Modern methods of monetisation for independent and major record labels: 360 and beyond

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In the music ecosystem, the record label is the “facilitator” and the “doer” that produces, manufactures, distributes, promotes and markets music tracks and albums.

The term “record label” derives from the circular label in the centre of a vinyl record, which prominently displays the manufacturer’s name, along with other information. While the label business model has substantially changed, since the day when the term “record label” was spinned, some things are immune to the passing of time: the corporate structure of a record label is still the same, with a president in charge of the business of the whole company at the top, and various vice presidents in charge of different departments such as:

- **A&R** (artists and repertoire) – in charge of discovering new talent, assisting the artist with song selection, choosing the people who will produce the tracks and deciding where the album will be recorded;
- **Art department** – in charge of all the artwork that goes along with producing songs (including CD, MP3 and streaming cover art, advertisements and displays at music stores and websites);
- **Artist development or Product development** – responsible for planning the careers of the artists who are signed to the record label, by promoting and publicizing the artists over the course of their career;
- **Business Affairs** – which deals with the business side of things such as bookkeeping, payroll and general finances;
- **Label liaison** – which acts as the liaison, between the label’s distribution company responsible for getting the vinyls, CDs, MP3 files into brick and mortar or online stores or aggregators, and the record company;
- **Legal department** – responsible for all the contracts that are made between the record label and the artist, as well as contracts between the record label and other companies, and for managing any litigation or legal issues that may arise for the record label;
- **Marketing department** – which creates the overall marketing plan for every album that the record company will release and coordinates the plans of the promotion, sales and publicity departments;
- **New media** – in charge of dealing with the newer aspects of the music business, including producing and promoting music videos for the artist, supporting an artist in creating a presence on the internet and dealing with new technologies in which artists can stream music and music videos through the internet (YouTube, Vimeo, etc);
- **Promotion department** – which main purpose is to make sure that an artist, and in particular his/her new songs, are being played on the radio and the artist’s videos are being played on MTV or VH1 channels as well as video streaming on demand websites (the latter in coordination with the New media team);
- **Publicity** – which is responsible for getting the word out about a new or established artist, by arranging for articles to be written in newspapers, blogs and magazines, by dealing with radio and television coverage of an artist and

- **Sales** – which oversees the retail aspect of the record business, working with record store chains and other music stores to get new albums onto retailers' shelves, in coordination with the efforts of the Promotion and Publicity departments.

As the going got tough, due in part to the rise of music piracy and democratisation of free music online, consolidation of the record labels' sector occurred: many record companies, now, are huge conglomerates that own a variety of subsidiary record labels. These record corporations are majorly composed of a parent or holding company that owns more than one record label and are, for the most part, located in New York, Los Angeles, London or Nashville. For example, Warner Music Group owns three main labels, Atlantic Records Group, Warner Bros. Records and Parlophone. In turn, Warner Bros. Records owns, among many other record labels, Maverick Records (originally founded in 1992 by Madonna), Sire Records (founded in 1966 by Seymour Stein who went on to sign the Ramones and Talking Heads) and Reprise Records (founded in 1960 by Frank Sinatra to allow "more artistic freedom" for his own recordings).

This ruthless consolidation of the music label industry has now left three major record labels in the playing field, since 2012: Universal Music Group, Sony Music Entertainment and Warner Music Group, which control about 60 percent of the world music market and about 65 percent of the United States music market[1].

Record companies that are not under the control or umbrella of the big three are considered to be independent, even if they are large corporations with complex structures. The most successful indie record label of all time is, without contest, A&M Records, founded in 1962 by trumpeter Herb Alpert and record promoter Jerry Moss. Over its 37-year run, A&M signed acts such as The Carpenters, Cat Stevens, The Police, Sting, Bryan Adams, Suzanne Vega and Sheryl Crow. Alpert and Moss sold A&M to Polygram in 1989 with the caveat that they would continue to manage it independently. As Polygram was later bought by Universal Music Group in 1998, A&M died the next year as a label and a brand. Today, some successful independent labels that cut out a market share for themselves are Beggars Group (which released Adele's albums 19, 21 and 25) in the UK and Because Group in France.

A new paradigm is causing a revolution in the music industry, which record labels are desperately trying to grasp and cash in on. Since independent peer-to-peer file sharing service Napster was invented by Shawn Fanning and Sean Parker in 1998[2], retail consumers have collectively forced and pressured the music and tech industries into re-thinking the offering of music distribution and music consumption tools. This disruption radically and irrevocably annihilates the traditional cash cow music business model, based on physicals (CDs, mini-discs, vinyls, cassettes, etc.), brick and mortar retail points (Virgin, HMV, etc.) as well as paraphernalia to listen to said physicals (CD and cassette players, HI-FI systems, etc.), to trade it for a much more competitive, virtual, lean, complex and data driven music tech business model based on digital revenues (streaming, downloads, internet radio, etc.), online distribution points (Amazon, iTunes, digital service providers such as Spotify and Deezer, etc.) and online consumption (on tablets, laptops, smart phones, ipods, etc.).

After much whining and denial from the vast majority of stakeholders in the music industry, in particular from music top management and acts who are baby-boomers and who differ in their core values from Generation X and Millennials, in that they prefer to "own" things rather than embrace the exponentially successful "sharing" and "access" economy favoured by their juniors, record labels are putting their act

together to survive and adapt to this new paradigm.

In this context, I am offering here a snapshot of the most recent and astute evolutions and strategies engineered by record labels to play their cards right. Meanwhile, tech mega-successful and cash-rich multinational corporations such as Google and Apple watch at bay, already going after record labels in order to cut the middle man between precious and highly sought-after musical content and catalogues, and billions of retail customers who stubbornly refuse to fork in any substantial amount of money to listen to said music material.

1. *Record labels and the recording artists: what record deals are on the table today?*

Today, more than at any other period historically, a wide range of choices and options is at the disposal of both record labels and talent, to find an agreement on how to make music together, as well as promote, market and distribute it.

1.1. Traditional deal

Recording contracts are legally binding agreements between recording artists and/or bands and record labels, enabling the label to exploit an act's performance in a sound recording, in return for royalty payments.

Under most exclusive recording and traditional contracts, the recording artist will assign copyright in the sound recordings to the record company. An assignment is an irreversible transfer of ownership for the full life of copyright. In the case of sound recordings, this will be 50 years from release in the UK[3], and 70 years from release in France[4]. So, even once the artist has repaid all recording costs, the label will still own the masters.

In a traditional deal, exploitation is achieved through physical sales, such as CDs, vinyls and cassettes, the public performance and broadcasting of works, the sale of digital products such as downloads and mobile ringtones and streaming of tracks. The contract will define a record to include audio-visual devices as well, so "Dualdisc", DVD, online videos and other new technologies will be caught by this definition.

