



UNIVERSITY OF AGDER

UNVEILING THE BLACK BOX

Allocate the Missing Revenues in Music Streaming

Vincent Kok Yoon Sing

Supervisor

Daniel Nordgård

This Master's thesis is carried out as part of the education at the University of Agder and is therefore approved as a part of this education.

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ABSTRACT

Listening to music has never been easier. Now, everything is just a fingertip away. From mainstream hits to niche productions, all we need to do is log on to a music streaming service like Spotify. Even better, we do not need to pay a single penny! If we want more access and options, we can pay for premium service with a monthly subscription fee as low as 99 Norwegian crowns or USD \$9.99, depending on where you are located. This new music consumption method has become so popular that it has turned the tide of the long recession in the music industry, and now “accounts for 50% of total recorded music revenues” (IFPI, 2017, p. 10). However, the music industry is also not short of complaints from recording artists who argue they are not getting paid enough from music streaming. This contradictory phenomenon has sparked a huge discourse in the music industry, and I am here to trace the artists’ shrinking revenue stream.

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1. INTRODUCTION

In 2014, music lovers were devastated after pop star Taylor Swift decided not to release her album “1989” on Spotify. (Engel, 2014) The news shocked many; no one would have guessed a superstar like her would snub the highly regarded music streaming service. To add insult to injury, she also withdrew the rest of her music that was previously available on Spotify. Defending her move, Swift called Spotify a ‘grand experiment’ that did not “fairly compensate the writers, producers, artists and creators of [the] music” (Grow, 2014). Her dissatisfaction over Spotify stemmed mainly from the fact that many users could listen to her music for free, “perpetuating the perception that music has no value” (Grow, 2014). Has music streaming really affected the revenue of artists? Or was Swift merely pulling a marketing stunt?

On closer look, it is relatively harder now for artists to be dependent on music streaming as their main source of income. According to a comprehensive breakdown collated by informationisbeautiful.net (2015), an artist would have to get a song streamed more than a million times to earn the standard United States monthly minimum wage of USD \$1,260. In contrast, the same artist could easily achieve the same figure by selling not more than 200 physical albums. And if the artist chooses to distribute the music privately, a little more than a hundred would suffice.

Due to the nature of the distribution, music streaming is unable to provide a high payout, compared with physical distribution. Instead of selling a physical product to consumers, music streaming services sell their users access to music. Because of that, a different revenue system is employed. In most cases, it is less direct and every single transaction is in a small decimal figure. An anonymous band revealed their royalties from Spotify dating from 2013 February 15 to 2013 October 15, and it showed that the average per stream payout they received was USD \$0.004891 (Resnikoff, 2016). Taking that into account, I begin to question why the margin in music streaming is so low, and if that is a genuinely fair compensation from the service provider.

Without a doubt, music streaming has shown promising results in recent years. By 2015, it accounted for 43 per cent of the overall digital sales and a record 93 per cent increment in the United States (IFPI, 2016, p. 4). According to the Year-End Revenue and Shipment Reports of

the Recording Industry Association of America (RIAA), the music industry is officially making money on music streaming (Shaw, 2016). That said, it is alarming that artists are not making more money, even as the industry is benefiting from music streaming. This paradox has left me with a lot of questions and as part of the growing music streaming community, I am determined to find out the truth about this unexplained phenomenon. With an aim to allocate the missing revenue in music streaming, my research thesis will set out to answer: How does the growth of music streaming affect the revenue of artists? If the music industry is really making money from streaming, where has the money gone? Has the missing revenue gone into the ‘black box’? And most importantly, are there any solutions?

1.1 WHY MUSIC STREAMING?

To help me understand how digital service providers (DSPs) like Spotify became so prominent in the music industry, I would need to go back to the start of music digitization. It all started in the late 20th century with the creation of the MP3 file. A group of scientists from The German *Fraunhofer*¹ laboratories found a way to compress a music file into a fraction of its original size. Given the small file size, music can now be uploaded and downloaded via the internet, even with a slow connection. In its digital form, music consumption is not limited to physical copies anymore, and has transformed into an information good (Frith & Marshall, 2004). In other words, it is non-exclusive; everyone can access the music with or without a physical copy; music can be consumed repetitively and simultaneously by different persons.

