consistent across all record companies, and there may be scope to improve the way this information is presented and used, and to offer more guidance on how to interpret the data. As part of our review, we noted that in some cases definitions of data were unavailable or unclear, or some important pieces of information may require some calculation on the part of the artist. One possible improvement could involve ensuring that key pieces of information are highlighted or provided without a requirement to calculate them (eg on earnings per stream across all premium streaming plans in the UK, with further metrics showing the extent to which these earnings per stream vary by music streaming service provider).[254] Other improvements could include providing enhanced search functionality to help easily find financial data, providing clear data definitions, and explaining clearly why earnings can vary (eg by service).[255]

5.67 We also found evidence that the record companies have an incentive to continually improve their provision of information to artists as this is a key part of the proposition they make to artists when competing to sign them. Internal strategy documents from each of the three majors highlight the importance of continually improving artist transparency. For example, documents from the 2021 global A&R meeting of one major stated that 'our job is to PROVE to the artist community that we value transparency too. We have the opportunity to use technology to create direct connections with both our artists and their management teams.'[256]

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[254] It should also be possible for artists to relatively easily obtain basic financial information such as information on what gross income is received by a record company in relation to their recordings, volumes of streams, what royalty rate or profit share of this income they are entitled to (including detail on the size and nature of any deductions from this prior to calculation of the artist royalty payments such as producers' royalties) and the amount they receive from these in relation to their recordings at a granular level (eg by territory and streaming service) on both an aggregated and per stream basis.

[255] We note that one response to the Update Paper highlighted the amount of free resources that are available to artists. AIM response to Update Paper.

[256] In addition it stated that: 'We believe [✂] is the FIRST STEP in doing this… This is the Digital Expression of our [✂]. HOW ARTISTS INTERACT WITH US. THE IMPACT? Improve artist relations • New way to engage with our artists • We aggregate information • Provide a deep dive into their performance • On demand 24 hours a day • The power is in their hands. Talent acquisition/retention • We are creating the best artist tools • Artists and managers talk about this • This will be a key differentiator'. [✂] information provided to the CMA.

5.68 We acknowledge the continued concerns of stakeholders around the transparency of information provided to artists. However, our view remains that, certainly in the case of established artists, significant amounts of information are already made available to artists and further improvements are likely to be secured through the IPO-led industry process that is already in place.[257]

5.69 We also note the concerns from some stakeholders that the IPO does not have the necessary powers to bring about improvements including the ability to require that NDAs in contracts between music streaming services and record companies be set aside. However, our review of transparency in this market suggests that, whilst NDAs do prevent certain terms and conditions being made available to artists and limit access to the 'source data' from the music streaming services, they do not appear to prevent a significant amount of relevant information being made available to artists about their earnings. By limiting the access to source data, the NDAs may potentially limit the ability of artists to verify the accuracy of information that is made available to them, something we discuss further in the section on royalty audits below.

Artist representation

5.70 When dealing with music companies, particularly majors and independent labels, artists will typically be represented by a manager and lawyer. For example, in the case of SME they stated that 'In SME UK's experience, all artists signing to SME UK will have a manager and an independent lawyer representing them in the negotiation and conclusion of recording agreements.'[258] In addition, we understand that artists can utilise legal services such as those provided by the Musicians Union to help them with any contractual issues that may arise in their negotiations with music companies[259] and there are significant amounts of free resources to allow them to understand the market, recording contracts and how earnings/royalties work.[260]

5.71 During the study we had discussions with a number of artist-side representative bodies, including the MMF, FAC and MU, as well as a small number of artists and lawyers or managers who represent the artists in their

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[257] Since the beginning of this year, the IPO has been working with the industry to agree a transparency code of conduct. The Transparency Working Group, made up of experts from across the sector, has been working to agree standards of transparency for the streaming ecosystem. We understand that there has been a high level of participation in the process.
[258] SME information provided to the CMA.
[259] Contract Advisory Service for Musicians | The MU (musiciansunion.org.uk)
[260] See for example, AIM Distribution Revolution report and the Dissecting the Digital Dollar work commissioned by the MMF.

negotiations with music companies. These discussions suggested that the level of representation that artists received or had access to when dealing with music companies was satisfactory.

5.72 One aspect of artist representation that we noted from these discussions was that whilst it was very common for artists to have legal advice during their dealings with music companies, with artists often relying on their managers for commercial input, obtaining specialist financial advice was much less common. A possible lack of financial advice could be an issue for artists when it comes to understanding the financial information they receive from music companies, which we discuss in more detail below.

Royalty audits and breakage

5.73 Other issues that were brought up by stakeholders in relation to transparency were: the perceived inability of artists to fully audit their earnings from music companies because of licensing NDAs (which could prevent the auditor having access to key data required to authenticate the artist's royalty payments); [261] and how digital breakage or black box income is distributed.[262]

5.74 Artist recording contracts typically include the right to periodically audit the earnings they receive under that contract. We received evidence from all the majors as well as a small number of other music companies about their approach to providing source data from music streaming services as part of the audit process. This evidence showed that source data is made available to the auditors but this may only be in the form of a sample of a wider set of data.

5.75 We received evidence from all the majors as well as a small number of non-majors about any non-artist specific revenues they receive and how they are distributed to artists.[263] The evidence showed that these revenues made up a very small proportion of streaming revenues received by music companies in relation to recorded music in 2021. Across the music companies we received evidence from, non-artist specific revenues accounted for between 0.5% to 5% of total streaming revenues for recorded music in 2021.[264]

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[261] See, for example, #BrokenRecord Campaign response to the Statement of Scope..
[262] See, for example, MMF/FAC response to the Statement of Scope. (We note that concern about breakage or black box income is more of a concern on the songs/publishing side of the market but it is also relevant on the recording side).
[263] Non-artist specific revenues are revenues which are not triggered by specific recordings on a music streaming service. They are typically passed on to artists through some kind allocation rules (e.g. in proportion to the artist's total share of streams from a label on a steaming service). Many labels have a formal breakage policy in place which set out the rules on which this allocation will be based.
[264] CMA analysis of RFI response from all majors and several non-majors.

5.76 The evidence we have received suggests that it is common for access to source data from music streaming services to be provided as part of royalty audits, although this access may be limited to a relatively small sample. There may be scope for improvement in the provision of data at audits, but this is an issue more to do with verification of the fulfilment of contractual terms rather than one of competition to sign artists. However, we note that it is important that artists are able to adequately verify that their contractual terms are being fulfilled.

Conclusion - artists

5.77 The evidence we received, including internal documents and the improving contractual terms for artists, indicates that in the streaming era there appears to have been an overall increase in the intensity of competition to sign certain artists. This has been due to the increase in the availability of data to enable successful artists and artists of high potential to be identified, and also due to the emergence of alternative business models such as A&L services. Over the last few years there has been steady growth in the share of streaming accounted for by independents. However, despite the emergence of the alternative models, market concentration remains high and there are significant barriers to expansion in the market. While there has been significant improvement in outcomes for some artists across a range of financial and contractual measures, it is the case that for the large majority of artists their earnings from streaming are relatively low.

5.78 Competition appears to be particularly focused on signing the relatively few artists that account for the vast majority of streams or that have the greatest potential. This reflects how these artists generate the most revenues for record companies. Similarly, these artists account for the vast majority of artist earnings from streaming.

5.79 However, there is weaker competition to sign many other artists. This weaker competition to sign many artists and the relatively low earnings of most artists appears to be largely driven by inherent features of the sector. Because of this, it is unlikely to be the case that lower market concentration per se (eg more majors) would significantly improve outcomes for these artists overall. There is a large pool of artists and, due in large part to consumer preferences tipping towards certain popular artists, for many artists there is significant uncertainty over who will be successful. As a consequence, there is more limited competition to sign many artists and the majority of these artists' earnings from streaming are relatively modest.

5.80 We have received no clear evidence that artists' earnings are translating into significant risks to the supply of music, in terms of the quantity, quality and diversity of music available to consumers. On the contrary, the evidence we have indicates that the supply of music is growing with the number of tracks being uploaded to music streaming services running into the tens of thousands a day and increasing over time.

5.81 As we set out in Chapter 2, our profitability analysis has also not found evidence of substantial and sustained excess profits by the majors. This is consistent with our overall finding that there is unlikely to be scope to improve outcomes for artists substantially through increased competition. The limitations and complexities of our profitability analysis mean we cannot rule out excess profitability. However, even if the majors were more profitable than our analysis suggests, the inherent market features described above, which result in strong competition for a small number of artists and weaker competition for others, would be unchanged.

5.82 As we note above, some interventions have been proposed by stakeholders to help some types of artists by strengthening the copyright framework, for example equitable remuneration or measures to help established artists renegotiate improved terms once they achieve success. Such interventions have more potential to improve outcomes for artists compared to measures to increase competition, but would need to be carefully thought through to avoid possible unintended consequences. Such issues are beyond the scope of the CMA's study given our focus on competition. They are wider policy issues that could be considered further by others, potentially as part of Government research that is currently looking at a number of relevant aspects of the copyright framework.

5.83 In addition, we found that, whilst there is some scope to improve the provision of information to artists these improvements could be realised through the ongoing IPO led industry process. We have also found that the licensing terms over the placement of the majors' music do not prevent artists from indies from gaining prominence on music streaming services.

Future dynamics in competition to sign artists

5.84 Our analysis appears to indicate that there may be some drivers of weak competition in the supply of services to artists, but potentially limited scope for greater competition to improve outcomes overall for artists. However, as with many fast-moving digital markets, concerns may arise in future if certain factors change.

(a) Future mergers between record companies, in particular acquisitions by the majors, could risk reducing the current intense competition to sign some artists.

(b) If the supply of music streaming services became more fragmented, this could increase the majors' bargaining power. Under this market structure, music streaming services may not have the scale needed to push back on more stringent licensing terms. Such terms could include more stringent restrictions on how music streaming services promote indies' repertoire.

(c) The increasing importance of music recommendation systems (including both editorial and algorithmically generated playlists) in influencing music discovery, might make it more challenging for indies to compete with the majors in the future if the recommendations disproportionately favoured content that is already popular and/or owned by the majors.

(d) Technological changes or changes in consumer attitudes could also result in an increase in piracy, reversing the increase in music streaming revenues. This could reduce artist earnings and make it more difficult for indies to remain in the market. A reduction in competition could follow with the substantial exit of some indies.

(e) If there is a significant drop in the amount, quality and/or diversity of new music being produced – and consumers raise concerns over any such change – this could be indicative that competition to sign artists may not be delivering the music that consumers want.

Songwriters

5.85 As previously described, the majors hold a strong market position in music publishing alongside their recorded music interests. Songwriters and their representatives have expressed serious concern that songwriters are not remunerated fairly for their work from streaming to the extent that they are unable to make a sustainable income. Many songwriters believe that these poor outcomes are due to the majors:

(a) favouring their recording business over their publishing business when setting rates in negotiations with music streaming services (possibly in part as the result of tacit coordination); and

(b) using their strong market position to achieve the above objectives via their influence on CMOs.

5.86 For context, as described in paragraph 2.114, music streaming services must license both the publishing and recording rights to a song in order to make it available to consumers. Songwriters typically assign or license their music rights to publishers and CMOs to exploit on their behalf, and artists will typically assign or license their rights to record companies. Music streaming services will therefore enter into separate licence agreements: for publishing rights (with publishers and CMOs); and for recording rights (with record companies). All these agreements are negotiated on a commercial basis between the relevant parties.

5.87 Under this structure, revenues from streaming are effectively divided three ways: between the recording rightsholders, publishing rightsholders and the music streaming services. At a headline level, there is a significant and longstanding difference between the share of revenues earned from music streaming by recording rightsholders (the 'recording share' – in 2021, 53%) relative to publishing rightsholders (the 'publishing share' – in 2021, 15%).[265] Several stakeholders have argued that this differential is no longer justified as the shift to streaming has changed the balance of costs and risks between publishing and recording. In particular, they feel that while the publishing share has increased over time, it should have experienced far greater increases relative to the recording share. They contend that music streaming does not involve many of the traditional 'recording' costs associated with the physical product it has largely replaced (such as the manufacture and distribution of CDs through record shops).