The recording contract will usually require the artist to sign to the label exclusively. As this means that the artist can neither record for another label without permission nor leave the contract if unhappy, record labels justify this exclusivity with the "huge" sums of money invested in breaking an act and by claiming that they need this level of control in order to improve the chances of making a profit or cut their losses. This strategy can backfire though, if record labels cannot justify this exclusivity through factual investments in their acts, as illustrated by the very public showdown between British songstress Rita Ora and Jay Z's label, Roc Nation[5].

Major record labels, which are the record companies in the strongest position, and with the strongest

inclination to offer traditional deals, will normally sign the act to a worldwide deal. Companies such as Universal and Sony Music Entertainment have offices in all key markets, together with the vast distribution network capable of delivering their latest offerings to a supermarket near you. Split-territory deals are less likely with major record labels, but independent labels may be more willing to agree so such an arrangement.

As far as the term is concerned, it is calculated by reference to an initial fixed period of usually 12 months – when the recording artist will make his first album – followed by further option periods, also usually of 12 months, allowing the labels to extend the contract if they so wish. There will be a minimum commitment within each period, requiring the act to deliver a certain number of tracks, to a releasable standard, with perhaps a total of five or six albums expected under the deal.

Advances are sums of money paid to the recording artist on account of future royalties, in a traditional record label deal. They are paid when the act signs to the label, and again as and when further options are exercised.

If the traditional record agreement is well negotiated by the entertainment lawyer representing the artist, the advances will solely be repaid by the recording act when his record sales generate sufficient royalties to cover them; failing that, the label bears the loss. In a traditional deal, the talent is paid royalties based on record sales. In a typical major-label deal, the artist will earn somewhere between 10 and 25 percent of the record’s dealer price, which may be between GBP6.50 and GBP8.50 a unit. Before they’ll see any money, acts will have to recoup recording costs, advances and usually 50 percent of all video costs. The label will make additional deductions, reducing the real royalty rate still further. Standard deductions include a packaging deduction of 20 to 25 percent on CDs, a reduced royalty rate on foreign sales, budget records and record clubs, a reduced royalty on TV-advertised albums, and often no royalty at all on free goods (records given away to retailers and the media). Overall, an act may only get paid on 90 percent of actual sales, since retailers are able to return records they don’t sell. The record label holds on to a portion of the act’s royalties, usually 10 percent, as a reserve, until all sales are verified. Moreover, the act is expected to pay the producer royalty from their own royalty share: for example, if a producer is paid a 3 percent royalty and the artist 15 percent, then the artist will end up with an actual rate before deductions of 12 percent (the producer, however, will be earning this healthy 3 percent from the first record sold, while the act will only get paid once the deductions and any cash advances have been recouped).

In reality, most “deductions” are artificial and in no way reflect the true cost to the label. Packaging on CDs manufactured in volume is cheap. Similarly, as more records are sold through digital channels, a reserve for breakages and the allocation of free digital goods ceases to make any sense at all, other than boost the label’s profits.

Which means, that today, many acts just refuse flat out to sign what they think is an antiquated and disadvantageous traditional record deal, even with a major, and prefer to either self-release – leveraging social media to target their audience and fans, such as very successful hip hop act Macklemore & Ryan Lewis, whose debut single Thrift Shop peaked at number one on the US Billboard Hot 100 chart in 2014 (the first song since 1994 to reach the top spot without the backing of a major label in the US) – or look at alternative record deals which better match their own expectations, aspirations and sense of fairness.

Reportedly, Macklemore & Ryan Lewis are signed to their own imprint, Macklemore LLC, but have a deal with Warner Bros. Records, which sees the major label take a chunk of their sales in exchange for distribution funding for their debut album, the Heist. Speaking about the deal, Macklemore said at the time "*Warner had never done this. That's the interesting thing about where the music industry is right now: you have major labels that are willing to take unconventional approaches because the old model is crumbling in front of us. They're open to it*"[6].

Indeed, if major record labels want to keep signing successful new or seasoned acts, they need to become more flexible while negotiating record deals. Also majors need to understand that their strength lies in their global, impactful and far-reaching distribution network as well as in the massive economies of scales that they make, as a result of their conglomerate business model, which is structured around dozens, even hundreds, of subsidiary record labels that share promotion, manufacturing, PR, new media, digital media, sales and marketing services together.

1.2. Net profit deal

Speaking of alternative record deals, this is where the indie record net profit deal comes into play.

As mentioned above, an independent label is a record label that is not affiliated in any way with a major and which uses independent distributors and/or digital distribution methods to get their releases into stores, both online and into traditional brick and mortar music retailers.

The net profit deal, proposed by indie labels, had rapidly increased in use, as an alternative to the traditional type of record deals, at the beginning of the 21st century.

To compute the net profits in a net profit deal, the record company deducts off the top its actual out-of-pocket costs for recording, manufacturing, promotion, marketing, etc. Some labels also deduct a so-called "overhead fee" of 10 to 15 percent of the gross record sales income. After the record company deducts all of these expenses and reimburses itself, the label then pays the recording artists whatever percentage of the profits their contract requires (usually 50 percent of net profits).

Though this percentage is obviously much larger than the 10 to 25 percent royalty range mentioned above for traditional record deals, the recording artist in a net profit deal is getting 50 percent of the income from records sold, but only from what is left after all expenses are paid. In traditional record deals, on the other hand, the act starts getting their artist royalties after the label has recouped the recording costs – and any cash advances to the artist – from the talent's royalties. Major record labels absorb most other costs out of their own pocket – such as duplication, shipping and staff costs – and those costs do not factor into the calculations of what is to be paid to the artist.

In most net profit deals, a label does not have to pay the artist anything (neither hefty advances nor, under many contracts, any mechanical royalties from internet downloads or physical sales) until the label has recouped all costs fronted by it. This is, of course, appealing to labels, particularly in the current music business climate when the foremost concern of indie labels are front-end costs and just trying to survive financially.

This advantage needs to be weighed against the back end – that is, if the record is successful and the costs

relatively small in comparison, then the net profit deal will be less profitable for the label than would be the case with a traditional record deal.

Like in a traditional record deal, the default situation in a net profit deal is that the recording agreement sets out that the record label is the copyright owner of the performances recorded during the term of the recording agreement, by way of assignment of copyright. In cases where the artist is able to cause a reversion of ownership of his recorded performances contractually via negotiation (an occurrence that usually happens only with the biggest superstars or in the case of a licensing of preexisting masters agreement), that right is often subject to the record company having recouped all costs paid on behalf of the artist.