Digitization made music sharing easy – and free – but this presents a huge problem for the music industry. Consumers have come to see music as free goods and have little compunction about downloading and sharing digital files (Menell P. S., 2014; Hardy, 2012). While gathering their favourite tunes from the famous peer-to-peer (P2P) platform Napster, consumers had no idea they were committing online piracy. They were simply applying the same ideology of ‘loaning’ a copy of music to their friends, but in the digital realm. Nonetheless, the act of sharing music without proper consent from the rights holders has created mayhem in the music industry. Firstly, the sales of music recordings plummeted as consumers opted to download

¹ The Fraunhofer Society is a German research organization with 67 institutes spread throughout Germany, each focusing on different fields of applied science. (Source: https://en.wikipedia.org/wiki/Fraunhofer_Society)

their music for free. Second, music labels and publishers were in trouble because none of the existing solutions could work efficiently. In the United States for example, the No Electronic Theft (NET) Act and the Digital Millennium Copyright Act (DMCA) were enacted by Congress long before online piracy was widespread, yet that did not prevent the public from doing so. Because the administration fees of ensnaring piracy offenders from the internet were rather costly (Menell P. S., 2014, pp. 224-227), it became difficult for the law enforcer to oversee the vast internet users. And most importantly, the rights holders would not benefit from the penalties that would be issued to the offenders (Menell P. S., 2014, p. 230). With fire burning from both ends, the music industry shifted their focus from physical distribution to digital distribution.

Diverting music distribution to the internet has proven to be a great challenge for the major music labels, because they have invested a lot of time and money in the offline production chain. Over the years, major labels have vertically integrated with pressing and distribution facilities to reduce their financial risks. However, streamlining the production process has become a 'strategic handicap' (Moreau F. , 2013, p. 22) when disruptive technology like music digitization was introduced. From an economical standpoint, it would be a bad decision for the major labels to change their distribution method if the transition would put a toll on their assets. Their facilities in the production line would become irrelevant to digital distribution, thus losing value and turning into negative equity. Even though the major labels attempted to launch their own online music stores before Napster's emergence, "their efforts lacked the variety, functionality, and flexibility of peer-to-peer networks" (Menell P. S., 2014, p. 220). In the midst of looking for a better solution, DSPs like Amazon and iTunes became the intermediaries for the labels to distribute their music digitally.

Still, the idea of getting music for free has become deeply rooted among consumers and they no longer know what is a fair price to pay for music (Elberse, 2014). Despite the availability of legal digital downloads, the music industry had to compete with free music that could be found in P2P sharing (The Kristiansand Roundtable Conference, 2016; Wikström & DeFillippi, 2016). In response, a new business model made its first appearance in the music streaming platform Spotify in October 2008 (spotifysher & The Spotify Team, 2008). Under this model, users have the option to sign up for a free account with some restrictions, or a premium account with upgrades; hence the term 'Freemium' (Wikström, 2013, p. 110). Free account users can enjoy their music for free, and their supposed subscription fees will be offset by advertising

revenue from third parties. On the other hand, premium users would have to pay a monthly subscription fee in return for customisation not available to free users. With this ‘Freemium’ arrangement, consuming music through a legal channel has become appealing to consumers once again, because ‘virtually’ free (Moreau F. , 2013, p. 27) music has finally been made available to the public on a legal platform.

1.2 MAKING MONEY FROM FREE MUSIC

The introduction of on-demand, subscription-based streaming services proved to be the antidote for the long recession in the music industry. Co-founder and CEO of Spotify, Daniel Ek, expressed that “after years and years of decline, music is growing again, streaming is behind the growth in music, and Spotify is behind the growth in streaming” (Ek, 2016). There was an implicit theory that ‘Freemium’ would encourage free users to sign up for the premium service, therefore reviving the practice of paying for music (Wikström, 2013; Wikström & DeFillippi, 2016). Based on recent statistics, the theory might hold water because 40 to 60 per cent of free users would eventually upgrade their account after their free trial period (Byrne, 2015). In fact, premium subscribers in Spotify have risen and contributed to 90.9 per cent of its total revenue by 2013 (Peoples, 2014).

Evidently, music streaming has become one of the most important distribution channels, but problems have started to emerge, and questions about its sustainability have become a popular topic. One of the top concerns is that artists are not making as much money as they used to. Many artists are questioning whether they are getting their fair pay, and how cheap their music would need to be in order to be ‘virtually’ free for consumers. A similar question was brought up to Daniel Ek during the Vanity Fair Summit, and this was his answer:

There were a lot of artists that didn’t understand streaming [whether] was it good, was it bad for them. And, Spotify quite quickly started becoming the biggest music service and right now we are about 70 percent of all revenues in Sweden including physical as well. So this is a massive part in the music industry has actually gone up in revenues. But the biggest [issue] that happened during the process is transparency, so we started showing actually how many streams the artists had. And as a consequence, they started asking

the labels...what is that mean? How much will actually go out? [...] Today, we have an artist website where we say roughly how much a thousand streams or a million streams actually mean in terms of dollars back to artists. But because of how we published that, that started creating a dialogue between the artists and the industry. And as a side consequence, because streaming has become such a massive part of the revenues, labels even changed how they started paying out the artists. So they started paying out instead of once a year, [they] started paying out...more frequent. (Vanity Fair, 2014)