5.88 Many music companies – including the majors – have both a recording and a publishing business and it is argued that the main reason for the continuing difference in revenues is due to the majors' vested interest in maintaining the *status quo*. For example, it is argued that the majors can make greater overall profits by favouring their recording businesses because they pay artists lower royalty rates and recoup a wide range of costs from artists.

5.89 In the section below we assess the concerns raised by stakeholders. Our analysis considers how streaming revenues are split between publishing and recording, and how this split has changed over time. We go on to assess whether it is competition concerns driving any distortion in the split. We also assess whether competition can correct any distortions in the split that may have arisen in the past.

5.90 A key issue we have considered is whether competition to sign songwriters is substantially weaker than competition to sign artists, and whether this is driving the difference between publishing and recording revenues. This could happen if, compared to recorded music, there is a significantly more concentrated market structure in publishing and greater barriers to

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[265] In this section, unless otherwise specified, 'revenue share' is used to refer to the *overall* share of revenues achieved. This derives from a combination of contractual price mechanisms, for example a revenue share percentage, per subscriber minimum fees, and sometimes minimum guaranteed lump-sum payments (see paragraph 3.5). The revenue share discussed in this section will therefore differ from the revenue share in contracts.

songwriters exercising choice and switching publisher. We have also considered whether tacit collusion rather than competition is taking place in relation to how the split in revenues between publishing and recording is determined.

Publishing share of revenues

5.91 We consider below the context for the differential between the two sectors and how the publishing share has changed over time.[266]

Context for revenue differences between the sectors and the implications

5.92 The development of the revenue split between recording and publishing appears to be a matter of some debate within the industry. One common explanation provided to us has been that the disparity in shares is in part a reflection of longstanding industry norms. Traditionally the record labels have earned a greater share of revenue from music sales, which reflected the higher costs and risks of that business. For example, a record label would pay for the recording to be made, the manufacture and distribution of physical copies, and for the associated marketing campaign. For a given song, the record label's success would depend on specific recordings whereas publishers would benefit from all recordings of that song.[267]

5.93 This pre-streaming differential ended up being broadly carried over to music streaming, with revenues initially being divided among the parties as follows in 2008: 51% going to recording rights; 8% going to publishing rights; and 41% retained by DSPs.[268] A range of reasons have been put forward for this, including that it seemed a reasonable and/or convenient and/or generally acceptable starting point as the industry sought to manage its transition to a new and uncertain digital paradigm; others allege that it came about as a result of the majors exerting their influence to perpetuate a retail model that had served them well to that time.[269]

5.94 Regardless of how this split was established, over time, some stakeholders argue that, since music streaming does not bear many of the traditional costs

[266] We note that changes in the amounts actually received by creators will depend both on changes in the overall revenue share and changes in the overall revenues available from music streaming services.
[267] Also, songwriters do not pay studio producers royalties, it is less common for them to have managers (unless they are writer-performers), and they will earn from every version of a work, and every time it is performed live (although they may not generate income from tours or merchandising). A song's copyright will also run for the life of the songwriter and then a set period of time thereafter (eg 50-70 years), meaning song copyrights usually last significantly longer than recording copyrights. See Cooke, Chris (2020), Dissecting the Digital Dollar (Third Edition).
[268] See Figure 5.2 below.
[269] See, for example, response from Ivors to the Statement of Scope (p3).

associated with the manufacture and distribution of physical music (such as CDs sold through record shops), the publishing share and songwriter revenue should have increased relative to the recording share. It is suggested that the fact the publishing share has not increased further is evidence that it is being artificially held at a level that suits the majors' interests.

5.95 We note that one would not necessarily expect identical shares for recording and publishing rights as this is a function of a number of factors, including the risk they take on, the costs they bear, the relative value each adds and licensors' views of the commercial value of the respective rights under the existing copyright framework. This study does not seek to focus on what is an appropriate share of revenues between recording and publishing, given this complexity and wider considerations over what may be considered fair.

5.96 However, we have considered the extent to which the current situation may indicate an incentive for the majors to favour their recording arms over their publishing arms and thereby distort the outcome that might otherwise be reached in a competitive publishing market. We start by considering the arguments put to us that the current revenue split is out of kilter with costs.

5.97 Ultimately, the nature and extent of cost changes is hard to gauge given that digitisation has caused a paradigm shift in how the music industry operates.[270] Further, a comparison of relative costs over time is complex to carry out on a like-for-like basis, given that many costs relate or are common to activities beyond streaming. Similarly, a comparison of relative margins will not be on a like-for-like basis given the different nature of the businesses.

5.98 Any general comparison is therefore not determinative. However:

(a) At face value, we note that operating margins are higher and trending upwards for the major record companies, compared to being lower and trending downwards for publishers (see paragraphs 2.30 and 2.55).

(b) Further, it is notable that the average royalty rates paid by the major publishers to their songwriters (84% in 2021) are significantly higher than the average royalty rates paid by the major record labels to their artists

[270] Some costs on the recording side will have fallen due to the shift from physical sales to digital sales; however, other costs will also have changed. Digital tools and platforms have changed the way in which talent scouting, A&R, production and marketing can occur. For example, there is a wider range of ways to identify talent and marketing activity is now much more spread out over time instead of focusing on key release windows; roles may also be changing as the Ivors Academy has reported more production and development costs being asked of songwriters over time (see for example paragraph 2.4 of their further response to the CMA's Statement of Scope). On both the publishing and recording sides, companies have had to invest in systems to manage the larger data flows involved and (for record companies) to digitise their catalogues and get their content onto music streaming services.

(26% in 2021).[271] As such, all else equal (ie if other costs do not make up the difference), a £ of revenue may be more profitable to the recording arm than the publishing arm.

5.99 On this basis, we cannot rule out that, all else equal, it could be financially attractive for the majors (and likewise other music companies who have both publishing and recording interests) to favour their recording businesses if possible. However, it may also not be particularly profitable for the majors to favour more revenues going toward recording rights if any financial benefit to their recording arms would be competed away in the form of higher royalty payments and more investment in artists.

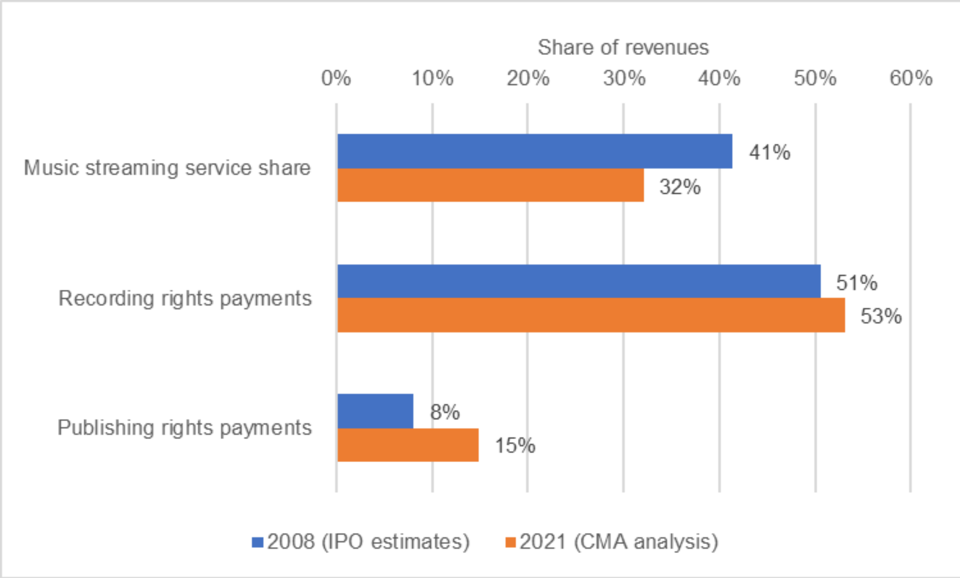
5.100 In the assessment in this section, we do not focus on the extent to which any financial benefit in favouring recording may be competed away. As noted above, we instead consider more generally whether competition might be able to correct any distortions in the split in revenues between recording and publishing rights, and to what extent it is competition concerns that may be the underlying cause of any distortions in this split.

Changes to the publishing share

5.101 Figure 5.2 shows how the split of music streaming revenues between recording rightsholders, publishing rightsholders and music streaming services may have changed over the long-term (by comparing the split in revenues in 2008 with the split in revenues in 2021). This evidence indicates that over this period there has been an increase in the publishing share from 8% to 15%. This long-term increase in the publishing share has been accommodated by fall in the share of music streaming revenues retained by music streaming services, which has fallen from 41% to 32%. There does not appear to have been a fall in the share of revenues going to recording rights, which has remained at over 50%.

[271] CMA analysis of data provided by major record companies and publishers.

Figure 5.2:Split in music streaming revenues in 2008 and 2021



Source: Section 4.2.2 of research commissioned by the IPO *Music Creators' Earnings in the Digital Era* and CMA analysis of data from Apple, Amazon and Spotify.

Note: Whilst the CMA analysis for 2021 is based on data from the largest music streaming services, the IPO research draws on a range of largely qualitative evidence and therefore (as the IPO research itself acknowledges) the IPO research estimate of the split of revenues for 2008 is only indicative. Therefore, comparison between the split between 2008 and 2021 should be treated with caution and taken to be indicative of the overall trend in the split over time rather than estimates of the exact quantum of change in the split.

5.102 In 2007, the Copyright Tribunal issued an interim decision concerning how an 8% publishing share for composers, songwriters, and publishers should be applied when their music is made available for download, limited download or by on-demand streaming.[272] The 8% rate had been agreed between a number of important music service providers (eg AOL, Apple iTunes, Napster) and a joint venture between two CMOs.[273] The IPO published evidence that suggested that in the UK the publishing share has increased from 8% in 2007 to approximately 12% in 2012, and incremental increases thereafter. It is believed that some of this increase was driven by the introduction of Option 3 publishers in 2009.[274] The CMA's analysis (Figure 5.2) shows that in 2021 the publishing share is now 15%, so since 2007 this publishing share has almost doubled.

5.103 The #BrokenRecord Campaign has argued that the increase in publishing share is the result of streaming services using a communication right alongside the mechanical right previously applied (ie that the increment is

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[272] See *BPI and Ors v MCPS-PRS and Ors* (Case CT84-90/05, 19 July 2007), available at the National Archives website.
[273] The Mechanical Copyright Protection Society (MCPS) and the Performing Rights Society (PRS).
[274] Report commissioned by the IPO (2021), *Music Creators' Earnings in the Digital Era*, paragraph 4.2.1. Between 2009 to 2012, this included an increase in rates from 10.5% to approximately 12% which has been attributed to the introduction and influence of publishers who opted to withdraw their reproduction rights from CMOs and license these directly on a multi-territorial basis – referred to as Option 3 publishers (see paragraph 2.49).