Almost all record labels, when entering into a deal with a recording artist, will insist on the right to handle the artist's product not just in the physical medium, but also will want to have the right to distribute and sell the artist's recordings in the digital medium through outlets such as iTunes and YouTube, including downloads to computers and over-the-air downloads to mobile devices for both full track downloads, ringtones, ringbacks and other wireless uses. On a traditional label deal, most labels that work on a royalty basis will try to maintain the payment of just a royalty to the artist in the same way that a royalty is paid on a physical sale, but generally without factoring in packaging deductions and free goods, since these elements are irrelevant. Payment of a 15 percent royalty on a 99 cents download (i.e. 15 cents), plus statutory mechanicals, leaves a nice margin for the label, with the digital music service downloader paying the label 70 cents on the download. However, on a net profit deal, the artist will do much better than a royalty deal of 15 percent. On a 50-50 split of net, the artist will see about 25 cents plus mechanicals, whereas with the royalty traditional deal, the artist will see just 15 cents plus mechanicals.

As digital income is the fastest and exponentially growing area in music revenues[7], it is likely that more and more acts will be drawn to the net profit deal option, which ensures a 50-50 split on streaming and download revenues, rather than the traditional record deal option.

Recording artists, such as Eminem and "Weird Al" Yankovic, as well as managers, such as 19 Entertainment founded by music mogul Simon Fuller, have swiftly brought this issue relating to the split of earnings on digital revenues to the attention of the general public, by filing high-profile lawsuits against the three majors[8]. The defendants later settled these lawsuits out-of-court, consenting – under confidential terms – to hike up artists' share of earnings on digital revenues, but their reputation got tarnished in the process[9].

As there is a clear dichotomy between the labels' view that royalties for both downloads and streams should be accounted for to the artist as sales, and the point of view of recording artists and their collecting societies which errs on the side of a stream or download being considered as "mechanical reproduction" or as "performance" under a license, it is well worth for labels to make time in order to clarify, and lobby about, the subject matter with the European Union's Commission and the United States Copyright Office[10]. Indeed, the European Commission currently plans to examine whether action is needed on the definition of the rights of "communication to the public" and of "making available" under copyright law, as well as to assess the role of alternative dispute resolution mechanisms. Both major and indie labels should join forces, in order to lobby the European Commission and other European and US institutions, about that issue of defining what digital revenues are in law, (license or sales or a hybrid of both?) since this single point may seriously impact their future overall revenues, which will increasingly be derived

from digital income.

1.3. 360 deal

A 360 deal is a boon for any record label. Mostly favoured by major labels, a 360 deal has two components:

- the first part of the 360 deal contract relates to record sales and contains basically the same terms than those of a traditional record deal and
- the second part of the 360 deal contract gives the label a right to receive a percentage of certain other income streams which labels have not historically shared in, such as artist's touring and merchandising income as well as the artist's songwriter and music publishing income (if the recording artist is also a songwriter).

The first reported 360 deal was Robbie Williams' agreement with now-defunct major EMI in 2002[11]. Acts such as the Pussycat Dolls and Paramore have been reported in the media as having been signed to 360 deals and, in 2007, it was confirmed that Madonna had signed a USD120mn 360 deal with concert promotion company Live Nation. It was reported that in exchange for cash and shares, Madonna gave Live Nation distribution rights for 3 future albums as well as rights to promote live concerts, sell merchandise and license her name and image.

While the sell of a 360 deal to an artist may be a tough call, majors and their affiliates justify their offer of the 360 deal by citing significant investments they make in an artist's career as well as the dramatic decline in income from sales of recorded music. Factually, it is true that income from sales of pre-recorded music reached its peak in 1999 at approximately USD14.5bn. By 2012, that amount had shrunk to only approximately USD7bn – a decline of more than 50 percent, not accounting for inflation.

Under the traditional paradigm, the label would pay the recording artist a small royalty, which was even smaller after all the deductions. Hence, the artist could expect to receive no recording royalty at all, unless his album was a major commercial success. However, the act got to keep everything else: publishing, merchandising, touring, endorsements, etc.

Since recording artists, especially in the USA where the physical market is moribund and where no neighbouring rights are paid on terrestrial broadcast, often generate more money from other activities than record sales and performance, major and indie labels have insisted on taking a piece of the action, by concocting 360 deals. For instance, Lady Gaga's Monster Ball Tour grossed over USD227mn of touring income, and 50 Cent's endorsement deal with Vitamin Water turned golden when he accepted shares in the company in exchange for authorising the use of his professional name in "Formula 50": when Coca-Cola purchased Vitamin Water's parent, Glacéau, for USD4.1 bn, 50 Cent's shareholding became worth over USD100mn.

These developments have spurred labels to seek to participate in all the possible revenue streams generated by the artist. Even small labels, known as production companies, get in on the action and insist that new artists sign 360 deals with them, even if they put little or no money into recording and make no promises in regard to marketing or promotion, while getting an assignment of copyright on the master

recordings!

There is no standard 360 deal as the terms vary substantially from deal to deal, and from label to label. A lot depends on the track record and negotiating power of the artist, plus how much of an advance is being paid.

A “full” 360 deal allows the label to share in all entertainment industry income, including touring, music publishing, merchandising, product endorsements, book publishing income (if the artist writes a book), songwriter and music publisher income (if the artist is a songwriter), etc.

Usually, the label’s share of those non-record kinds of income is in the range of 10 to 20 percent, but for new artists if can get as high as 50 percent. A typical 360 deal record agreement would set out the following splits, in relation to the label’s take for various streams:

- 50 percent merchandise;
- 25 percent touring and live performance;
- 25 percent “digital products” such as ringtones and sales from the artist’s fan site;
- 25 percent publishing;
- 25 percent endorsements;
- 25 percent of any other income from the entertainment business including appearances on TV and movies, theatre, book publishing, etc.

Today, all major labels and their affiliates usually demand 360 terms, especially when dealing with emerging artists. So the artist may not have much choice, especially if his strategy is to leverage the formidable distribution channels and economies of scales offered by a major, to achieve wide-reaching and fast success.

1.4. Record deal in the EDM world: still the wild west

In 2010, the acronym “EDM” was adopted by the music industry and music press as a buzzword to describe the increasingly commercial electronic dance music, club music or simply dance, scene.

Major EDM acts, called DJs, such as David Guetta, Deadmau5, Calvin Harris, Steve Aoki, Avicci or Skrillex, often make appearances on main stages during the final nights of high profile festivals such as Lollapalooza or Coachella and, in December 2015, EDM was reported to be a USD6.2bn global industry[12]. In a nutshell, EDM is one of the most lucrative genres in the music industry today.

While top DJs can demand GBP50,000 to GBP200,000 per gig – with hardly any overheads -, record deals relating to some of the EDM tracks that these DJs play during those live gigs are either non existent or incredibly pro-label.

For example, in 1996 artist and songwriter CoCo Star (real name Susan Brice) released a track “I need a miracle” under Greenlight Recordings in the US, which became a club hit. It was then re-recorded and release on EMI’s Positiva imprint in the UK a year later. In 1999, a British DJ mashed up Brice’s vocals from the song with German act Fragma’s track Toca Me. The mash-up was released without Brice’s permission on a bootleg white label for which she was never paid. This sparked a buzz in clubs, and

Fragma released their own version of the bootleg, Toca's Miracle, on Tiger Records in Germany and Positiva in the UK in 2000. It went to N.1 in 14 countries worldwide. While Toca's Miracle has reportedly sold more than 3 million copies, Brice claims she was never paid for any of these remixes[13].

