11 POINTS

FOR MORE FAIRNESS, TRANSPARENCY AND SUSTAINABILITY IN THE MUSIC STREAMING MARKET

1. Put streaming on the political agenda

Music streaming is booming. In Germany alone, a record 165 billion music streams were counted in 2021, that is twice as much as in 2018. No other usage category exhibits similar growth rates. Only a fraction of the heavily increased streaming revenues reaches those at the beginning of the value chain; the music creators. In the UK, creators and performing artists managed to put undesired developments in the streaming market on the political agenda. In Germany and at EU level, the more and more pressing challenges in this important future market also need a wider discussion in terms of how they can be resolved.

2. Take all streaming providers into account, content providers included

The implementation of the EU Copyright Directive was an important first step towards more fairness and responsibility in the streaming sector. The provisions of the new German Act on the Copyright Liability of Online Content Sharing Service Providers (UrhDaG) do, however, only apply to upload platforms (hosting providers) such as YouTube, but not to streaming services (content providers) such as Spotify, Amazon Music, Apple Music or Deezer. A closer look needs to be taken at all the relevant streaming providers in any further discussion. The providers not covered by the UrhDaG must live up to their responsibility to include music creators in the rising streaming revenues accordingly.

3. Ensure a fair balance within the music business

Music streaming can only be sustainable in the long run if all involved actors receive a fair share of the revenues. Current studies from the UK do, however, highlight significant imbalances in the marketplace. As such, the much-noticed "Economics of Music Streaming" report of the House of Commons comes to the conclusion that the share in streaming revenues of creators and performing artists, viewed collectively, turns out lower than the respective share of streaming providers and labels.[1] Against this background, the report demands a complete reset in the music streaming market. Should the figures from the UK also turn out to be applicable to Germany, it would also have to be considered in this country whether a political intervention is deemed necessary. First and foremost, however, it is sensible to create a robust set of data for Germany and to demand more transparency in the streaming market, especially with a view to the allocation of revenues.

4. Discuss distribution models openly

Distribution models in the music business are the results of an often highly complex negotiation process in which a multitude of players is involved. Just like the music use itself, the distribution models are also subject to constant

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[1] cf. Economics of Music Streaming, House of Commons, July 2021 An overview of the allocation of revenues within the music streaming market is located on page 17 ibid. For an additional overview, please also refer to: Music Creators' Earnings in the Digital Era, UK Intellectual Property Office, September 2021, page 71.

change. In view of the changes triggered by streaming, a debate arose how existing models can be developed further and optimised. The discussion is important and should be held openly. In light of the current imbalances in the music streaming market (see item 3 above), it is important to keep sight of the goal that the "pie" for the music creators must become bigger overall.

5. Make streaming more transparent

Despite the enormous economic importance, central mechanisms of the streaming market remain opaque for the music creators. This applies with a view to both the criteria which form the basis of the content recommendations of the streaming services (algorithms, curated playlists against payment, preferential treatment of presentations in exchange for royalties etc.) and with regard to the partially non-transparent payment streams. More transparency in the streaming market is also necessary to be able to verify the usage reports independently. This way, effective mechanisms against fraud and manipulation of the streaming figures can be developed.

6. Improve usage reports

Collective management organisations like GEMA have invested significant amounts into the development of their IT and database systems in order to be able to allocate music uses quickly and reliably, to bill them and to pass on the remuneration to the respective rightsholders. Collective management organisations are, however, dependent on proper usage reports submitted by the streaming platforms. All the players in the music market should intensify their efforts for a comprehensive and correct allocation of metadata just like they are promoted by the Credits Due initiative, among others. Beyond that, upload platforms have to follow their duties as licensees in particular to guarantee complete and correct usage reports to the rightsholders.

7. Promote cultural niches and European works systematically

Cultural diversity on streaming platforms is not self-evident. Access to creative contents increasingly focusses on a few selected gatekeepers in the streaming market. They alone decide on the selection and presentation of the contents. It is important to think about measures which make it possible to find popular offers and promote cultural niches at the same time, while making them as easy to find. Existing provisions for the promotion of cultural diversity in the film sector can serve as a role model for measures in the music sector. The EU Directive on audiovisual media services (AVMD), for example, provides that video streaming services "promote the production and distribution of European works" and to "ensure prominence of those works" on their platforms.

8. Make the creators behind the music visible

Several persons are often involved when a song or musical piece is created. Streaming generally provides the opportunity to make the creators more visible behind the works. It does, for example, allow for providing details on "songwriter/performer credits", for creating the respective profile pages or for setting up special search functions. Together with the streaming providers, opportunities should be determined how to expand the availability of such tools and to continue developing them in the interest of the creators.

9. Prevent total buy-out contracts

While the video streaming market is undergoing a global upturn, music creators from Europe are increasingly pushed to enter into total buy-out contracts subject to US laws, i.e. a complete sell-out of their rights in a musical work against a one-off lump sum payment which in turn means that they renounce irrevocably on any royalties for all future uses of their own work. Buy-out contracts are diametrically opposed to the "principle of appropriate and proportionate remuneration" (Art. 18 of the EU Copyright Directive anchored in EU law and must be curbed in Germany and at international level. It must not be that industry giants from the US can simply circumvent European provisions for the protection of creators.

10. Strengthen collective rights management

In light of the enormous market power of the big streaming providers, collective rights management is more important than ever in order to negotiate a fair remuneration for music creators. Collective management organisations manage both niche and internationally sought-after repertoire subject to the same conditions. This way, they enable especially less well-known music creators to have equal access to the market and make an important contribution to the cultural diversity.

11. Streaming must become more sustainable

In principle, streaming provides the potential for a lower CO_2 footprint than physical sound recordings. Many of the savings potentials therefore remain unused so far. Streaming providers could be encouraged to run their computer and data centres with electricity from renewable energies and to use the waste heat efficiently. Beyond that, it would be conceivable to deactivate the autoplay function as a standard setting and to transfer the streams only with a bandwidth adapted to the respective end device. A wider discussion in society is also necessary regarding how streaming can become more sustainable overall, from economic and ecologic perspectives.