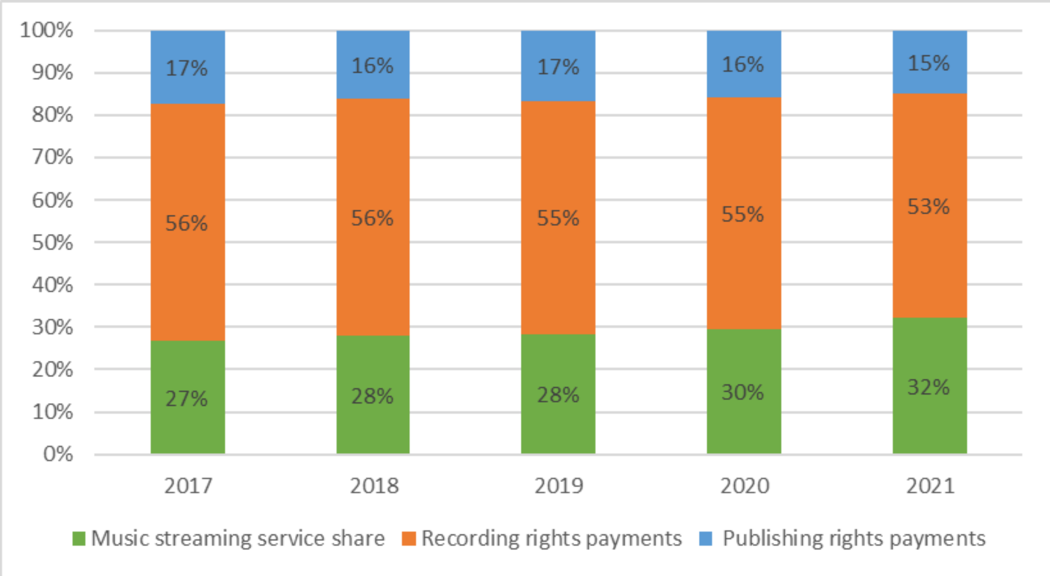
payment for the exploitation of the additional communication right). However, the 8% share in the 2007 Copyright Tribunal interim decision covered streaming alongside digital downloads, and as such the increase observed relative to that earlier share appears to be on a like-for-like basis (ie covering the same set of rights).

5.104 The USA also presents a useful comparator. The USA is, like the UK, a major music market. However, unlike the UK, publishing rates in the USA are subject to regulatory supervision by the Copyright Royalty Board (CRB), a tribunal that holds litigated proceedings to establish rates. In CRB proceedings to determine the mechanical royalty rate for interactive streaming[275] the parties reached a settlement in 2022 that, if adopted by the CRB, will require the music streaming services to pay a 15.1% revenue share to publishers in 2023 that rises to 15.35% in 2027, inclusive of mechanical and public performance royalties. The CRB also regulates mechanical royalties for physical music reproductions and permanent digital downloads, as well as certain sound recording royalties.[276] As such, the US publishing share is only now reaching the level that has been secured in the UK.

5.105 The CMA's analysis based on data from music streaming services since 2017 shows that between 2017 and 2021 (a shorter period than the longer-term comparisons above) the publishing share has fallen from 17% to 15% (Figure 5.3). The overall recording share is also falling over this period. The recent falls in the publishing share and recording share appears to have been driven by music streaming services recently seeking to increase the share of revenues that they retain, which has gone up over this period. The fall in the publishing share is not a result of revenues going to publishing rights being diverted in any substantial way to recording rights.

[275] See Case details for Phonorecords IV - eCRB
[276] See the settled agreement here: 27222 (crb.gov).

Figure 5.3: Recording and publishing rights shares of UK streaming revenues



Source: CMA analysis of data provided by Amazon, Apple and Spotify.

5.106 In absolute terms, overall publishing revenues paid out by the UK's largest music streaming services have grown (from £[100-200]m in 2017 to £[200-300]m in 2021,[277] a [110-120]% increase) as streaming revenues continue to grow.[278] Major publishers in particular have seen above average streaming revenue growth of 244% over the same period, over twice the growth rate for publishers as a whole.[279]

5.107 The 244% growth in the major publishers' revenues between 2017 and 2021 has also significantly outpaced their recording arms' revenue growth of 121% over this period.[280] This development may indicate that the majors have been shifting, to some extent, the music streaming revenues that they receive from recording to publishing, rather than in the other direction as has been alleged by some stakeholders.[281]

[277] CMA analysis of data from music streaming services.
[278] The increase in publishing revenues, and benefit to some songwriters, may be diluted by increases in the average number of contributors to songs. For example, Table 2.9 shows that the average number of songwriters contributing to successful works has increased from 2.95 in 1999 to 4.77 in 2019. This will impact the size of revenue shares given to each songwriter, with splits ranging from 100% to less than 1%.
[279] CMA analysis of data from the majors.
[280] CMA analysis of data from the majors.
[281] The majors' higher revenue growth in publishing compared to recording could in principle be partly due to the majors being more successful at increasing the share of rights that they own in publishing compared to in recording. However, with the majors' growth in publishing revenues being more than double that of their recording revenues since 2017, there is scope for changes in the majors' publishing rates to have also driven some of this increase.

Integration of recording and publishing businesses

Business structure and incentives

5.108 Some stakeholders are concerned that the majors have the ability and incentive to suppress the publishing share. It is argued the majors' fiduciary duty to their shareholders creates a conflict of interest. It could be financially advantageous for the majors to maximise revenue paid to the recording side of their businesses, where lower royalties are paid to creators and the majors may recoup a proportion of their A&R costs from creators.

5.109 In response to these concerns, the majors assert that no such strategy exists, and that their record label and music publishing businesses are largely autonomous entities. Also, at a UK operational level, decision-making is often undertaken separately and subject to a set of delegated authorities.[282]

5.110 Nevertheless, there is a degree of common oversight, in particular at Board level, and scope for certain decisions to be subject to Board approval. For instance, each major's record label and publishing businesses ultimately report into the same corporate leadership group. There is also evidence of certain recording and publishing agreements with one of the majors potentially requiring CEO or Board approval.[283]

5.111 These touchpoints mean that while interactions between the publishing and recording businesses within each major group currently appear limited, opportunities exist for some degree of influence now or in the future, including if business practices change. This is not necessarily problematic from a competition perspective. A level of coordination is common and unexceptional in such structures, with companies within the same group often interacting and having decisions made across the group as a whole. However, a degree of interaction may be problematic if each major could suppress its publishing share without harming its competitive position (for example, through tacit collusion). This is considered in more detail below.

Negotiations with music streaming services

5.112 To assess this concern further, we asked the music streaming services about the negotiation process with the majors' recording and publishing arms. In response, it appears that these negotiations are largely conducted separately and by different teams, with the record label and publishing businesses being ultimately accountable for securing the best licence terms possible for their

[282] Information provided to the CMA by the majors.
[283] [✂] information provided to the CMA.

respective artists and songwriters. For instance, a number of music streaming services cited limited connections between the majors' record label and publishing arms, and that negotiations were usually conducted separately with the core points of focus in each deal being distinct.

5.113 Some stakeholders have also alleged that the majors ensure that their recording contracts with the music streaming services are negotiated first. This coordination, it is alleged, means that the amount of streaming revenue that the publishers can receive is capped by the outcome of the recording negotiations, with the publishing side unable to negotiate improved terms and having to take whatever is left over.

5.114 There is however a lack of strong evidence to suggest that the majors are sequencing their negotiations to ensure that the recording contracts are signed first and before negotiations on the publishing contracts had commenced. Indeed, one music streaming service was concerned that the majors' recording and publishing arms were too separate, resulting in both applying pressure to increase/maintain rates without reference to each other or the potential impact on the music streaming service's revenues.[284]

5.115 While there do seem to be some exceptions, for example a few instances where the timeframes of publishing and recording licences were aligned,[285] we have not seen evidence of terms in the majors' licences for recording rights being linked to terms for publishing rights (or vice versa) to any significant degree.

5.116 Some stakeholders have also raised the concern that price MFNs in the majors' recording agreements are preventing publishers from negotiating an improved share of streaming revenue.[286] This is because price MFNs, which ensure that any price change by a major is notified to its competitors, would allow the majors to signal that they are not competing on their recording share. This, it is alleged, maintains the current level of the recording share and effectively caps the revenue share that the publishers can negotiate (because the overall streaming revenue is fixed). We have, however, not received evidence to support these concerns and the cumulative impact of price MFNs, which is discussed in more detail in Chapter 4, appears to be limited.

5.117 It has been put to us that CMOs have oversight and approval over the terms of deals negotiated on their behalf through multi-territory licensing hubs with

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[284] [✂] information provided to the CMA.
[285] [✂] information provided to the CMA.
[286] Ivors Academy of Music Creators response to CMA Update Paper.

music streaming services and, as such, a CMO would deny approval if it thought the majors were not securing the best value for the songwriters they represent.[287] The role and influence of CMOs is considered further below.

5.118 More generally, wider challenges in negotiating increases to the publishing share should be recognised. For instance, to increase the publishing share, given the large numbers of publishers and labels who have each entered agreements with the music streaming services, there would need to be widespread agreement on changes to how music streaming revenues are divided between record companies, publishers and music streaming services since an increase in one of these group's share necessitates a fall in one or both of the others' share of revenues. This can lead to difficulties in reaching agreements on changing the split of revenues, what we refer to as licensing negotiation frictions.

5.119 As noted above, increases in the publishing share appear to have been accommodated by a fall in the share of revenues retained by music streaming services. This may be possible given the strong bargaining position of rightsholders with music streaming services, which arises from the need for music streaming services to have licences in place to offer a full catalogue of music on their services (see Chapter 4 above).

5.120 However, the licensing negotiating frictions may be more acute when a change in the split involves certain music rightsholders' share of revenues falling. This is due to the bargaining power of key rightsholders and music streaming services needing agreement from all of them to include their music on their services, which appears to be an inherent feature of the full catalogue music streaming model (see paragraphs 4.39 to 4.40). More specifically, a record company would lose out from a substantial reduction in the recording share so is likely to resist such a change that might otherwise facilitate a substantial increase in the publishing share. This would still be the case even if record companies (such as the majors) did not have publishing arms, indeed there would likely be even stronger resistance as a standalone record company would not benefit from any increase in the publishing share.

Extent to which competition to sign songwriters is increasing the publishing share

5.121 If there were sustained weak competition or even a monopoly in publishing and, as it has been alleged, it is more profitable to earn music streaming revenues on the recording side than in publishing, we may not have expected

[287] For example, see Universal Music Group response to CMA Update Paper.

an increase in the publishing share given the combined ownership of publishers and record companies.

5.122 To illustrate this, consider what might have happened if there is a monopoly in publishing, with the major record companies each owning an equal stake in this monopolist. Also assume in this illustrative example that it is more profitable for the majors to receive music streaming revenues on the recording side compared to publishing in the way some stakeholders have alleged (due to the percentage royalty rates paid to artists being lower than that paid to songwriters).[288]

5.123 In this illustrative example, each major would have no incentive to negotiate a higher publishing share of music streaming revenues. There would be no competitive incentive to negotiate a high publishing share as a way of competing with rival publishers to sign and retain songwriters due to the monopoly in publishing. They would be better off keeping the publishing share low (or lowering it further) and instead focusing their negotiations with music streaming services on securing a recording share of revenues that was as high as possible and where they earn more profits (due to retaining a larger cut of these revenues rather than passing these revenues on to creators in this illustrative example).

5.124 The fact that the publishing share of music streaming revenues has increased indicates that there is competition in publishing to sign songwriters with this competition incentivising publishers to negotiate a higher publishing share so the overall royalties and advances that publishers offer songwriters are as competitive as their rivals. If a major publisher sought not to follow this strategy (ie sought not to negotiate a higher publishing share), it could put the major publisher at a competitive disadvantage. It could impact its ability to retain existing songwriters whose contracts were up for renewal or to compete for new songwriter talent.

5.125 Some stakeholders have noted that songwriters do not know their publisher’s share (or any other publisher’s share) of music streaming revenue, how it equates to what they are currently earning, or how much they could earn elsewhere (to understand the implications of switching). They also state that

[288] In this example, the royalty rates paid to songwriters would actually be expected to fall if there was a monopoly in publishing and therefore no competition to sign songwriters. We assume that royalty rates paid to artists are still lower than what is paid to songwriters. This is for the purposes of explaining how such a rate structure could possibly give the majors incentives to favour shifting music streaming revenues from publishing into their recording arms, as has been alleged by some stakeholders, when combined with particularly weak competition in publishing.

songwriters are often under long-term agreements which would prevent them from switching in any event.[289]

5.126 Some publishers have commented that the complexity of the pricing models used makes it difficult to demonstrate to songwriters what they can definitively expect to receive as a 'payment per stream' (for example, because the effective amount yielded per stream will vary based on factors such as the music streaming service in question, the territory, plan, and accounting period).[290] However, other publishers indicated that it would be possible for songwriters to estimate the 'payments per stream' from the information they provided to songwriters.[291]

5.127 For instance, existing songwriters on a major's roster will often have access to a range of information via royalty portals and statements which enable songwriters to break down their royalties by income source, source country, territory, period, work, and production. Songwriters may also be able to access information on their royalties for a work by commercial offering (for example, ad-funded tier, premium and family), country, and time-period. In addition, the majors often report stream counts on royalty statements issued to songwriters, which should allow them to estimate the per stream rate.