Judging from Ek's reply, he seems convinced that the source of the problem did not come from the streaming service itself, but from the process of revenue distribution. He also pointed out the lack of transparency between the labels and artists, and that they have been providing the artists with a better understanding of what they were actually earning in case of royalty discrepancy. Nevertheless, knowing how much the music is worth in streaming services does not solve the transparency issue. It was just scratching the tip of the iceberg because the value of the music is determined by other factors that are beyond the control of the artists themselves. As Peter Menell (2014, pp. 253-254) puts it, artists in the Internet Age are being caught in a dual-clamping vice by two powerful and determined forces. Consumers are getting more reluctant to spend on music, and labels need to maximize their profits under such circumstance. Being sandwiched by these uncompromising parties, artists have become the target of exploitation, resulting in their shrinking revenues.

Making money from free music may be a ridiculous idea, but it has been done at the expense of the artists. This irrational act is sabotaging the artists and failing to provide economic sustainability across the entire revenue chain. Even well established artists like Prince (Davis, 2016), Taylor Swift (2015), David Byrne (2015), and Billy Bragg (2014) have raised their concerns about music streaming, yet the industry is slow to respond to their protests. In the following chapter, I will try to identify the source of the problems and find out what contributed to the transparency issue. And by doing so, I could narrow down what I should be focusing on in my research to explore the possible solutions to this critical issue.

2. IDENTIFYING THE PROBLEMS

In a nutshell, the music industry has morphed from a high margin, low complexity industry into a low margin, high complexity industry (Nauman, 2016, p. 2). This idea was first coined by Vickie Nauman, who said the situation was irreversible, comparing it to “toothpaste out of the tube” (Nauman, 2016, p. 2). Before digitization, sound recordings were sold in physical copies that were ‘rights ready’ (Cooke, 2015, p. 10). They consisted of the respective rights clearance for private consumption, and the splits of the revenue were finalized prior to distribution. So whenever a purchase was made, the buyer was paying for the rights to consume the music from a physical copy. Since each copy consisted of 12 songs on average, the unit price is correspondingly higher and the rights holders could enjoy more payout. It was a very straightforward business model that allowed few mistakes and little confusion. The revenue stream was more transparent and artists had a higher revenue margin in general.

2.1 NON-DISCLOSURE AGREEMENT

Music streaming operates in a very different way compared to the old business model. Since music streaming services do not get their music from individual albums, they would need to seek the copyright clearance from the labels and publishers separately. During the process of negotiation, they will enter an agreement which is commonly known as the Non-Disclosure Agreement (NDA), where the contents of the agreement are kept secret. Once the agreement has been finalised, they will gain access to the catalogue of music from the respective labels. As simple as it might sound, the NDA is the key reason why music streaming is so complicated.

First of all, “copyright law does not usually seek to regulate the specifics of assignment or licensing agreements, or how the ownership and control of individual copyrights is divided and transferred” (Cooke, 2015, p. 26). Meaning, copyright law is flexible and there is no existing template for standard artist contracts or NDAs. As long as the terms were agreed on between the signees, the contract or agreement will take effect immediately. In such circumstances, some might take advantage of the artists by “twisting the rules” or “playing the system” (Cooke, 2015, p. 22) to lessen their artists’ royalties payout. In the worst case scenario, some artists get nothing out of their music.

An excerpt of Lady Gaga's contract with Interscope Records was leaked on the internet in 2014. In that contract, it is stated that "Interscope will not pay anything to Lady Gaga on licensing deals that involve the entire label catalogue" (Resnikoff, 2014). Under this arrangement, Interscope would absorb all the royalties from music streaming services that supposedly belonged to Lady Gaga. This bizarre incident was later confirmed by Troy Carter, Lady Gaga's ex-manager. He lamented, "Spotify is paying out a lot of money, it's just not finding its way into the hands of the artists" (Resnikoff, 2015). Although the flexibility of copyright law has provided a safe ground for business partners to customize their agreements, the absence of governance has increased the complexity of contracts and agreements without limitation, handicapping the artists.