While major labels and large indie labels may take a bit of convincing to enter the underground – and drug-fuelled – EDM sector, there is an untapped opportunity here that they can no longer ignore. The public wants and is prepared to pay for EDM, EDM has grown to become a USD6.2bn to USD6.9bn global industry[14] and it is still an Eldorado largely untapped by reputable labels, meaning that the best talent may want to focus on other "more respectable" musical genres for fear of being "screwed" by bootleg white labels which currently populate the EDM scene.

1.5. Label services deal: à la carte and en vogue

At the other end of the spectrum of a 360 deal, lies the label services deal which is a very palatable alternative to business savvy artists. Indeed, the rise of social media, digital distribution, online platforms and direct-to-consumer technology has empowered artists like never before and brought them closer to fans.

The services model sees the record deal flipped on its head: instead of assigning the copyright on their sound recordings for an upfront advance and the label footing the campaign bill, acts will receive the lion's share of royalties (often 100 percent) from a release and pay a company for a range of services from an à la carte menu of promotion, distribution, marketing, press and a wide range of other essentials[15].

Interestingly, the services model is not just reserved for artists with enough capital behind them to fund a whole campaign and an already established fanbase likely to ensure a decent return. This services deal is being used by record companies too, as a quick and convenient way to establish an office abroad, push releases into international territories after domestic success, or to simply augment their in-house functionality with new capabilities as and when needed.

Although a relatively new idea in the music industry's history, the number of companies offering services to both artists and labels has skyrocketed, making the sector fiercely competitive.

PIAS Artist & Label Services, Believe Digital, Republic of Music are some of the most representative label services companies out there, with aggregators, such as the Orchard (now fully owned by the major Sony Music Entertainment), and majors' owned companies, such as Universal's Caroline International, Sony RED and Warner's ADA, very much active in this market.

Even independent rights management groups, such as Kobalt and Fintage House[16], are widening their services offering, adding label services to their roster. Kobalt in particular, plays the transparency card with brio, by setting out on its website the key characteristics of Kobalt's "new model" contracts, contrasting them against the key terms of a traditional label deal[17]. For example, as explained on Kobalt's website, while the term of the label services deal is 3 years with Kobalt, a traditional deal will have a term of 7 years (for a license, a rare occurrence) to the life of copyright. While the talent gives up ownership and control over their recordings, in a traditional deal, Kobalt highlights, on its site, that artists retain full ownership and control of their recordings. While a traditional deal provides for semi-annual

accounting with minimal detail, says Kobalt, it commits to provide quarterly accounting with line-by-line detail on every type of income. And the last straw: while a traditional record deal will not cater for any pay-through of neighbouring rights income, Kobalt says that it will collect and pay to artists the label share of neighbouring rights income!

What's not to like? Of course, major acts are totally smitten with Kobalt's offering and the likes of 50 Cent, Paul McCartney, Boy George, Busta Ryhmes, Maroon 5, Skrillex, Courtney Love, Dr Luke, Max Martin and Foo Fighters have jumped on the bandwagon of Kobalt's label services deals.

Personally, I am not surprised that it is a private equity-owned company, such as Kobalt[18], that is currently delivering some of the act-friendly record deals to the talent, as far as transparency, fairness and redistribution of neighbouring rights and digital revenues are concerned: Kobalt is not managed by "pure" music people!

If majors want to attract legendary artists, nowadays, they must up their game in terms of transparency, redistribution of digital income, auditing and reporting of revenues[19]. Their old ways may work on new talent, who wants to make a fast buck, but seasoned acts will not go anywhere near a 360 or traditional deal those days – especially since they have the cash to auto-finance their distribution and marketing campaigns through label services companies such as Kobalt. What these acts are interested in, is to keep the rights to their recordings and catalogues and monetize those rights to the fullest, through music publishing, neighbouring rights, performance revenues and mechanicals.

2. Record labels and digital service providers: where the wild things are

As mentioned above, the major beef that artists and their managers have against labels and digital service providers is the lack of transparency, especially as far as digital revenues and neighbouring rights are concerned.

Digital service providers, or "DSPs" are tech companies providing music streaming subscription services. Apple Music, Spotify, Deezer, Tidal, Google-owned YouTube Red are some of the largest DSPs in the music streaming sector[20].

The stakes are getting higher by the minute, with digital revenues – which comprise income from both digital downloads and streaming –growing by 6.9 percent to USD6.9bn in 2014, and now on a par with the physical sector. Indeed, globally, like physical format sales, digital revenues now account for 46 percent of total music industry revenues. In 4 of the world's top 10 markets, digital channels (streaming and downloads) 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).

In particular, streaming is going from strength to strength, with music digital subscription services – including free-to-consumer and paid-for tiers – growing by 39 percent in 2014, while downloading sales

predictably declined by 8 percent but remained nonetheless a key revenue stream as they still account for more than half of digital revenues (52 percent). However, streaming subscription revenues offset declining downloading sales 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 USD1.6bn in trade revenues.

Music industry analyst Mark Mulligan predicts that streaming and subscriptions will grow by 238 percent from the 2013 levels, to reach USD8bn in 2019, with download revenue declining by 39 percent. He concludes that streaming and subscriptions will represent 70 percent of all digital revenue by 2019.

Universal Music Group is capitalising on the growth of streaming with impeccable flair, naming music and media industry executive Jay Frank, who founded the music and marketing analytics companies DigSin and DigMark, to the newly created role of Senior Vice President of Global Streaming Marketing[21]. His role will be to get UMG acts on playlists, in particular through Digster, a company that creates themed playlists featuring mostly MHG recordings.

While this evolution towards more music streaming is very customer-friendly (who does not want to have the option to select and potentially hear millions of tracks, anywhere in the world, on a device no bigger than the size of a jean's pocket?), new legal and business issues have arisen as a result.

In particular, right owners in the recorded performance of a composition – typically, the record label, the recording artist-performer and non-featured musicians and vocalists – repeatedly ask themselves how they are financially benefiting from this surge in streaming consumption and income. How do they get paid?

Also, more and more DSPs want to know how they can access high-quality musical content and obtain the right to stream the widest music catalogues on their platforms, at a reasonable price. Since scaling up is the key to success for any technology company, DSPs also want to have the right to stream such musical content all over the world.