5.128 Songwriters are often represented by specialist advisors (such as managers, lawyers, accountants/business advisors and auditors), although this is not always the case. These advisors will often have songwriter clients who are signed to different publishers. Their songwriter clients could share with them information from these different publishers, enabling the advisors to compare financial information and metrics (sometimes in respect of the same song) across these different publishers. Therefore, were a major to fail in negotiating a publishing share of revenues that was similar to the increase that its rivals had negotiated, a significant risk is that the impact of this failure in terms of lower royalties could become known in general terms by the songwriter community. Even if the underlying cause of this major's lower royalties was not widely known, royalties are an important factor in attracting and retaining songwriters.[292] The lower royalties would therefore result in a significant risk that the publisher would find it difficult to compete for and retain song writing talent, which would potentially have significant consequences to the publisher's reputation among songwriters.

[289] See #BrokenRecord Campaign, Ivors Academy of Music Creators and Hipgnosis Songs Management Limited responses to the CMA Update Paper.
[290] Information provided to the CMA.
[291] Information provided to the CMA by publishers.
[292] For example, the Ivors Academy of Music Creators states in its response to the CMA's Update Paper that 'Competition between publishers is based on their admin shares of royalties retained and other matters'.

5.129 Also, were a major to fail to negotiate an increase in its publishing share of revenues to keep pace with its rivals, this may limit the advances it can offer to attract and retain songwriter talent. Advances are an important factor when a songwriter is deciding which publisher to sign with.[293,294] Although the size of advance being offered may comprise several different factors,[295] if a major had a lower publishing share of revenues than its rivals, this would reduce its current and future revenues and therefore the level of advances it could offer over time. This would place the major at a competitive disadvantage in signing and renewing songwriters' contracts.

5.130 With reference to songwriters being subject to long-term agreements, there does appear to be some variation of contract duration. Publishing rights (which is one aspect of contract length) can be anything between five and twenty-five years after the end of a contract's term. The contract term itself is comprised of an initial period followed by a number of option periods (exercisable at the discretion of a publisher). The length of each of these periods depends on the delivery of compositions by a songwriter (for example one album) and a longstop cut-off, often of 2 to 3 years, if delivery does not take place. Three option periods would be considered fairly short for a major agreement with 4 or 5 option periods being more common. [296]

5.131 Consistent with the above, an independent publisher told us that standard publishing deals will involve 10 to 13 years of copyright.[297] UMG has also noted that many publishers' agreements with songwriters provide frequent opportunities for re-negotiation or change of representation.[298]

5.132 Long-term agreements will only impact existing songwriters on a publisher's roster, not new songwriters and those whose deals are expiring (who will have an opportunity to switch publishers, particularly for new material, at every renewal). Furthermore, songwriters may be able to take their song catalogue with them (for example, where the overall publishing deal is on a short-term basis, where songwriters have forgone an advance in order to have greater

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[293] Information provided to the CMA.
[294] Other important factors include term, retention period and royalty rates.
[295] Such as projected income streams, the overall commercial terms on offer, and songwriter preference (such as a songwriter agreeing to a lower advance for a shorter deal duration).
[296] See clause 2 and 3 here: https://musiciansunion.org.uk/legal-money/job-contracts-and-business-agreements/specimen-agreements-for-music-business/specimen-publishing-agreement (accessed on 28 October 2022)
[297] Call with an independent publisher. [✂]
[298] UMG response to the CMA Update Paper, paragraph 2.44.

control over their works,[299] or where the 'retention period'[300] of the publishing deal is nearing its end). To avoid losing existing songwriters on their roster over time, the majors may have an incentive to ensure that their share of publishing revenues keeps pace with its rivals, and to therefore push for a higher publishing share of revenues in negotiations with music streaming services.

5.133 Based on the evidence we have received, competition to sign songwriters does not appear to be substantially weaker than competition to sign artists. Were there substantially weaker competition to sign songwriters compared to artists, this imbalance in competition could contribute to any weaker incentives the majors have to negotiate up the publishing share of revenues compared to the recording share of revenues. The majors would be less concerned about losing songwriters due to a lower publishing share than losing artists due to a lower recording share of music streaming revenues (all else equal). However, such a concern is not supported by the evidence. The market structure is less concentrated in publishing compared to in recording. The barriers to switching, for example due to contractual commitments and copyright retention periods, also do not appear to be materially greater for songwriters compared to artists (see paragraphs 5.130 to 5.131 on songwriters' contracts and paragraph 5.50 for artists' contracts).

5.134 While competition may be helping to drive increases in the publishing share of music streaming revenues and currently does not appear to be a key driver that is suppressing this publishing share, we have also assessed to what extent competition can overcome the licensing negotiation frictions referred to in paragraph 5.118.

5.135 Regardless of how much competition there is to sign songwriters, there may be limits on the extent to which competition can overcome licensing negotiation frictions. These licensing negotiating frictions may not impede the increase in the publishing share of revenues where it does not require a substantial fall in the recording share of revenues that record companies would have incentives to resist. But there is a risk that we may now have reached a point where such a fall in the recording share is needed to increase further the publishing share. The long-term decline in music streaming services' share of revenues appears to be reversing more recently, which

[299] Whilst many songwriters may want the services and money offered by publishers, many do not want to relinquish all control over their works. For example, some songwriters may forgo an advance so they can exploit their rights and make money out of them without too many restrictions.
[300] Unlike recording agreements where record companies will often take an assignment of copyright in the recordings for the life of such copyright, some publishers will only want an assignment, and thus the right to collect income and administer the rights, for a limited period (the 'retention period').

could reflect an increase in their bargaining power and/or a need for them to reach agreements that are financially sustainable for them.

5.136 As noted above, record companies are likely to resist a substantial fall in the recording share, and with music streaming services needing to reach agreements with them to offer a full catalogue of music, the licensing negotiation frictions could now be a more significant limiting factor on increases in the publishing share. To date we have not observed such a shift in revenues from recording to publishing to suggest that competition can overcome these licensing negotiation frictions.

5.137 Even if there were stronger competition in publishing to sign songwriters, it is not clear to us how this could overcome the licensing negotiation frictions. Given the importance to music streaming services of being able to offer a 'full catalogue', greater competition to sign songwriters may not reduce a record company's bargaining power and ability to block a shift in revenues away from recording and towards publishing.

Tacit collusion

5.138 Concerns have been raised that tacit collusion between the majors is resulting in publishing taking a low share of music streaming revenues. Such tacit collusion would involve the majors (and possibly other music groups) reaching a common understanding to each negotiate a similar publishing share with music streaming services. That is, the majors could use such a common understanding to focus on increasing the recording share of music streaming revenues instead of increasing the publishing share (which may help them offer more competitive deals to songwriters). If such a tacitly collusive outcome could be reached and sustained, the concern is that this could in principle be a mechanism to maximise a major's overall profits by ensuring more revenues are allocated to recording rights than to publishing.

5.139 The increase in the publishing share of streaming revenues (noted in the section above) is more consistent with competition than such tacit collusion currently taking place. Such increases in the publishing share under tacit collusion would involve the majors reaching a common understanding to do this when, as is alleged, a higher publishing share may not be in their collective interests. That is, a higher publishing share would make it more difficult to increase the recording share where it is alleged that they could make greater profits.

5.140 If tacit collusion were currently taking place, one would have expected the publishing share of revenues to have remained at a similar or lower rate as in 2007 when the Copyright Tribunal issued its interim decision confirming the publishing share at 8% (see paragraph 5.102 above) so the major record companies could focus on getting an even higher share of revenues being allocated to recording rights. Instead, the majors have negotiated higher publishing shares, including by taking a greater role in negotiations relative to CMOs. Such behaviour is more consistent with competition as noted above.

5.141 The publishing shares that each major negotiates with music streaming services are also not widely shared due to NDAs and there are complex financial terms that impact the overall publishing share a major receives. This lack of transparency and complexity is likely to make it challenging to reach a common understanding on the publishing share to seek. The lack of transparency also makes it difficult to detect and therefore punish a major that negotiates a higher share. This, in turn, makes it more difficult to sustain a tacitly collusive outcome.

Majors' influence on CMOs

5.142 Some stakeholders have raised concerns about the influence majors have both within, and relative to, CMOs. For instance, some of the majors sit on the Board of PRS for Music[301] and it is claimed that this may undermine any steps that it might want to take to improve songwriter rights. Also, as described in paragraph 2.49, Option 3 publishers who have opted to license the music streaming services directly (which include the major publishers) are now negotiating performing rights on behalf of CMOs alongside reproduction rights through multi-territory licensing hubs. This, it is alleged, has eroded the influence of PRS for Music and increased the majors' role because, while PRS for Music still has an important function to play in the oversight and review of licence requests, the major publishers are leading more negotiations. This gives rise to concerns that the major publishers will not maximise publishing outcomes in these negotiations due to influence from their record label counterparts.[302]

5.143 It has also been alleged that the distribution of unclaimed royalties[303] on a pro rata basis to their market share by PRS for Music unfairly favours the majors.[304] This is because basing the distribution on market share will benefit the most successful companies, who often have the knowledge and resources

[301] PRS for Music Limited is a CMO made up of two collecting societies: the Mechanical-Copyright Protection Society (MCPS) and the Performing Right Society (PRS).
[302] See, for example, Ivors Academy of Music Creators, An Artist Management Company, and the European Composer and Songwriter Alliance responses to the CMA's Statement of Scope.
[303] Unallocated royalties can be a combination of i) unmatched royalties which occur when music contains data which cannot be matched to a registered work, and ii) partially-matched royalties where data can be matched to a registered work but 100% of the shares on the work are not claimed.
[304] See, for example, response to the Statement of Scope from Ivors (further response, p12) and an Artist Management Company (p10).

to properly register their data quickly and accurately (meaning their royalties are rarely unclaimed). This means that the majors will benefit from royalty payments twice, through distribution to the streams that have been correctly identified, and through the unallocated royalties. This, it is alleged, creates an incentive for inertia when it comes to industry investments that would increase accuracy.

5.144 We have not received evidence that clearly supports the concerns about the influence the majors have both within, and relative to, CMOs. As described in paragraph 5.102, publishing shares and revenues have increased since the major publishers have taken a greater role in negotiating and licensing music directly to streaming services. Any weaker role of CMOs does not therefore in practice appear to have resulted in worse outcomes for songwriters over time.

5.145 PRS for Music's governance appears to be structured with checks and balances in place to prevent undue influence from the majors.[305] The Board comprises 13 directors of which only two are major publishers. Songwriters, publishers and non-executive independent directors are represented equally at Board level with decisions made, and disputes resolved, by consensus (with each director having a single vote regardless of the revenue that flows through the society via the publisher the Board member is employed by).[306,307] The majors also do not participate in the songwriter director elections or in the elections for the remaining publisher directors.[308]

5.146 PRS for Music's oversight role also requires entities mandated by Option 3 publishers to provide it with information so that it can assess whether to grant its consent to the performing rights negotiated on its behalf. This includes information on terms, so that PRS for Music can check these and ensure that songwriters would not be materially disadvantaged by the grant of consent (for example, where the proposed terms do not ensure adequate remuneration for PRS for Music songwriters).[309] This oversight should allow PRS for Music to identify and oppose any attempt by the majors to suppress publishing profits.[310]

5.147 PRS for Music also operates a conflicts policy which requires the majors (and all directors) to declare any interests in other directorships, board seats or

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[305] The majors are defined as 'designated publishers' under PRS' constitution.
[306] See the Governance page of the PRS for Music website.
[307] UMG response to CMA Update Paper.
[308] UMG response to CMA Update Paper.
[309] PRS information provided to the CMA.
[310] The European Commission also found in its 2018 clearance of Sony / EMI Music Publishing that, because Sony will still require certain approvals from collection societies to engage in digital licensing activities in the UK and Europe, that the CMOs could still 'oppose any attempt by Sony to shift value from publishing to recorded music'.

client relationships that might exist with PRS customers.[311] PRS for Music also assert that the majors have no role in influencing policy on or approving licensing terms, negotiations and any other agreements involving music streaming services. For instance, the majors are not involved in the 'Clean Team' (which has oversight and approval over the terms of majors' licensing deals with music streaming services) and the PRS Members' Council and PRS for Music Board (both of which include the majors' representatives) are not involved in licence negotiations for streaming services.[312]

5.148 In addition, as described in paragraph 2.54, the amount of unclaimed MTOL online royalties distributed by PRS for Music (on behalf of PRS and MCPS) appears limited in magnitude. It is therefore unclear to us that the current distribution model for unclaimed royalties[313] is unduly disadvantaging independent publishers in favour of the majors.

