Crefovi's take on Midem 2015: wider income streams, that transparency issue and levelling the playing field

Midem 2015 ended yesterday and here are below the three key issues which were discussed and debated during this whirlwind of an international music trade show. Crefovi's take on Midem 2015, conveyed by its **founding and managing partner Annabelle Gauberti**, below, helps understanding the new challenges faced by professionals from the music sector.

Harvey Goldsmith, legendary producer and promoter of rock concerts, charity events & TV broadcasts and Annabelle Gauberti, founding and managing partner of music law firm Crefovi, at MIDEM 2015

1. Crefovi’s take on Midem 2015: diversification of income streams is a good way to hedge your bets

Firstly, all stakeholders in the music industry agreed, during Midem 2015, that revenue streams and provenance are increasingly diversifying.

While physical format sales hold steady in key territories such as the UK (still 41 percent of total industry revenue nationwide in 2014!), Germany, Japan and France, the industry’s digital revenues grew by 6.9 percent in 2014 to USD6.9 billion and are now on a par with the physical sector.

Indeed, globally, like physical format sales, digital revenues now account for 46 percent of total industry revenues worldwide. In 4 of the world’s top 10 markets, digital channels account for the majority of revenues (i.e. 71 percent of total 2014 industry revenue in the US; 58 percent of total 2014 industry revenue in South Korea; 56 percent of total 2014 industry revenue in Australia and 45 percent of total 2014 industry revenue in the UK).

Digital subscription services, which are part of an increasingly diverse mix of industry revenue streams, are going from strength to strength. Revenues from music subscription services – including free-to-consumer and paid-for tiers – grew by 39 percent in 2014 and are growing consistently across all major markets.

Global brands, such as Deezer and Spotify, continued to reap the benefits of geographical expansion and there were some notable new entrants into the streaming market: YouTube launched its subscription service Music Key in late 2014, Apple made its USD3 billion acquisition of Beats in preparation for its own streaming service roll out, while Jay Z and a raft of other music stars re-launched talent-managed streaming service Tidal.

The subscription model is leading to more payment for music by consumers, many of whom appear to be shifting from pirate services to a licensed music environment that pays artists and rights holders. The number of paying subscribers to subscription services rose to 41 million in 2014, up from just eight million in 2010, representing a rise of 46.4 percent.

Subscription revenues predictably offset declining downloading sales (-8 percent) to drive overall digital revenues, pushing subscription at the heart of the music industry's portfolio of businesses, representing 23 percent of the digital market and generating USD1.6 billion in trade revenues.

However, digital downloads remain a key revenue stream as they still account for more than half of digital revenues (52 percent) and are helping to propel digital growth in some developing markets such as South Africa, Venezuela, the Philippines and Slovakia.

Revenues from advertising-supported streaming services, such as YouTube and Vevo, are also growing – up 38.6 percent in 2014.

Revenue from performance rights – generated from broadcast, personalised streaming services and venues – saw strong growth. Performance rights income was up 8.3 percent to just under USD1 billion, representing 6 percent of the total 2014 music world sales.

Revenues from synchronisation deals – the use of music in TV adverts, films, video games and brand partnerships – was up 8.4 percent in 2014 and now accounts for 2 percent of total industry revenue. The UK, Germany and France all saw better than average performances in this sector improving 6.4 percent, 30.4 percent and 46.4 percent respectively.

While this diversification of income streams hedges the economic risks borne by music right owners, as music stakeholders are guaranteed to monetise their intellectual property rights and therefore “collect the cash” one way or the other, such diversification also highlights the complexity and “tyranny of choices” that characterise the music industry today.

Indeed, retail consumers are lost when faced by the cascade of choices that they have to make, in order to select the best musical providers and formats in this creative industry which is furiously moving ahead at an ever-increasing pace, under the impulse of technology behemoths such as Apple and Google.

What musical format to choose from? Should I listen to my favourite music tracks on a physical, digital, download format?

If digital, which streaming provider should I use or subscribe to? YouTube, Tidal, Deezer, Spotify or Apple on the subscription side? DailyMotion, Vevo or YouTube on the ad-supported streaming side?

We predict that music streaming providers are going to enter a fight to the death, as both the music and tech sectors are built around the "winner-take-all" economic model. In the next five years or even less, only one or two streaming providers are going to rise above all others, through consolidation, mergers and acquisitions or – simply – bankruptcy of their competitors.

While end-consumers are still struggling to "bet on the right horses" (and we suspect that these lucky horses will be music streaming services backed by monopolistic and cash-rich giants such as Google and Apple), music right owners, their collecting societies, publishers and managers also balk at the prospect of having to collect and audit income revenues from so many sources and in so many different shapes and forms.