Finally, as the surge in musical digital consumption and income is becoming factual evidence, certain categories of income streams are developing and taking more of a preponderant role. For example, sound recording performance rights, or "neighbouring rights", are a growing source of global revenue for recording artists and record labels. While recorded music sales of physical products have declined 66 percent since their high in 1999, revenues from overall neighbouring rights have increased dramatically, reaching Euros2.034 bn globally in 2013. Musical rights represent around 90 percent of the royalties collected in relation to neighbouring rights. Audio-visual rights are worth around Euros200 mn, benefiting mainly to performers, while the rest of these royalties (around Euros1.834 bn) relate to musical neighbouring rights. Where are these musical neighbouring rights going? How are they collected then distributed?

2.1. Streaming equity

As a preliminary remark, it is worth noting that labels, in particular majors, were very prompt in renewing their grip on music distribution: they invested massively in DSPs, whenever the opportunity was arising.

For example, Warner Music Group acquired up to 5 percent of Soundcloud in October 2014[22], and Warner, Universal and Sony have quietly muscled out stakes in the hottest digital streaming services, such as Spotify but also in choose-your-own-adventure music video purveyor Interlude and song-recognition giant Shazam – valued at USD1bn in its latest round.

What have the labels been giving the startup DSPs, aside from legitimacy, to secure these "sweet deals"? All-encompassing access to the artists and their songs. As explained in point 2.3. (Neighbouring rights and digital performance of sound recordings) below, the artists derive some minimal amount of royalties from these new distribution channels, but they were not getting any of the ownership.

Until February 2016 at least, when, during his latest investor conference call, Warner Music's CEO Stephen Cooper announced that the label will pay its recording artists a portion of any income it earns from equity stakes in services such as Spotify and Soundcloud. With Spotify planning on announcing its IPO during the second quarter of 2016, such commitment on Warner's end is more than a token gesture, as it owns a 2 to 3 percent stake in Spotify's shareholding, which will probably be valued at around USD200mn.[23]

This is a very smart PR move indeed from Warner because it means that this major understands that it needs to have all its recording artists on board, as far as streaming services are concerned.

Streaming is where consumer behaviour and affinities are going, but currently Google-owned YouTube is growing quicker than everyone else, while labels need premium and freemium services to make up ground fast. Which is why they cannot afford the Black Keys-Taylor Swift-Adele- Coldplay-Radiohead trickle to turn into a free torrent available at will to fans. They need artists to be as vested as they are into streaming and DSPs.

It remains to be seen whether Sony and Universal will follow suit, as far as sharing streaming equity with their respective acts is concerned.

2.2. Breakage

In May 2015, the Verge revealed details of the contract signed between major label Sony Music Entertainment and DSP Spotify, giving the streaming service a license to utilize Sony's catalogue[24].

The 42-page licensing agreement was signed in January 2011, written by Sony Music and revealed that Spotify had to pay USD42.5mn in yearly advances to Sony for the two years of the contract. It also detailed the subscriber goals that Spotify had to hit and how streaming rates were calculated. Most interestingly, the contract detailed how Sony used a Most Favoured Nation clause to keep its yearly advances from falling behind those of other music labels, how Spotify could keep up to 15 percent of revenues "off the top" from ad sales made by third parties, and the complex formula that determines how much labels get paid per stream. What the contract between Sony and Spotify did not stipulate was what Sony could and would be doing with the advance money. Did the money go into a pot to be divided between Sony Music's artists, or did the major keep it to itself?

These revelations sent a shockwave in the music industry, with artists and their managers up in arms because they had already complained that earning on average less than one cent per stream play –

between USD0.006 and USD0.0084 according to Spotify Artists[25] – was neither reasonable nor fair. Top talent such as Taylor Swift and Radiohead, in particular, left Spotify with fracas, in 2014 and 2013 respectively, complaining that end-consumers did not pay enough to access their catalogues on Spotify.

But that is just one reason why artists did not get paid much at all per stream, the other reason being breakage: indeed, DSPs, which are always on the lookout for top music catalogues and content to stream to their retail consumers, readily paid hefty "minimum revenue guarantees" to labels, over the past years, to get access to, and be able to license, their music recordings.

For example, French streaming service Deezer, which planned to organize a (later on aborted) IPO from its home city in Paris during the last quarter of 2015, revealed on its "*Autorité des Marchés Financiers*" registration documents, that it had paid a Euros257mn advance to record companies in instalments over a period of 3 years (2012: Euros57.1mn, 2013: Euros87.4mn and 2014: Euros112.5mn). In 2013, Deezer even had to pay 94 percent of its total revenues to record companies as minimum guarantees (no wonder that IPO went south)! Meanwhile, royalties from subscriptions and ads fell short of this advance payment in 2012, 2013 and 2014 – totally approximately Euros236.4mn. In total, the deficit between the two numbers amounted to Euros20.6mn across the 3-year period (2012: Euros5.4mn; 2013: Euros13.2mn and 2014: Euros2mn). This Euros20.6mn deficit is unallocated "breakage"[26].

Therefore, while the payment of an advance by a DSP to record companies is justified if the streaming platform then generates the same or even more revenues through subscriptions and ads, the system is inherently flawed if the advance ends up exceeding the annual streaming royalty income. When that happens, the label is inevitably left with a lump sum – in this case over Euros20mn – sitting in record company bank accounts, but which cannot be attributed to any specific artists.

One of the three majors, Warner, feeling the heat, was the first to share this breakage with their acts as standard company policy since 2009, even attributing a line to "breakage" on their artists' royalty statements. Sony has also agreed to share with its talents proceeds from an upcoming sale of its equity in Spotify. Meanwhile, over 700 indie labels have signed up to the Fair Deal Declaration from the Worldwide Independent Network, which pledges to "*account to artists a good-faith pro-rata share of revenue and other compensation from digital services*"[27], and the French ministry of culture issued a voluntary agreement in October 2015 requesting that music industry stakeholders agree to share with artists all income received from online music services and to guarantee them a minimum wage, in return for the digital use of their recordings[28].

These reactions from both private and public stakeholders in the music industry demonstrate that labels, in particular, majors, will not get away with egotistically keeping all advance income paid by DSPs for themselves. Either the labels self-regulate, and redistribute a portion of this extra income to their recordings artists, or European Union regulators – busy bees with their ongoing general overhaul of copyright law in the 28 member-states of the EU – will eventually make it compulsory, in law, for labels to redistribute a portion of the breakage as well as minimum revenue guarantees to their acts.

2.3. Neighbouring rights and digital performance of sound recordings

Neighbouring rights, also called "related rights", were consecrated in law, step by step, in order to ensure that people who are "auxiliaries" to the creation and/or production of content (artists, performers, music

producers, film producers, non-featured musicians and vocalists, etc.) could have more control over their creative endeavours.

There is no single definition of neighbouring rights, which vary much more widely in scope between different countries than authors' rights or copyright.

However, the rights of performers, phonogram producers and broadcasting organisations are certainly covered by related rights, and are internationally protected by the Rome Convention for the protection of performers, producers of phonograms and broadcasting organisations, signed in 1961. Aside from the Rome Convention, another international treaty addresses the protection of neighbouring rights in the musical sector: the WIPO performances and phonograms treaty (WPPT) signed in 1996.