5.149 Despite these findings, there are concerns about the role and independence of CMOs and this remains important for stakeholders given the pivotal role CMOs have in collecting revenue for songwriters. The conduct of CMOs is governed by the IPO under the Collective Management of Copyright (EU Directive) Regulations 2016 (the CRM Regulations).[314] The CRM Regulations require PRS for Music (among other things) to act in the best interests of the rights holders it represents and not to impose any obligations which are not objectively necessary for the protection of their rights and interests. Any concerns regarding non-compliance with the CRM regulations should be directed to the IPO.

Other concerns raised by songwriters

5.150 Notwithstanding the increases in the publishing share over time, songwriters (like artists and other creators) have raised concerns about the level of remuneration that they receive from streaming.

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[311] UMG response to CMA Update Paper.
[312] PRS information provided to the CMA.
[313] The PRS distribution policy is set by a Distribution Committee. The Distribution Committee is drawn from the membership of the Board and up to 2 publishers and 2 writers from the Members' Council. It comprises up to 4 independent non-executive directors, 6 writers and 6 publishers.
See the PRS for Music website.
[314] The conduct of UK CMOs (including the PRS) is governed by the CRM Regulations. The CRM Regulations designate a National Competent Authority (NCA) which is responsible for monitoring and enforcing compliance with the Regulations' provisions. The NCA functions in the UK are undertaken through the IPO, which has published guidance on these regulations (see IPO (2021), *Guidance on the Collective Management of Copyright (EU Directive) Regulations 2016*).

5.151 There may be several factors contributing to this:

(a) Due to the music streaming services' subscription-based models with prices relatively stable over time, the amount of streaming revenue that the publishers receive, and therefore the amount that they can distribute to their songwriters, will be a largely fixed amount irrespective of the average user's consumption.

(b) As discussed in paragraph 2.57, the barriers to entry for music-making and distribution are low and the number of songs being released per year, and the number of songwriters contributing to those songs, is increasing. Further, like many other creative industries music tends towards a "winner-takes-all" focus on a small number of popular hits dictated by consumer awareness and tastes.

(c) Also, with the 'full catalogue' streaming model making it easier for listeners to find older music, and personalisation algorithms that recommend music regardless of its age, new songwriters – like new artists – are not just competing against other new music, but all music that has ever been written. This has also led to a significant shift in how songwriters are remunerated. Pre-streaming, songwriters would earn most of their revenue in the years following the release of a song, then experience a decline in sales. As a result of music streaming, songs now have a much longer shelf life and generate income incrementally for a longer period than has traditionally been the case.

5.152 These factors may reduce the revenue a songwriter receives from a successful song, may make it difficult for new songwriters to attract consumers' attention and may therefore dilute the revenue that any one songwriter can earn. On the other hand, songwriters may benefit in the longer term from the prolonged shelf life of music under streaming, with the opportunity for higher total earnings over their lifetime.

5.153 Ultimately, concerns about songwriter remuneration underpin the concerns raised regarding differentials in publishing and recording shares. We note that a creator's remuneration is calculated by multiplying the revenues received by a music company for the rights to that creator's music, with the royalty rate paid out.[315] While publishing earns a much lower share of streaming revenues than recording, it pays out much higher royalties.[316] As such, the total amounts that the majors pay out, in aggregate, to their songwriters (12%) and

[315] Advances and recoupable costs also affect creators' earnings.
[316] See paragraph 5.97

to their artists (16%), while lower, are not vastly different[317,318] – albeit individual songwriters' remuneration within this will vary considerably. To the extent that an increase in the publishing share is warranted (if publishing revenues are currently being suppressed in favour of recording revenues), it is not a given that any increase would eliminate the debate about how the spoils of streaming should be divided among different creators (particularly if songwriters become better remunerated than artists).

5.154 Songwriters have also raised concerns about the challenges they face in receiving their income on a timely basis or in full (see paragraph 2.82); and we have also heard concerns about a lack of contract transparency adversely impacting creators.[319] While not an area of focus set out in our statement of scope, we understand that music publishing royalty chains may be particularly complex, involving multiple rightsholders and intermediaries (eg multiple songwriters as well as both publishers and CMOs on a multi-territory basis) – and that challenges in administering such chains can be exacerbated by missing or inaccurate metadata identifying song rightsholders. These are important concerns and the DCMS Select Committee made a number of recommendations to Government on these points.[320] In response, the Government has set up an industry working group on metadata with the aim to publish an industry agreement covering the problems, objectives, responsibilities, and commitments for further action on metadata by industry.[321] In addition, we note that CMOs are regulated under the CRM Regulations (see paragraph 5.149) and concerns regarding their conduct, if any, should be directed to the IPO.

Conclusion - songwriters

5.155 We understand that songwriters are very concerned about the fairness of their remuneration and feel strongly that the current valuation of publishing rights is too low, which they consider to be a threat to both existing songwriters and the long-term health of this creative sector.

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[317] See Figure 2.10.
[318] In practice, artists will also tend to have to pay recoupable expenses from their share, which may further reduce any disparities in outcomes between artists and songwriters.
[319] For example, see the response from An Artist Management Company and the further response from Ivors Academy of Music Creators to the CMA's Statement of Scope.
[320] For example, the DCMS Select Committee recommended that the Government must oblige record labels to provide metadata for the underlying song when they license a recording to streaming services, and that Government should push industry to establish a minimum viable data standard to ensure that services provide data in a way that is usable and comparable across all services. See House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Government and Competition and Markets Authority Responses to Committee's Second Report*.
[321] See the Government's update of 18 May 2022 to the Chair of the DCMS Select Committee here.

5.156 As noted in Chapter 1, music streaming emerged at a challenging time when the music industry was in substantial decline. When streaming first launched, it may have been unclear whether streaming would be attractive to consumers or how the economics of streaming would differ from physical sales or music downloads. It appears that the starting point for negotiations that determined the initial revenue split between recording and publishing in music streaming was the historic split agreed in physical sales, which favoured recording rights given the higher costs and risks that record companies bore in distributing these products to retailers.

5.157 Songwriters are concerned that the majors have an incentive to favour a split that favours recording rights. This is due to the royalties they agree to pass on to artists being substantially lower than for songwriters so they therefore get to retain a larger share of revenues from a split that favours recording rights. However, any additional profits on the recording side could be competed away when seeking to sign artists, so it is not possible to conclude that the majors' overall profits are higher from a split that favours recording and that they therefore have strong incentives to retain such a split.

5.158 Since 2008 there has been a significant increase in the share of music streaming revenues going to publishing. With the recording share being broadly the same as it was in 2008, the long-term increase in the share going to publishing rights has been at the expense of the share taken by music streaming services (albeit more recently the share going to music streaming services has been increasing).

5.159 With the shift to digital distribution that has arisen with the growth of music streaming, some stakeholders are concerned that changes in how music streaming revenues are divided do not reflect the different costs and risks involved compared to physical distribution. There is also a question over the extent to which the split in revenues between publishing and recording reflects the relative value of artists' and songwriters' contributions to a track, for example in terms of how much an artist drives the sale of a track compared to the songwriter (if they are different people).

5.160 While some elements of these concerns go beyond the scope of the CMA's remit, we have assessed to what extent competition can be expected to ensure changes in costs and risks in recording and publishing are reflected in how music streaming revenues are split. We have also assessed to what extent competition issues are driving any distortion in this split.

5.161 We have not found evidence of competition to sign songwriters being substantially weaker than competition to sign artists. Such an imbalance in competition could possibly lead to weaker incentives in publishing than in recording to negotiate a high share of music streaming revenues and drive a split that favours recording, but this concern is not supported by the evidence available.

5.162 The increase in the publishing share of revenues since 2008 is more consistent with there being competition in publishing over this period to drive up this share rather than there being tacit collusion. Our analysis indicates that a publisher would be at a competitive disadvantage in signing songwriters if it did not keep up with the increase in the publishing share of revenues negotiated by other publishers. It is also unlikely that the conditions for tacit collusion are currently met, in particular because of a lack of transparency that might facilitate this type of coordination. Tacit collusion does not therefore currently appear to be driving any distortion in the split in revenues between publishing and recording.

5.163 Also, despite the conduct of CMOs not being the focus of this report, we have not received strong evidence that supports the concerns about the influence the majors have both within, and relative to, CMOs. We also note that the conduct of CMOs is not within the CMA's remit, with the IPO responsible for monitoring and enforcing the CRM Regulations.

5.164 While we have not found evidence of weak competition to sign songwriters or tacit collusion driving any distortion in the split in revenues between recording and publishing, there may be challenges in securing increases to the publishing share that arise from the need for music streaming services to reach agreement with many key publishing and recording rightsholders to offer a full catalogue. Music streaming services, record companies and publishers all need to agree on how music streaming revenues are divided since an increase in one of these parties' share of revenues necessitates a fall in the share received by one or both of the other parties. This results in what we refer to as 'licensing negotiation frictions'.

5.165 Competition to sign songwriters appears to some extent to have driven up the publishing share of revenues over the long-term. This increase in the publishing share appears to have been accommodated by a fall in the share of revenues retained by music streaming services. This may be possible given the strong bargaining position of key music rightsholders arising from the need for music streaming services to license their rights to offer a full catalogue of music.

5.166 There is a risk that we may have reached a point where it may be difficult for publishers to secure further substantial increases in their revenue share, or that we could reach this point soon. Over the last 5 years the publishing share has not increased as fast as it did in the preceding years. It may be difficult for music streaming services to offer publishers further substantial increases in the publishing share without record companies agreeing to a substantial decrease in their recording share (both the majors and the indies, many of which use the licensing agreement negotiated by Merlin on their behalf). Licensing frictions may be more acute in this situation due to the strong bargaining position of music rightsholders noted above. As record companies would stand to lose out from a shift in revenues away from recording rights, they are unlikely to agree to such a shift. And since 2008 there has not been a substantial shift in revenues away from recording rights towards publishing rights, which is consistent with record companies being unlikely to agree to a substantial reduction in their share of revenues.

5.167 Regardless of how much competition there is to sign songwriters, it is not clear how this could make a significant difference at overcoming the licensing negotiation frictions. Given the importance to music streaming services of being able to offer a full catalogue, greater competition to sign songwriters is not likely to reduce a record company's bargaining power and ability to resist a shift in revenues away from recording and towards publishing. This appears to be an inherent feature of the full catalogue music streaming model, as explained at paragraph 4.39 to 4.40 above.

5.168 Even if record companies, such as the majors, did not have publishing arms, it would still be in their interests to resist a substantial shift in revenues for the reasons explained above. In fact, the majors would actually be likely to have stronger incentives to resist such a shift if they did not have a publishing arm as any losses in recording revenues would no longer be mitigated by increases in publishing revenues.