2. Transparency: much room for improvement

While the music industry breathes a huge sigh of relief as revenues generated by various income streams are – finally – either relatively stable (physical, downloads) or growing (streaming, sync, performance rights, live acts), music stakeholders feel powerless when faced with the task of efficiently collecting the cash and managing their rights worldwide in a digital age.

It seems that no one wants to take on the role of claiming, on behalf of the songwriters and performers, the cash from streaming sites such as YouTube and Vevo, and of reviewing and auditing those income statements sent by the likes of YouTube, Spotify, Deezer, etc!

Publishers and record labels each refuse to accept that it is their role to check all of these – extremely-complex – digital stream income statements, relying on collecting societies to do the bulk of the work, while managers and agents merely rumble that talent is not paid enough per stream play.

It is true that, with royalty rates per stream play varying between USD0.00012 (for AmazonCloud) and USD0.07411 (for Nokia), while YouTube pays USD0.00175 and Spotify pays USD0.00521, one wonders how performers and songwriters can return a profit out of licensing their catalogues to streaming providers, no matter how many times their tracks are played on these.

Top talent such as Taylor Swift decided to check out from streaming sites such as Spotify, in November 2014, unimpressed by the argument made by Spotify that they had paid out over USD2 billion to artists since 2008, and was on track to pay Swift around USD6 million for the year.

Another very secretive area of this streaming business, which is slowly and reluctantly becoming less opaque, revolves around the exact terms agreed between top streaming providers and major record labels. Indeed, in May 2015, the agreement entered into in January 2011 by Spotify and Sony, the major record label that owns music by Michael Jackson, Bruce Springsteen, Mariah Carey and One Direction, was leaked to the press. It turns out that the money is really good … for labels. Sony received USD25 million in advance payments in the first two years of its contract, then another USD17.5 million from an optional third year. The label likely did not share these payments with its artists. "*The whole streaming business has been a ridiculous system of not paying independent labels and artists*" commented Allen Kovac, manager of Motley Crue and Blondie.

In this context, a raft of tech start-ups are appearing in the music ecosystem, in order to provide some research and auditing tools to music stakeholders, so that they can track what songs are played, where such music is played, by whom and when. Often, these tech start-ups are snatched up by tech behemoths such as Apple (which bought British startup behind music analytics service Musicmetric in January 2015, a company supporting record labels track digital sales, streams and social stats, which could become part of Beats Music relaunch).

Transparency is therefore still very much of an issue in the context of music streaming, even though music streaming websites, who all have a battle to the death to win, are competing with each other in order to offer the best tracking tools possible to their record labels' and talent partners.

3. Levelling the playing field: EU is winning

Finally, the IAEL legal summit during MIDEM 2015 was critical to fully size the challenge facing US and EU policymakers and lobbyists, in allowing and improving the collection of performance rights on a pan-territorial basis.

Indeed, among the top 10 international music markets in 2014, the US is the only one that does not generate any sound recording public performance rights for its artists and producers (the revenues collected by SoundExchange being now reported under the "Digital" category, as they relate only to digital sound recording performance royalties). In other words, artists and producers, in the US, do not receive public performance royalties when their recordings are played on terrestrial radio.

Unsurprisingly, because of the many conflicts of interests and conflicting agenda priorities that US congress has to contend with, lobbyists representing the US music industry are feeling a little discouraged, while their copyright reform bills, such as the Songwriter Equity Act, the Allocation for Music Producers Act and the Fair Play Fair Pay Act, slowly progress through the meanders of the House of Representatives.

We think that there is a high probability that these US bills remain wishful thinking, as, for example, US radio broadcasters and other stakeholders fiercely push back on any introduction of a sound recording public performance royalty for AM/FM radio. Denying the receipt of public performance royalties from terrestrial radio plays, both domestically and on foreign territories, costs the US up to USD100 million in foreign revenues alone each year. Indeed, since the US does not pay sound recording public performance royalties for terrestrial radio play to foreign artists and producers, foreign countries do not pay these royalties to US artists and producers either.

This lack of harmonisation, by the US, of its inefficient and damage-inducing legal framework with the much more talent-friendly European-wide legal framework, may cause great harm to the US music industry in the long-term, with US artists, producers and managers not hesitating to work from abroad in order to benefit from wider sources of income and, in particular, sound recording public performance royalties.

In the European Union, it is full steam ahead: further to the entry into force in February 2014 of the EU directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, fairer competition – as well as sound collaboration – have at last arisen between all EU-based collecting societies. Cross-border licensing of online rights in musical works, across the 28 European member-states, is now a given, making the European Union the world champion for protecting content-creators’ rights worldwide.

All in all, it was a very enjoyable, leads-generating and content-packed MIDEM 2015 for us and we will be back next year, especially if another mega party at the Carlton is in the works!

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