At the European Union level, three directives have been instrumental in developing a harmonized legal framework relating to neighbouring rights: the directive of 27 September 1993, relating to the coordination of certain rules on author's rights and neighbouring rights applicable to satellite broadcasting; the directive of 29 October 1993 – replaced by the directive n. 2006/116/EC of 12 December 2006 – on the term of protection of copyright and certain related rights; the directive n. 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

As mentioned above, sound recording performance rights represent the bulk of all neighbouring rights collected worldwide, and they are a growing source of global revenue for recording artists and record labels. For example, in the US, SoundExchange, the organisation responsible for collecting and distributing sound recording performance royalties, distributed USD590mn in 2013, a dramatic increase from the USD3mn the organisation distributed in 2003. In the decade since SoundExchange's inception, the organisation has generated USD2bn in royalties to artists and record companies.

Out of a total of Euros2.034bn of neighbouring rights collected in 2013, 48.9 percent originate from Europe (Euros1.101bn), 30 percent from North America (Euros681mn), 11.9 percent from South America (Euros268mn) and 8.6 percent from Australasia (Euros192mn)[29].

With a 28 percent share of worldwide royalties, the US is the main market for neighbouring rights, even though the collection of such rights is limited to the public performance of sound recordings on digital medium only (such as online radio like Pandora, satellite broadcasting like Sirius/XM and also online streaming of terrestrial radio transmission like iHeartRadio). Unlike most of the world, the US does not apply sound recordings performance rights to broadcast radio, terrestrial radio and performance of sound recordings in bars, restaurants or other public places.

The market of neighbouring rights is mainly concentrated in 10 countries, which control 82 percent of worldwide royalties, with a strong concentration in Europe. Apart from the US, the United Kingdom (12 percent), France (11 percent), Japan (7 percent), Brazil (7 percent), Germany (7 percent), Argentina (3 percent), the Netherlands (3 percent), Canada (2 percent) and Norway (2 percent), are the top 10 worldwide markets. Outside the US, sound recordings enjoy broader performance rights for broadcast (including terrestrial radio), public performance and so-called communication to the public.

Globally, sound recording performance rights are administered by music licensing companies or

collecting societies. These organisations are responsible for negotiating rates and terms with users of sound recordings (e.g. broadcasters, public establishments, digital service providers) collecting royalties and distributing those royalties to performers and sound recording copyright owners, i.e. record labels.

There are around 60 collecting societies around the world focused on sound recording performance royalties. These collecting societies may provide a statutory license to DSPs.

However, neighbouring rights deriving from streaming revenues generated on the DSPs' platforms are almost always managed directly by the record labels and their representatives. Indeed, it is important to note that statutory licenses do not apply where there is a direct licensing deal between the DSP and the record label. So, for example, the 3 major labels have each directly signed a licensing agreement with each of the DSPs, while other direct deals have been signed between Clear Channel, the owner of digital radio IHeartMedia, and labels such as Glassnote (the label for Mumford and Sons) and Big Machine (Taylor Swift's label). Independent labels have teamed up to create global digital rights agencies such as Merlin, which offer the attractive option of globally licensing, via a single deal, the world's most important and commercially successful indie labels to DSPs. Among those that have a license with Merlin, feature Soundcloud, Vevo, Google Play, Deezer, YouTube and Spotify.

In 2014, internet radio Pandora entered its first direct deal with record labels, outside the statutory system, by establishing a partnership with Merlin[30]. Meanwhile, neighbouring rights collection body SoundExchange keeps a tight leash on Pandora, arguing that the USD0.0014 paid by Pandora to record labels for every stream is too low and should be increased to USD0.0025. As a result, in December 2015, the US Copyright Royalty Board increased the basic per-song rates paid by Pandora (and its competitors such as iHeartRadio) to USD0.0017, or slightly more than 20 percent.[31]

While Pandora is now willing to sign direct deals with record labels, as explained above, it does not mean that the cordial relationship is devoid of any strain: the three majors and the RIAA filed several copyright infringement lawsuits against Pandora and its competitors in 2014, for playing pre-February 1972 recordings without making any royalty payments. The labels said both Pandora and competitor SiriusXM took advantage of a copyright loophole, since the master recording for copyright was not created federally, in the US, until 1972. However, the labels claimed that their master recordings are protected by individual state copyright laws and therefore deserve royalty payments.[32] Several court decisions were released since, and the federal courts unanimously found against SiriusXM and Pandora, and for the payment of royalties on play of pre-February 1972 recordings.

Since direct deals are signed between record labels and DSPs, this means that it is down to the parties to organise their licensing contractual agreements as they see fit. These licensing deals between DSPs and labels, which are 3 to 4 years old at best, have so far had almost no impact on the way recording deals signed between label and recording artists, are drafted, as far as digital revenues are concerned.

Indeed, the way the licensing agreement between the DSP and the label is drafted is automatically going to have an impact on the record deal signed between the record label and the recording artist. If a record deal was signed more than 4 years ago, it will most definitely not provide for a clear and transparent redistribution of digital income to the artist, by the label.

As I mentioned in point 1.2. (Net profit deal) above, labels and recording artists are currently fighting

hard to establish whether streaming is replacing radio or sales. Currently, labels typically pay artists on either one or the other of those models, and more often on the basis of a stream being a sale. Why are labels most commonly treating streaming as sales (which is rather counterintuitive since streaming is all about “access” not “ownership”)? Because, as explained in point 1.2. above, the percentage that labels have to pay artists is so much lower, often in the 10 to 15 percent range if the artist is signed on a traditional or 360 record deal, rather than around 50 percent for a license. Music industry experts propose to assimilate streaming to a hybrid between sale and license, with a hybrid rate that sits in the middle. Doing so would double the amount of money more artists make from streaming, instantaneously transforming its revenue impact for many.

It is highly probable that new record deals will be negotiated at length, in particular by major acts, as far as digital revenues are concerned, in the very near future, especially in the aftermath of the breakage “scandal” and the controversy over the sale or license nature of a stream.

3. *Record labels and collecting societies: How to collect micro-payments around the world*

As mentioned above, there are around 60 collecting societies around the world focused on sound recording performance royalties. These collecting societies may provide a statutory license to public venues, DSPs or radios, etc. from which they later collect neighbouring rights royalties, which are later paid back to record labels, performers and non-featured musicians and singers.

3.1. How are neighbouring rights protected and collected on a territorial-basis?

While it could appear that neighbouring rights are protected and remunerated in a very homogenous way around the world, thanks to the structured international and European legal framework described in point 2.3. (Neighbouring rights and digital performance of sound recordings) above, in fact these related rights and the business practices of collecting societies are very different and vary from territory to territory.