5.169 Whilst we find that competition for songwriters has driven up the existing publishing share, concerns exist that the current split could still be sub-optimal, particularly for songwriters. If that is the case, it may take time for the split to adjust further, if at all, owing to the inherent licensing negotiation frictions and the bargaining power of music rightsholders we have described, and thus there could be restrictions to competition. There is also a limit on the extent to which competition to sign songwriters can drive further increases in the publishing share, particularly if an increase needs to be accommodated by a fall in the recording share. Competition policy is not therefore the right tool to reach an optimal split. It is a matter for Government and policymakers to determine whether the split is appropriate and fair, and to explore what, if anything, is needed to incentivise song writing as part of any wider policy interventions on this split and other measures, for example those relating to the copyright framework and how music streaming licensing rates are set.

6. User Uploaded Content (UUC) platforms

6.1 In Chapter 4, we set out our analysis of how competition is working between music streaming services and explained our conclusion that it is currently delivering good outcomes for consumers. As we outlined, this includes competition from some UUC platforms – notably YouTube and SoundCloud – which offer premium and ad-funded music streaming services, providing additional choice and innovation to consumers.

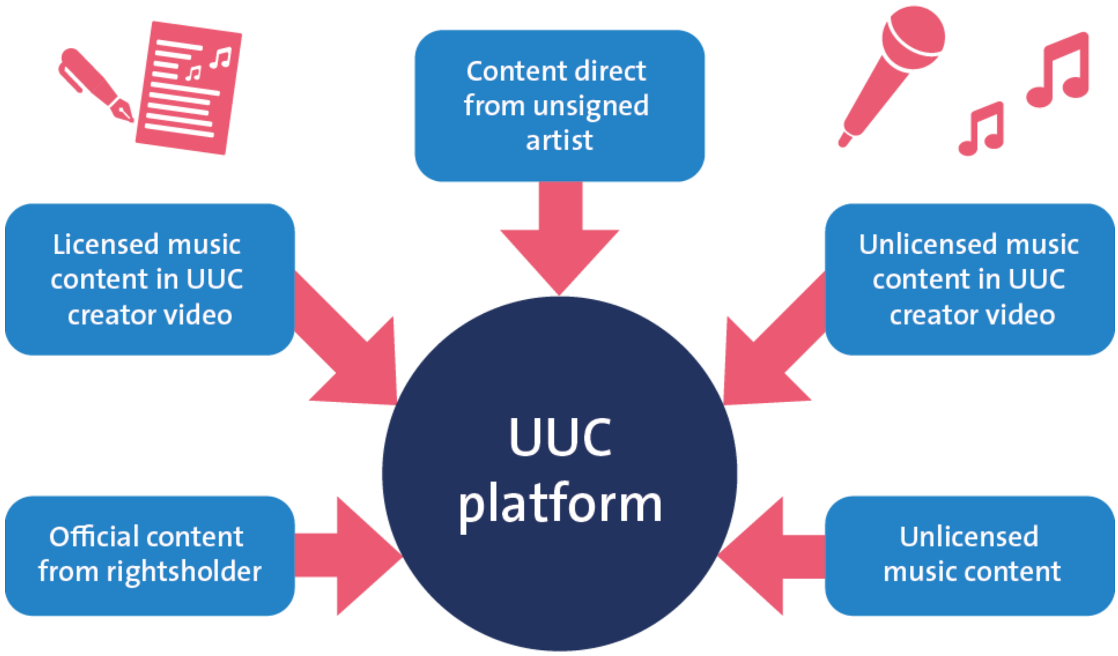
6.2 However, parts of the music industry have argued that the way UUC platforms operate within their distinct legislative framework may reduce overall music revenues, with negative impacts on creators and potentially on the diversity and sustainability of music in the future. The DCMS Select Committee identified this as a potential issue in its report on the economics of music streaming and this was one of the reasons it recommended that the CMA undertake a market study.[322]

6.3 Therefore, in this chapter we provide some evidence and analysis on comparative revenues from music streaming services and UUC platforms. This is intended to provide an input to the broader debate about whether there may be scope to increase revenues from music streaming if changes were made to the 'safe-harbour' protections available to UUC platforms in the UK. As part of our contribution to the debate, we also set out some of the arguments we have heard about the costs and benefits to consumers and creators of UUC platforms.

6.4 As described in Chapter 2, UUC platforms are subject to a different legal copyright framework to music streaming services. UUC platforms tend to focus on video-sharing and they have a variety of both music and non-music content. During this market study some stakeholders have voiced concerns that UUC platforms offer consumers an attractive way to listen to music for little or no cost, and that this is reducing revenues to the music industry and creators. In particular, there are concerns about a 'value gap' between what rightsholders earn from tracks streamed through a music streaming service compared to the same tracks accessed on a UUC platform.

[322] Digital, Culture, Media and Sport Committee report on Economics of music streaming (2021), paras 161-178.

Figure 6.1: Summary of how music can appear on UUC platforms



6.5 Given the scope of our study, a particular focus for us has been UUC platforms that offer comparable functionality to music streaming services - that is, UUC platforms that offer consumers a wide choice of tracks to select and listen to in their entirety. Since the YouTube UUC platform is the largest of these (accounting for [10-20]% of UK music streaming revenues in 2021 as set out in Chapter 2), it is the focus of much of our analysis.[323]

6.6 In light of representations that platforms such as TikTok also affect music revenues, we briefly discuss the potential impact of these emerging UUC platforms, while noting that some of them use music content in different ways to music streaming services.

The relative bargaining power of UUC platforms and rightsholders

6.7 UUC platforms offer video-sharing and viewing services to consumers. Music content – both official videos from rightsholders and user-uploaded videos – can be a significant part of the services offered on these platforms, though there are a range of other types of video content. Data published by Ofcom found that among adults who watched short video or online content of less than ten minutes on any device at least monthly, 56% had viewed music

[323] Data published by Ofcom found YouTube is the most popular social video platform in Britain for watching videos of less than ten minutes, used by 70% of internet users aged 15+ for this purpose. Ofcom (2022), Media Nations: UK 2022, Figure 19.

content at least monthly which was the fourth most commonly viewed genre of video.[324]

6.8 In the context of music content, some music industry stakeholders have argued that UUC platforms are in a strong bargaining position relative to rightsholders because they benefit from 'safe harbour' provisions in the UK copyright legislation.[325] This, in turn, is argued to enable them to pay less to rightsholders than music streaming services, meaning music industry revenues are argued to be suppressed.

6.9 As outlined in Chapter 2, these 'safe harbour' provisions exempt UUC platforms from liability for illegal content uploaded by its users, subject to certain qualifications including a requirement to take down such content if requested by rightsholders. These provisions mean UUC platforms do not need to agree licences upfront with music rightsholders. One record label, for example, claims several social media platforms have formally stated to them that they do not need a licence for music in UUC at all. YouTube, however, has argued that balanced copyright law allocates responsibility and liability among all stakeholders, and adds that stability in the framework has allowed a robust digital music marketplace to drive revenues back into the music industry.[326]

6.10 For rightsholders to have an effective choice about whether to license their content to a UUC platform, there need to be mechanisms which allow copyrighted material to be identified and removed if the rightsholder chooses to do so. We have been told that those options are not always available.

6.11 First, some UUC services may have ineffective systems to identify and remove content, which in turn means that content may appear and remain on the UUC service without rightsholders' permission or appropriate commercial terms having been agreed.

6.12 Second, given the breadth of some UUC platforms' services and their perceived strong position based on the 'safe harbour' provision, some UUC platforms deploy their content management systems in a limited way, and unlicensed content may still appear on their platforms as a result. For example, one record label reported that a UUC platform proposed to scan

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[324] Data published by Ofcom (2022), Media Nations: UK 2022, Figure 20.
[325] See, for example, IMPALA's response to the Update Paper p1-4, PRS for Music response to the Statement of Scope p4-5 and WMG's response to the Update Paper p10-12.
[326] Written evidence submitted by YouTube to the Digital, Culture, Media and Sport Committee inquiry on Economics of music streaming (2021).

only a small proportion of user uploaded content to identify copyrighted content (and not the entire corpus of content), [✂].[327]

6.13 These issues can be exacerbated if the process for rightsholders to identify and request that content is taken down is onerous and costly. IMPALA told us the concerns are particularly acute for smaller independent labels, as the majors have greater resources to monitor use of their copyrights and to issue takedown notices.[328]

6.14 When unlicensed content is available on UUC platforms and it is hard for rightsholders to identify it, this may lead them to conclude they have little choice but to monetise their content, rather than having to monitor and repeatedly ask for it to be taken down. This may therefore weaken rightsholders' bargaining position with the UUC platform.

6.15 In practice, the majors have agreed licences and commercial terms with both established and some emerging UUC platforms. YouTube, as a more established and larger platform, appears to have more sophisticated content management systems. Google says the tools in YouTube's Copyright Management Suite are intended to achieve high standards in the detection, prevention and removal of infringing content for the benefit of rightsholders, while safeguarding its users' rights to freedom of expression and information (also see paragraphs 6.48 to 6.58 for further evidence we received on content management systems).[329]

6.16 However, even where licences are agreed, it is argued that the bargaining power of UUC platforms arising from the legislative framework and inadequate content management systems has led to rightsholders having agreed to poorer terms than they would otherwise have done. PRS for Music, for example, claimed that if rightsholders cannot in practice require a platform to remove their works, the negotiation of licensing terms is no longer one of a willing seller, but rather of one who has little choice but to sell.[330]

6.17 In addition, YouTube, in particular, might also have strong bargaining power in negotiations with music rightsholders due to its size, its importance for promoting music across its wide user base, and due to YouTube not relying on music rights to be able to offer general-interest video content. The same may also be true, to some extent, in relation to some other fast growing UUC

327 [✂] information provided to the CMA.
328 IMPALA response to the Update Paper p1-4.
329 Google information provided to the CMA.
330 PRS for Music response to the Statement of Scope p4.

platforms that offer video-sharing services that include music content as just one part of their offering.

6.18 To the extent that a UUC platform has strong bargaining power – potentially due to a range of factors noted above, of which safe harbour may be just one – this bargaining power may manifest itself in a gap between what rightsholders earn relative to music streaming services. Notwithstanding this range of factors, in line with the terminology used within the sector in recent years, we refer to any difference in payments to music rightsholders that results from this effect as the 'value gap'.

Value gap in what YouTube pays for music compared to ad-funded music streaming services

6.19 To inform the debate about the safe harbour provisions, we have sought to estimate the 'value gap' for music on YouTube's UUC platform compared to Spotify's ad-funded music streaming service. We have focused on YouTube, as it is the largest UUC platform and has more comparable functionality to music streaming services than other UUC platforms (albeit there are still notable differences between YouTube and music streaming services). We have compared it to Spotify's ad-funded service as it is the closest music streaming service to YouTube in terms of its scale.

6.20 We estimate the share of ad revenues that YouTube's UUC service pays out for publishing and recording rights (a 'pay-out rate'), and how much this share differs compared to Spotify's ad-funded service.[331] As Table 6.1 shows, in 2017 the share of YouTube's ad-revenues that was paid out was over 20 percentage points lower than Spotify's ad-funded service. In 2021, this difference had fallen to less than 5 percentage points. This fall over time was down to a combination of Spotify's ad-funded pay-out rate decreasing and YouTube's pay-out rate increasing.

6.21 In value terms, the difference in pay-out rates equated to a 'value gap' of less than £5m in 2021. That is, in 2021 if YouTube had paid out the same percentage of its ad revenues as Spotify, there would have been additional revenues to rightsholders of less than £5 million.[332] This equates to less than 0.5% of the £1,115 million total UK recorded music revenues in 2021.

[331] We note that the pay-out rates are different on ad-funded commercial streaming services to premium commercial streaming services, therefore a comparison to another ad-funded service is the most appropriate.
[332] This uses the total ad-funded revenues received from YouTube UUC and YouTube Music Premium as Google's system cannot separate these revenues. Revenues from YouTube UUC constitute the vast majority of these revenues.