Second, the lack of transparency in NDAs has limited the access of information with regards to the share arrangement and rights allocation. Despite being beneficiaries in the NDAs, neither artists nor their managers would have access to the agreements made between their labels and DSPs (Cooke, 2015 & 2016). With little knowledge about the agreement, artists are not able to find out what they are actually making from music streaming. In relation to the previous case study, this might explain why Lady Gaga and Troy Carter were not aware of their ill-treatment under their label. Based on a survey conducted by the Music Managers Forum, 57% of the managers are not sure what is the share arrangement made between the labels and DSPs (Cooke, 2015, p. 49). Furthermore, 67 per cent of them do not know what is the agreed minimum payments for their artists. There are too many uncertainties caused by the NDAs, and "some managers also felt that some labels and publishers may be benefiting from the lack of transparency financially" (Cooke, 2016, p. 10). As artists and managers have run out of solutions to ratify their revenue stream, the complexity brought by the NDAs remains.

Finally, the practice of advance payment and breakage in the NDAs are unjustifiable. DSPs like Spotify have paid USD \$500 million upfront to the labels before they can acquire the licenses to the music catalogues. Nonetheless, there is a possibility that "part of the money might have ended up in the proverbial 'black box'" (Menell P. S., 2014, p. 260). Theoretically, these upfront advances are recoupable by Spotify within a set period of time, but they will become non-refundable if the total revenues did not exceed the revenue share or guaranteed minimum royalties promised to the labels (Cooke, 2016, p. 56). So if the advance for the year is \$1 million, and the music catalogue only managed to generate \$700,000, which is below the revenue share or minimum royalties, the label would get to pocket the rest of the advance.

It is up to the goodwill of the labels to share the ‘extra’ revenue with their artists or not, though very likely the money will be categorised as ‘unallocated advance’ or ‘black box money’ and absorbed by the labels themselves. Taking this into consideration, the labels are making additional revenue by commodifying music created by their artists, yet the latter could not get a share of the pie. Moreover, advances demanded by the labels are gradually increasing. “A leaked Sony Music deal with Spotify in the US provided a \$9 million advance in year one, \$16 million in year two, and \$17.5 million in an optional third year” (Cooke, 2015, p. 62). These ascending numbers are slowly pushing the envelope and from a deeper analysis done by blogger Mark Mulligan, Spotify had paid out 82 percent of their total revenues in 2015 due to the advance payments to the labels (Mulligan, 2016); that was 12 per cent higher compared to their then 70/30 split projection.

Within the advances, labels will generally apply 20 per cent deduction on the revenue before an artist’s royalty is calculated (Cooke, 2016, pp. 37-38). This is an old practice from the heyday of vinyl records, where damage on the records happened frequently during the production and distribution process. Vinyl records broke because they were made of a thin layer of resin composite. Therefore, the labels would make a deduction from the artist’s revenue as a safety net, and the name ‘breakage’ was given to this deduction. In spite of its origin, ‘breakage’ fees are still applicable in the digital realm. The labels argue that they are still taking risks while producing and distributing the music, much like what happened in physical releases (Cooke, 2016, p. 6). Even so, artists have questioned how the labels came up with the figure of 20 per cent.

To retrieve the revenue, artists have to go through a series of obstacles. The flexibility of copyright law, transparency issues in the licensing deals, unallocated advances and breakages have created a multi-layer barrier, where each element will lower the revenue of the artists. When the problem of the low margin is being raised to the DSPs, the question will be diverted back to the transparency of the structure in music streaming deals (Vanity Fair, 2014). Obviously, the DSPs have tried their best to provide a greater payout – seemingly, the total payout has spiked up to 80 per cent on average. Borrowing a personal quote from an anonymous executive at a DSP, “70% is tough enough, but at 80%, we would have to shut up shop. Somebody should explain that 80% of nothing is... nothing” (Cooke, 2016, p. 29).

2.2 LOSS OF DATA

In light of the transparency issue the loss of information to the rights holders has become a common thread in the music streaming business. Pelle Snickars explained music had turned into a data-driven communication form in digital distribution (Wikström & DeFillippi, 2016, pp. 193-194). Instead of sound waves and musical notes, the computer reads music as bits and bytes (Manovich, 2013). It will not comprehend or distinguish the differences between the same song but different singers, or different songs but the same singer. The only way to help the internet and computer understand the differences is by providing data corresponding to the music that is being played (Wikström & DeFillippi, 2016; McAfee & Brynjolfsson, 2014). Since then, the data of the music has become very important because music does not come 'rights ready' anymore. Besides, music data are not always available to the public. Some labels and collective management organizations (CMOs) tend to keep part or all of the rights holders' data confidential (Gervais, 2010, p. 8). By doing so, only the specific party would have the accurate information and it will compromise the revenue stream of the artists.