Each of the 60 collecting societies operates in a territory that recognises performances in slightly different ways and has a specific business practice.

For example, the US Copyright act grants owners of sound recordings an exclusive right to “*perform the copyrighted work publicly by means of a digital audio transmission*“. This right is limited by a statutory license for so-called “*non-interactive digital audio transmissions*“. Therefore, services which comply with the statutory license may stream sound recordings without permission of the copyright owner, subject only to remitting data and payment to SoundExchange. The US Copyright act specifies how SoundExchange divides and distributes the royalties: 50 percent go to the sound recording copyright owner – i.e. the record label; 45 percent is distributed to the featured recording artist; and 5 percent is sent to an independent administrator which further distributes those royalties to non-featured musicians and vocalists.

In the United Kingdom, the UK copyright, designs and patents act grants sound recording copyright owners exclusive performance rights in their sound recordings. In addition, the UK act gives performers on those sound recordings a right of "equitable remuneration" for a share of the licensing proceeds for uses of the sound recordings. Therefore, when a sound recording is broadcasted in the UK, the performers on those sound recordings have a right against the producer (i.e. the record company) of the recording as to a share of the producer's revenue from that usage. From a legal standpoint, it is very different from the US statutory license regime where the featured artist's share is as against the user of the sound recording, not the record company. As mentioned above, the UK is the second largest market for neighbouring rights globally. According to the 2014 financial results of UK collecting society PPL, it collected a total of £187.1mn total license fee income (from broadcast, online, public performance and international revenue sources).

In Germany, the Law on copyright and neighbouring rights similarly grants performers and producers rights to remuneration for the performance of their sound recordings. While this German law grants performers rights of equitable remuneration for the broadcast of communication to the public of their fixed performances (i.e. sound recordings), it grants producers (i.e. record labels) a share of the performer's proceeds from the licensing of broadcast and communication to the public rights. Therefore, the producers' revenue from such activity is as against the performer, not the user of the sound recording. This is the exact opposite to the UK regime, and nothing like the US system.

In France, the Intellectual property code also grants sound recording copyright owners exclusive performance rights in their sound recordings, through a statutory license. Like in the US, digital service providers which comply with the statutory license may stream sound recordings without permission of the copyright owners, subject only to remitting data and payment to SCPP (when the record producer is a major), SPPF (when the record producer is an independent label), ADAMI (for performers) and SPEDIDAM (for non-featured musicians and vocalists). The Intellectual property code provides that 50 percent of the royalties go to the sound recording copyright owner (the label), while the other 50 percent go to the performers and non-featured musicians and vocalists.

3.2. How are neighbouring rights protected and collected on a cross-border basis?

One of the recurring questions that artists and labels ask themselves is how they are protected from one territory to the other. Indeed, music is a global business, especially in the digital era: artists successful in one territory often are successful in others.

Worldwide success implies that the sound recordings of artists are going to be performed publicly in other territories than where they reside. How, then, can performers and producers collect sound recording performance royalties in territories where they are not nationals and may not have direct agreements with the relevant societies?

The answers are complex and derive from the application of the provisions set out in the Rome Convention and the WPPT above-mentioned.[33]

Article 2 of the Rome Convention details the level of protection that it grants nationals of contracting states in each others' territories. In short, contracting states owe nationals of other territories the same level of protection they recognise for their own nationals. This concept of "National Treatment" is key to

international copyright treaties and works to ensure that members do not unfairly discriminate against nationals of other contracting states.

Articles 4 and 5 of the Rome Convention specify that sound recordings made by nationals of contracting states, first recorded in contracting states, or first published in contracting states, are eligible for National Treatment. Similarly, a performer's performance will be granted National Treatment if it was rendered in a contracting state, incorporated in a protected sound recording, or if not recorded, broadcast from a contracting state.

Article 12 of the Rome Convention sets out the equitable remuneration for performers, producers (or both) for secondary uses of their sound recordings (e.g. broadcasting, communication to the public). The US is not a signatory to the Rome Convention because, in 1961, this country did not recognise sound recordings as copyrightable subject matter (only in 1995 were sound recordings granted a limited digital public performance right in the US). Article 4 of the WPPT sets out the treaty's national treatment requirements. Contracting parties must grant nationals of other contracting parties the same level of protection they grant to their own nationals. Article 3 of the WPPT imports the qualification criteria for performers and producers from the Rome Convention (articles 4 and 5). Thus, performers and producers who would be entitled to National Treatment under articles 4 and 5 of the Rome Convention are entitled to National Treatment under article 3 of the WPPT, as if all members of the WPPT were Rome Convention members. This ensures that US performers and producers eligibility is analysed in the same way, even though the US is not a Rome Convention signatory. Article 15 of the WPPT details the equitable remuneration right of performers and producers and largely follows the provisions of article 12 of the Rome convention. A contracting party may recognise an equitable remuneration right for secondary uses of sound recordings (e.g. broadcast, communication to the public) for performers, producers or both, or may choose not to recognise such a right at all. Contracting parties may choose to limit their application of article 15 by depositing a notification detailing the scope of its limitation. Such notifications may have implications for the level of national treatment member states owe each other's nationals under article 4.

Article 4 of the WPPT requires contracting parties to provide full national treatment to each others' nationals. However, article 4(2) states that contracting parties may limit the scope of national treatment to the extent another contracting party has availed itself of a reservation under article 15. For example, because the US does not recognise a terrestrial broadcast right for its own nationals or those of any other country, most WPPT members choose not to grant terrestrial broadcast rights to US nationals, even though they are recognised for their own nationals. This concept of "like-for-like" treatment is often referred to as "reciprocity" and is distinct from "national treatment".

When seeking to maximise the amount of royalties one collects for artists and record companies abroad, these concepts of "national treatment" and "reciprocity" are critical to keep in mind. Understanding what qualifies for full national treatment and what qualifies for limited reciprocity can have an impact on the amount of neighbouring rights revenue an artist or label realises.

For example, a US performer recording in Europe would be qualified for performer royalties (or a European performer recording in the US). Eligibility for royalties is often a fact-based, case-by-case analysis focused on the nationality of performers and producers, where recordings took place, and where they were first published. Knowing these important facts is crucial to ensuring that artists and labels

receive what they are owed.

Collecting societies play an important role here: not only do they collect fees from users in their own territories and distribute those to their domestic royalty recipients, but they often act on behalf of their member artists and labels to collect undistributed royalties abroad.

In particular, PPL in the UK, and SAMI, in Sweden, have a share of international royalties above 20 percent in their respective total amount of royalties collected. This is explained by the fact that both UK and Swedish music are great exports around the world. Consequently, PPL has identified international income as a growing source of revenue and has set up a very dynamic policy of royalties' collection abroad, signing dozens of reciprocity agreements with sister collecting societies.