Table 6.1: The difference in YouTube's pay-out rates of its ad revenues compared to Spotify's

	2017	2018	2019	2020	2021
Percentage of YouTube's ad revenues from music paid out music rightsholders	[40-50]%	[50-60]%	[60-70]%	[60-70]%	[60-70]%
Percentage of Spotify's ad revenues from music paid out music rightsholders	[70-80]%	[60-70]%	[60-70]%	[60-70]%	[60-70]%
How much lower YouTube's percentage pay-outs are (percentage points)	[20-30]pp	[5-10]pp	[0-5]pp	[0-5]pp	[0-5]pp
Additional amount in £m paid out in rights payments if YouTube and Spotify percentage pay-outs were the same	£m[20-30]	£m[5-10]	£m[0-5]	£m[5-10]	£m[0-5]

Source: CMA analysis of data from Google and Spotify

6.22 One reason for YouTube paying out a lower percentage of its ad revenues than Spotify in 2017 could be because YouTube may have had greater bargaining power to negotiate better commercial terms. Any greater bargaining power could be due, to some extent, to the safe harbour provisions that apply to YouTube. But any greater bargaining power could also be due to other factors such as the importance of YouTube as a promotional tool compared to music streaming services. Our analysis is unable to unpick these different factors which is relevant to any consideration of reform to safe harbour.

6.23 With the difference in the percentage of ad revenues paid out by YouTube and Spotify having fallen over time, any difference in the bargaining power between YouTube and Spotify may also have reduced over time. Notably there was a significant reduction in this difference between 2017 and 2018. This reduction followed a large number of new commercial deals signed by YouTube[333] and Spotify with major recording and publishing companies in 2017 for the licensing of music content. [334] Following the deals being signed there was an increase in the percentage of ad revenues paid out by YouTube and a fall in the percentage of ad revenues paid out by Spotify.

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[333] See for example: YouTube, Music Labels End Standoff, Move Toward Paid Service - Bloomberg; Universal Music, YouTube signal truce with license agreement | Financial Times (ft.com); and Warner Music Extends Deal With YouTube - Variety. In the media it was reported that the imminent launch of YouTube premium music service in 2018 – which it would need to license majors' content for - may have been a driver behind some of these deals.

[334] See for example: Spotify's New Licensing Deal Eases Path to Going Public - The New York Times (nytimes.com)): Spotify just struck a crucial deal with Sony Music - The Verge; and Spotify signs crucial Warner Music deal - BBC News. In the media it was reported that the fact that Spotify was imminently going public may have been an important driver behind some of these deals.

6.24 If policymakers are considering the extent to which pay-out rates on YouTube (and other UUC platforms) should be similar to those on music streaming services, they may also wish to consider the following factors:

- to what extent the overall user proposition of a UUC platform is directly comparable to music streaming services (eg the availability of videos focussed on music alongside non-music videos is a different proposition to a music streaming service);
- to what extent music featured in content is being used in the same way (eg background music in a section of a general-interest video is a different consumption context to music streaming);
- to what extent additional creators beyond the music rightsholders are involved in the production of the user-uploaded content, who may also receive a share of revenues associated with it;
- differences in the ability of music streaming services to raise advertising revenues from music content;[335] and
- whether other elements of the broader agreements between UUC platforms and music rightsholders could offset or explain any lower pay-out rates on the platform's ad-funded service (eg whether, for premium music streaming plans, Google offered a higher pay-out rate than other music streaming services).

YouTube's impact on music streaming services

6.25 As well as the concerns raised about the greater bargaining power UUC platforms may have, some record labels and publishers have told us that UUC platforms affect the competitive dynamics of music streaming and can have a 'cannibalising' impact on their revenues.[336] In particular YouTube, as the largest UUC platform, has been highlighted as causing negative effects on revenues from premium music streaming subscriptions (though we note that YouTube itself now offers a premium music streaming service allowing consumers to access content without ads). This effect is argued to materialise in different ways.

[335] Where a service is able to sell advertising with music content at a higher price (perhaps due to better data or targeting technology), this higher price may mean that the service can pay rightsholders a similar amount per stream in absolute terms (ie pence per stream) compared to other services, even though the service offers rightsholders a lower percentage of these ad-revenues.
[336] SMP's response to the Statement of Scope, for example, argued that UUC services decrease the consumer's willingness to pay for a subscription service or to adequately value a subscription service.

6.26 First, we were told by music streaming services and music companies that the ability for consumers to access music content on YouTube on an ad-funded basis may contribute to an expectation among some users that music should be free to consume. Some stakeholders argue that this consumer expectation depresses streaming revenues by disincentivising users from taking paid subscriptions and constraining the price they can charge those consumers who do.

6.27 We have not seen evidence to support this direct link. We note ERA survey data from 2017 showed that among respondents that did not use a music streaming service, 32% indicated that their reason for not taking up a premium subscription was that it was too expensive.[337] Part of this may be because respondents had an expectation that music should be free, but it could also be a result of an inability to pay for a streaming service.

6.28 We note that free, ad-funded tiers are also central to the business models of most music streaming services. They have indicated that they would continue to offer such tiers even if music was not available for free on UUC platforms.[338] There are also other ways that consumers access music for free, including through radio.[339]

6.29 Second, it is argued that given YouTube's range of music content and ease of use, its quality is such that some consumers have their demand for music met without needing to subscribe to a premium music streaming service or without using an ad-funded music streaming service. As such, the presence of YouTube is argued to reduce the pool of people using music streaming services, thereby depressing revenues to rightsholders.

6.30 There is some limited evidence that may support this. For example, the 2017 ERA survey found 16% of those that did not use a premium service indicated one reason for this is because they preferred listening to music on YouTube.[340]

6.31 However, other evidence points in a different direction. Despite the presence of YouTube, the number of consumers using music streaming services (both premium and ad-funded) has increased considerably in recent years. During this time, there has been a significant decline in the number of official music streams on YouTube's ad-funded video platform. The number of such

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[337] ERA & BPI (2017), Innovation in Music Streaming, slide 33.
[338] House of Commons Digital, Culture, Media and Sport Committee (2021), *Economics of music streaming: Second Report of Session 2021-22*, paragraph 170.
[339] In January-March of 2022, 65% of 15+ adults listened to live radio on a radio set and 24% listened to online radio). Source: Ofcom (2022), Media Nations: UK 2022 Report, Figure 76.
[340] ERA & BPI (2017), Innovation in Music Streaming, slide 33.

streams fell from [20-30] billion in 2015 to [10-20] billion in 2021, a decline of over 10 billion streams (see Table 2.11).[341] This indicates there has been a significant shift away from YouTube's main UUC platform towards music streaming services (including YouTube Music Premium) for official music content.

6.32 Further, and consistent with the above trends, there is evidence which indicates that now a significant proportion of YouTube users also use premium music streaming services. One example of this is the IFPI Consumer Survey 2021, estimating that 51% of UK YouTube users also use a premium music streaming service.[342] There could be a range of reasons why people listen to music on YouTube's UUC platform as well as a music streaming service, including its unique music content.

6.33 It is also not clear how consumer behaviour would change in the absence of YouTube's ad-funded UUC service. There are a number of options available to them including using a music streaming service (some of which offer ad-funded tiers), but also radio, downloads, or, potentially, piracy. One indication of how behaviour might change is a 2017 survey commissioned by Google, which estimated that 81% of YouTube time would be either lost or shifted to lower or similar value channels (eg radio, already owned music, additional streams on existing music streaming subscriptions, piracy).[343] However, this estimate needs to be treated with caution due to limitations with the survey.[344]

6.34 It has also been put to us that if rightsholders believe that music content on YouTube 'cannibalised' music streaming revenues, they have the option to take down their content. YouTube's Content ID system (its key copyright infringement detection tool), appears to be one of the more effective content management systems (see paragraph 6.48 to 6.49 below). Instead, it is argued, the fact that 90% of all Content ID claims are monetised rather than taken down means rightsholders do not actually consider streams on YouTube to be cannibalising revenues from music streaming services.[345]

6.35 Furthermore, some music companies argue that the high quality of the free listening experience available on YouTube has a knock-on effect on the quality and price of music streaming services. Music streaming services need

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[341] CMA analysis of Official Charts data. See the note on Figure 1.2: Total number of monthly active users and streams in the UK, 2021. Also see footnote 124 for an explanation of why we have focused on streams of official music content on YouTube.
[342] IFPI Consumer Survey 2021. This statistic may be an over-estimate because of the online panel methodology used, which despite the UK's relatively mature streaming market and online penetration, often over-represents digitally confident users who may be more likely to cross-use streaming services.
[343] RBB Economics, Value of YouTube to the music industry – Paper I – Cannibalization, May 2017
[344] For more details of these limitations see RBB Economics, Value of YouTube to the music industry – Annex, June 2017, pp32-34.
[345] Google (H2 2021) YouTube Copyright Transparency Report p3.

to offer a higher quality ad-funded service than they would otherwise in order to attract and retain users. This dynamic is positive for consumers. However, absent YouTube (or with a lower quality experience on YouTube), the ad-funded service quality might not be so high, leading to a greater difference in quality between ad-funded and premium tiers on music streaming services. In turn, this means that consumers would have a greater incentive to upgrade to premium services. ERA research indicates that for users of ad-funded services the primary reason for not taking up a premium subscription (71%) was that they are "happy using the free version with adverts".[346]

6.36 This also means, it is argued, that the ability of music streaming services to increase their premium prices is reduced. As described in Chapter 3, the price of individual premium plans has been stable around £9.99 among all the largest music streaming services since inception, meaning that, even in the context of recent price increases, the price in real terms has fallen considerably since these plans were first introduced.

6.37 Music streaming services that do not themselves have a UUC offering told us that they face a 'strong' competitive constraint from YouTube's UUC platform. This was the same strength of competitive constraint that they told us they face from the ad-funded tiers on other music streaming services. So, it is not clear that the quality of YouTube's UUC platform is a key driver of the quality, take-up and price of music streaming services in the way that has been argued by some music companies. On this basis, it is also not clear whether the quality of YouTube's UUC platform is significantly reducing the revenues generated by these music streaming services.

6.38 Even if the quality of YouTube's UUC platform was reducing the revenues generated through music streaming, there is a question over whether, in practice, it would be desirable or feasible to significantly reduce the quality of the music listening experience on YouTube's UUC platform to address this alleged concern. YouTube has different restrictions on its ad-funded service compared to music streaming services, which may in part reflect that YouTube's offering is broader than music content. For example, some ad-funded music streaming services only allow a user to listen to music on a mobile device in shuffle mode and with a limited number of skips. Such a limitation may be difficult to apply on YouTube in a way that does not undermine how a wide range of content can be viewed on-demand on the platform. Accordingly, it may not be feasible to apply the same or similar quality limitations on YouTube that apply to ad-funded tiers of music streaming services. Such a deterioration in quality could also be a bad

[346] ERA & BPI (2017), Innovation in Music Streaming, slide 33

outcome for consumers, especially if this negatively impacts the broader viewing experience on YouTube.

6.39 Overall, while it is possible there could be some impact of YouTube's offering on music streaming services, potentially with consequential impacts on music revenues, we have not seen clear evidence of this link. The high quality of ad-funded tiers and the stable price of individual premium tiers is also consistent with there being competition between music streaming services. It is not clear how any negative impacts of YouTube's quality could be mitigated, or whether it would be in the interests of consumers to do so, given the contribution YouTube makes to competition between music streaming services overall.

Scope for incremental revenues from UUC platforms

6.40 In considering the impact of UUC platforms on music revenues, we have identified and been told about various opportunities for rightsholders and artists.[347]

6.41 We have discussed earlier the role that UUC can play in giving artists a platform, to build a fan base and to be discovered. We have also been told that there are ways UUC platforms can provide incremental revenues to rightsholders - that is, revenues in addition to what is earned on music streaming services. Given that consumers with a premium music streaming subscription pay a fixed price regardless of how much they stream, any revenue from music they listen to on a UUC platform can be considered incremental. This is because if they had not listened to it, the additional revenue from their doing so would not have been generated.[348]

6.42 Revenues from consuming content on UUC platforms could also be incremental in that doing so expands the ways in which music is used and monetised on digital services, rather than being a substitute for music streaming. UUC platforms can offer different content to music streaming services, for instance, concert recordings of music or amateur covers. UUC content could also be of a different nature to that available on music streaming services, for example short-form videos (such as on TikTok or

[347] See also Google's response to the Statement of Scope consultation, which argued that UUC-focused services broaden consumer access to music and grow revenues for creators (p7-9).
[348] As mentioned in paragraph 6.32: evidence suggest that 51% of YouTube users also use premium music subscriptions.

YouTube Shorts), music to enhance other entertainment categories (such as fitness and gaming) and social media content that features music.[349]

6.43 In addition, UUC platforms could also help to increase music revenues that are not directly streaming related, for example through live performances or merchandise sales.

6.44 The scale of these opportunities depends on what deals can be done between rightsholders and the UUC platforms. This, in turn, could be affected by the safe harbour legislation. We note that some deals between emerging UUC platforms and rightsholders appear to involve lump sum payments for access to some or all of their catalogue. Rightsholders have expressed concern that, partly due to lack of effective content identification systems or data regarding the usage of their content, they have no alternative but to accept these deals even though they have limited confidence that they are being paid fairly. We discuss this further below.

The UUC policy framework

6.45 As outlined in Chapter 2, the legislative framework in the UK applies different liability rules for music content uploaded to UUC platforms and for music content on music streaming services. This has been cited by some stakeholders as a key driver of a 'value gap' between these two types of services. Meanwhile, changes to the EU legislative framework for UUC platforms brought about under the EU Copyright Directive came into effect in 2021.[350] These were partly intended to address concerns raised by some music industry stakeholders about the potential downsides for rightsholders and creators of the asymmetric framework.

6.46 The issue of whether changes to the UK legislative framework are necessary is a matter for the Government, and we note that DCMS and the IPO have begun to gather evidence on copyright liability for user-upload platforms.[351] The Government's response to the DCMS Select Committee report indicated it would analyse how EU Member States have implemented Article 17 of the Copyright Directive. It also noted that it would be speaking to stakeholders to see whether any of these approaches have improved the position of rightsholders entering into licensing negotiations with UUC platforms.[352]

[349] One estimate suggests licensing revenues from short-form videos, connected fitness, gaming and podcasts contributed 5% of global recorded music revenues in 2021 and predicted this could rise to 12% by 2030. Music in the Air, Goldman Sachs, 13 June 2022.
[350] Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market.
[351] DCMS / BEIS Ministerial letter to Chair of DCMS Select Committee, 18 May 2022.
[352] Economics of music streaming: Government Response to Committee's Second Report, 22 September 2021.

Content management systems and EU Copyright Directive

6.47 A central part of any framework is the extent to which copyrighted content can be identified and removed from UUC platforms. We asked Google whether any changes YouTube had made to comply with the EU Copyright Directive were also implemented in the UK. We also asked the major music labels if significant changes have been made to the music content recognition systems and user-upload processes of the main UUC platforms, in light of the Copyright Directive, and whether corresponding changes have been made in the UK.[353]

6.48 Google stated that YouTube strives to offer solutions that scale, and it extends changes to rights management tools on a system-wide, global basis. An example of a recent change is 'pre-publish checks' whereby YouTube creators automatically see whether any content in their video is claimed by its Content ID system, including information about the rightsholder as well as the policy set by the rightsholder on the match (monetize, track or block).[354,355]

6.49 It was generally acknowledged that YouTube has well-developed content management systems and noted continued development of these tools. It was suggested by one major that the EU Copyright Directive may have had some positive influence in driving practical developments to support the licensing, blocking and management of copyright materials on YouTube. [✂].

6.50 None of the majors identified any material differences in how music content recognition systems operate in the UK and EU Member States. One of the majors observed that UUC platforms do not generally tailor their systems on a jurisdiction-to-jurisdiction basis.

6.51 However, while one major said there has been a general technical improvement in the development and proliferation of third-party content recognition systems over the last few years, it was noted by one of the majors that the usage and effectiveness of these systems varies across UUC platforms. It was stated by one major, for example, that it understands that a prominent UUC platform is developing additional rights management tools relevant to music publishing for several territories, including the UK, and suggested that potential liability under legislation implementing the EU Copyright Directive has provided an additional incentive for this UUC platform to do this. That major added that although some other UUC

[353] Information provided by the majors to the CMA.
[354] If the YouTube creator believes that the claim is invalid (for instance, because they have a licence to use the content or they believe a copyright exception applies), they can dispute the claim - or elect to edit the content out of their video - before the video is published.
[355] Google information provided to the CMA.

platforms use third party content identification tools, their content management systems are less well-developed than YouTube's.

6.52 Meanwhile, one major argued that improvements in some content recognition systems have not translated into improved economics for artists or creators. [✂].

6.53 One major claimed that while the EU Copyright Directive has not yet led to UUC services applying 'best efforts' to building content management systems, it remains a useful tool for rightsholders to be able to manage content and require UUC services to improve transparency around music usage data reporting.

Our findings on potential for UUC platforms to grow music revenues

6.54 Our analysis above suggests there was a 'value gap' between the revenues from YouTube – the largest UUC platform – and ad-funded music streaming, but it has reduced in recent years. There are a range of factors to consider when assessing the revenue differential, such as the importance of YouTube as a promotional tool, the different ways music is used, and the role of other creators.

6.55 Meanwhile, there could be scope to grow music revenues from newer, emerging UUC platforms, though the way music is used on some of these platforms is less directly comparable to music streaming services, so different licensing arrangements and payment models may develop.

6.56 The recent implementation in the EU of the Copyright Directive may impact on content management systems and financial negotiations in other jurisdictions such as the UK. We have heard that there have been recent improvements in the content management systems used by some UUC platforms. The pace of improvement varies, with some newer emerging platforms that make innovative use of music content sometimes lagging behind.

6.57 We consider that the quality of content management systems is important in ensuring that rightsholders are remunerated fairly for music content uploaded onto UUC platforms. The legislative framework – and the practical implementation and enforcement issues across jurisdictions – has an important role to play in ensuring UUC platforms do put these systems into place. This in turn provides the backdrop for rightsholders and platforms to agree licences, which could realise the potential for these platforms to reach new audiences and increase overall revenues.

Possible issues to consider on copyright legislation

6.58 As part of the work DCMS and the IPO are undertaking on the copyright legislation, areas of further analysis they may wish to consider, alongside our input, include:

- Whether the differential legislative framework between the UK and the EU (the latter having implemented the EU Copyright Directive) is leading to any divergence in the relative position of rightsholders when their music content is uploaded and viewed in the UK and the EU;
- If there is any such divergence, what is driving it;
- The extent to which the quality and accessibility of content recognition systems varies between UUC platforms, including considering whether newer growing platforms offering music content within 'short-form' video uploads and social media have as well-developed systems and processes as more established platforms such as YouTube; and
- Whether or not any legislative provisions may require amendment to safeguard rightsholders' interests in the future.

7. Conclusion

7.1 The music market has experienced profound changes in recent years from piracy through to the introduction of streaming. It is widely acknowledged that consumers have benefited from streaming through access to full catalogues of music and innovative services for free or at a fixed monthly price, which has reduced in real terms. However, there are real questions as to whether creators – those who write and perform the songs – have benefitted to the same extent. Streaming has significantly changed the wider economics of the music market. Many creators struggle to make a decent living from their profession. Our study has focused on the extent to which competition issues in the market could be hindering innovation and growth, distorting creator remuneration or causing harm to consumers. We have tried to shine a light on how the market works and, where possible, provide relevant information for stakeholders and policymakers.

7.2 Our analysis has shown that there are some areas of the market that could be improved, but overall outcomes for consumers, artists and songwriters are getting better. For example, today artists have more choice about the type of deal they may agree with record labels and royalty rates in the majors' deals with new artists have increased from an average of 19.7% in 2012 to 23.3% in 2021. The share of revenues going to publishing rights, which is then distributed to songwriters, has also increased significantly from 8% in 2008 to 15% in 2021, contrary to some claims that the majors are holding back publishing rates.

7.3 Whilst outcomes are generally improving, we note that to some extent changes in the sector, precipitated by streaming, have made it harder for some creators. Reduced barriers to entry and more choice on how to distribute music has meant there are more artists than ever and, therefore, creators face more artists and songs to compete with for streaming revenues. Not only that, but the convenience of streaming means that older music is enjoying a resurgence of popularity, meaning that today's artists need to work harder than ever to grab listeners' attention. These factors may be exacerbated by the fact that it is challenging for music companies to know who among the growing pool of creators will be successful. This inherent uncertainty combined with consumer tastes that tend to tip to a relatively small number of artists means that there are even greater challenges faced by creators. We do not think that these factors are caused or exacerbated by issues relating to how firms in the market compete.

7.4 That is not to say that we think the market gets a 'clean bill of health' or cannot be improved further. However, because we have found that it is unclear or unlikely that the alleged poor outcomes that concern many stakeholders are primarily driven by how firms compete with each other, it is consequently unlikely that a competition intervention of the sort available in a market investigation will suitably address them.

7.5 It has been put to us that the CMA could break up the majors, intervene in historic contracts between artists and labels, impose firewalls between the majors' publishing and recording arms, remove clauses in contracts between streaming services and labels, impose a code of conduct governing the financial relationships between music companies and creators, or otherwise intervene to increase creator remuneration. We have not found significant competition concerns overall, in particular those that are likely to be leading to substantial excess profits. This means a competition intervention is unlikely to release more money from within the system in a way that could significantly improve overall outcomes. In such circumstances there is also a greater risk of a competition intervention causing unintended consequences for both consumers and creators.

7.6 For example, an intervention to separate the publishing and recording businesses of the majors could create incentives for standalone recording businesses to refuse to accommodate any increase in the 'publishing share' through a reduction of the recording share, since any losses to their recording revenues would not be mitigated by gains to their publishing share. Moreover, the intervention is unlikely to significantly shift the allocation between recording and publishing because, for the reasons we set out in the report, these may be due to licensing negotiation frictions and bargaining power of rightsholders inherent in the market which will not be overcome by more intense competition for songwriters.

7.7 Another example is a potential remedy requiring changes to, or the removal of, certain of the clauses we have uncovered in the agreements between streaming services and labels (eg price MFNs). The evidence suggests that the dominant driver of weak competition to supply music to streaming services is the prevailing business model, which requires all streaming platforms to carry all (or nearly all) content. This, coupled with the popularity of the majors' content with listeners, increases the majors' bargaining power and means there is no credible threat of a music streaming service substituting a major's repertoire for another repertoire. This means competition between the majors to supply music to music streaming services is weak, but it would remain weak even without such clauses. Whilst imposing a remedy to remove these clauses might strengthen competition slightly, it is not clear any improvement would be more than marginal. Furthermore, there is a risk that this intervention could harm consumers if the removal of these clauses led to some music content valued by consumers being excluded from, or hidden or not promoted on, individual music streaming services.

7.8 In a market that is currently delivering good outcomes for consumers there is a risk that intervention using competition tools, without confidence that a lack of competition is the root cause of the problem, could threaten existing good or improving outcomes. We have therefore decided that it is not appropriate to make a market investigation reference.

7.9 While there is very limited potential for a competition intervention to release more money in the system to pay creators more or to charge consumers less, there remains a broader policy debate to be had about the optimal distribution of existing revenues. There are limits on the extent to which competition can change this allocation of revenues, as noted above. We think it is a matter for the Government and policymakers to determine whether the current split is appropriate and fair, and to explore whether wider policy interventions are required, for example those relating to the copyright framework and how music streaming licensing rates are set.

7.10 The music streaming market is changing rapidly, and further technological advances in the years to come may spark further change to the way we listen to music. During our study we have noted the significant innovations introduced on streaming services and that there are now new ways of accessing music such as through UUC platforms with consequential new opportunities for revenue growth. It is likely that these changes will continue to raise questions about how these developments will impact consumers and creators. The CMA may intervene in future if changes in the market restrict or distort competition and harm consumers' interests.