3.3. A la carte: how record labels are cherry picking the services that collecting societies will provide them with

In its latest report on neighbouring rights in the digital era, French collecting society ADAMI highlighted that the worldwide market of neighbouring rights in collective management should grow exponentially in the next few years. However, the report noted that the share of sound recording public performance royalties attributed to digital is still quite low, apart in the US where related rights in collective management only come from digital sources (i.e. streaming and digital radio).

As more and more consumers use streaming – as opposed to music downloads and physical formats -, ADAMI forecasts that the share of sound recording public performance royalties deriving from streaming will become an essential part of the income paid to performers and record labels.

As mentioned in point 2.3. (Neighbouring rights and digital performance of sound recordings) above**,** most labels elect to negotiate the collection of sound recording public performance rights, neighbouring rights, directly from digital service providers.

For now, most of the sound recording public performance royalties collected by collective management societies originates from equitable remuneration, which is in part linked to advertising revenues of commercial radio and TV.

As highlighted by co-founder of the French top indie label Because Group, Emmanuel de Buretel[34], labels should register directly with foreign collecting societies which manage neighbouring rights in key territories where their sound recordings are played, streamed and used, in order to have quicker and more transparent access to those sound recording public performance royalties. For example, Because Group, which main neighbouring rights collecting society is SPPF, is directly registered with PPL in the UK and SoundExchange in the USA, which are key territories for its acts.

4. Record labels, brands & ad agencies: let's synch!

Music is an important part of audio-visual projects such as films, television programs, television or internet advertisements, video games and internet websites. So much so, that Universal Music Group recently named some veteran film producers to lead its development and production of film, television and theatrical projects[35].

In order to be able to use an existing musical composition and existing sound recording in an audio-visual project, the producer of the project will need to get a license from the people or entities that own or control the rights to that musical composition and that master sound recording.

This is what is called a synchronisation license, or synchronisation and performing rights license, or master use and synchronisation license or just sync license. Such license gives the right to the producer of the project to synchronise the composition and existing sound recording with, or include them in timed relation to, the images in the audio-visual project.

Such use of compositions and master sound recordings in audio-visual projects is not subject to collective or statutory licensing schemes. Each use is freely negotiated between the parties involved: the owners of the musical composition and master sound recording on the one hand, and the producers of the audio-visual project on the other hand.

As sound recordings are usually owned or controlled by record labels, producers of audio-visual projects often negotiate the master use license with them[36].

4.1. Synch as a viable business model

Master use licenses can be an important source of income and exposure for labels and their recording artists. In an era of shrinking sales of physicals, and still insufficient revenue from downloads and streaming to make up the difference, master use licenses can be welcome and even vital sources of revenue. In particular, unlike sales and neighbouring rights which bring in small amounts of money on a delayed basis, master use licenses often bring in upfront lump sum payments, which can support the labels' cash flow.

Also, having a placement in a film or television program means that the artist and label can benefit from the promotion and marketing for that project, especially if the artist and label receive prominent written credit within the audio-visual project and in advertisements for the project, and if the sound recording is used in audio-visual ads for the project (such as a film trailer). Such promotion can lead to further physical sales, downloads or streams of the recording. Further, a placement in a successful film or TV show can bolster the credibility of the label and its recording artist, paving the way to obtaining additional master use licenses for that or other sound recordings.

For example, even Adele, who openly said that she will never "sell out" by endorsing consumer goods products, had readily agreed to synch her song Skyfall in James Bond's movie with the eponymous name in 2012. The song quickly went to the top of the Billboard Hot 100 and it became the first Bond theme to win at the Golden Globes, the Brit Awards and the Academy Awards. It also won the Grammy Award for best song written for visual media.

For bands such as the Rolling Stones, the Beatles and Led Zeppelin, master use licenses of one of their

sound recordings into an audio-visual project can reach up to GBP1mn per deal.

Labels are therefore strongly incentivised to have tight links with music supervisors, ad agencies and even music aggregators such as the Orchard, in order to multiply opportunities to place their sound recordings in attractive and cash-rich audio-visual projects.

Labels also need to be reactive and efficient when dealing with sync and master use licensing requests, because brands often contact them at the eleventh hour, sometimes just one or two weeks before the advertising campaign is launched, to negotiate music rights[37].

4.2. The pros and cons of sound-a-like litigation in the synch context

The other side of the coin of the sync business is that many producers of audio-visual projects do not bother to ask for, and negotiate, a sync and master use license with right owners. In this internet-era, and with a proliferation of user-generated TV channels on platforms such as YouTube, right owners are faced with an ever-increasing number of unlicensed uses of commercial music by brands and individuals[38].

Often, artists and record labels discover unlicensed commercials via fans who may stumble across them and share via their social networks or even tweet the artist directly. These uses can be incredibly damaging for an act, in particular those who choose not to have their music used in association with brands.

It is not uncommon for a brand or advertising agency based in a country where there is very little IP protection simply to use a sound recording in their advert without asking. Even in the US or the UK it sometimes happens, mainly due to a mistake or simply a misunderstanding of music copyright and sync rights in particular.

Also, there is an increasing use of “sound-a-like” songs in advertising. This is when a brand records a piece of music with the intention of making it sound very similar to an existing – and often famous – song. Ad agencies and brands may think that they will be able to bypass asking for a license to record labels and other right owners of the copied song that way, but recent litigation has proved them wrong. In 2007, for example, Tom Waits objected to the use of a sound-a-like of one of his songs in an advertisement feature Opel cars and successfully settled the claim.

For record labels, non-authorised use of one of its sound recordings or use of a sound-a-like to one of its sound recordings by a brand or ad agency can be a great opportunity to monetise its rights. While this scenario is not for the faint-of-heart though, since it may involve litigation, it is well worth initiating a frank and constructive dialogue with the infringer, in order to assess whether any license – and licensing royalty – may be agreed upon. Since any license would be granted post use of the copyrighted sound recording, labels usually ask for a higher licensing fee, as a penalty for not proactively seeking a licensed use in the first place[39].

Sometimes these issues cannot be settled out of court, resulting in full-blown litigation which may very well hurt the reputation of the infringing brand, defeating the whole purpose of setting up a marketing campaign in the first place, which is – ultimately – to make more consumers like your brand and its products. Record labels and recording artists are in strong positions, here, because if they have valid

evidence to demonstrate the copyright infringement of their sound recordings, they can obtain sizable damages allocated by IP-friendly judges, in court judgments, in particular in jurisdictions such as France, the US and the UK.

To conclude, it is obvious that record labels must reinvent their business models if they are to thrive, in the new paradigm of the music business. While the three majors seem to have the upper hand, at this game of reinvention and first mover's advantage in tech and streaming services, independent labels can play their cards well by leveraging their existing know-how in proposing innovating label services, monetising their back catalogues through sync and streaming, exploring uncharted EDM waters and maximizing royalties from sound recording public performance by striking advantageous deals with DSPs and collecting societies alike.

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