Nauman (2016) gave a very good example of how loss of data would create problems in the revenue stream. Imagine the revenue distribution process from the DSPs to the artists is like carrying a bucket full of water from Point A to Point B. In the midst of delivering the water, the bucket started to leak because it has holes all over. The holes represent the loss of data, hence by the time the water arrived at Point B, the bucket would be half full or maybe empty. Similarly, if the data of the music is incomplete or missing, artists will be receiving only part of their revenue, but never the full amount. On top of that, not all royalty distribution is possible. In the setting of cross border distribution, CMOs are unable to deliver the revenue to foreign countries if the involved countries do not have a reciprocal agreement with them (Gervais, 2010; Cooke, 2015; Cooke, 2016). Combining these factors together, we have a nightmare for revenue distribution.

Without a complete, accurate and unified database, royalties will often be trapped within the CMOs. This sum of royalties will be doomed as 'unallocated revenues' or 'black box money' because the system is unable to identify who is the correct rights holder. According to the Chairman of TONO, Bendik Hofseth, most of the 'unallocated revenues' are related to the conflict of data. Whenever there is a disagreement on the splits of revenue or multiple claims on ownership, TONO is not able to resolve the problem because they do not have a genuine

and accurate source to rectify with. As a consequence, the revenue will stay inside the CMO until the rights holders could come to an agreement. Otherwise, after a set period of time when the revenue remains unclaimed, the CMO is entitled to absorb and repurpose the revenue.

It is getting clearer that music streaming has a huge impact on the artist's revenue stream, but mainly the negative effect is greater than the positive. Daniel Nordgård pointed out that the debates over “evaporating royalty pay-outs and [...] the streaming format's economic sustainability” (Wikström & DeFillippi, 2016, p. 175) have become increasingly popular amongst artists nowadays. Regardless of the growth in the music industry or the higher overall payout from the DSPs, artists are not able to get a taste of the pie. Whilst focusing on the flaws of the copyright law and the dysfunctional system, another issue regarding the payment method might shed light on the problems of music streaming too.

2.3 PRO-RATA

Today, many of us live in a society of abundance. There are endless supplies of food, water, energy, information and other necessities. Products are readily purchased online and offline, and we can even have them delivered to our doorstep. However, the fact that we will never run out of options has become a huge dilemma for some of us. Barry Schwartz (2005) has written a book called “The Paradox of Choice” to illustrate how the culture of abundance has transformed our consumption behaviour. He realised that in modern days, “consumers tend to return to the products they usually buy, not even noticing 75% of the items competing for the attention and their dollars” (Schwartz B. , 2005, p. 12). In other words, three quarters of the products in the market will very likely be ignored by the consumers. Consumers developed this behaviour because it has become natural to “reduce the time and energy, as well as the number of processes [they] have to engage” (Schwartz B. , 2005, p. 23), when there are so many varieties to choose from.

The paradox of choice is also applicable to the music streaming business. There are 20,000 new tracks added to Spotify daily and to date, they have accumulated a humongous catalogue of music, not lesser than 30 million songs (Wikström & DeFillippi, 2016, p. 196). Using the estimation projected by Schwartz, only 7.5 million songs will be played by users. While the rest of the songs are buried at the bottom of the catalogue, the top 7.5 million songs would possibly be the international hits from superstar artists. This is a known fact throughout the

music or entertainment industry – that in a highly competitive market, only the crème de la crème will succeed. When consumers have so little to spend, they “will always spend on the superstar although the musical advantage is little” (Elberse, 2014). The ‘Superstar Effect’ has been widely discussed by scholars and analysts (Elberse, 2014; Mulligan, 2014; McAfee & Brynjolfsson, 2014; Krueger, 2005), and the result seems to be heightened in the digital age.

At the other end of the spectrum, there is the sub-genre music which is mainly produced by indie labels (Moreau F. , 2013). This group of niche music falls under the ‘long tail’, which Chris Anderson described as non-mainstream music that will eventually find their audience in the never-ending market; “even if it’s just a handful of people every month, somewhere in the world” (Anderson, 2006, p. 22). Among this handful of listeners, there are some of the heaviest consumers (Elberse, 2014). They could be listening to a very specific niche band most of the time, even if they have other options. Theoretically, the niche band will be receiving all or most of the revenue generated by their diehard fans, but due to the pro-rata payment system, the band will be paid otherwise.

Pro-rata is a revenue allocation model based on how often a song is streamed, compared to the overall streams in a DSP. This ‘proportionate allocation’ method focuses on the contribution of each individual consumption, and it is biased towards ‘quantitative listening’ (Maasø, 2014). If the niche band’s music only contributed to one percent of the streams, they will only get one percent of the revenue generated through their fans. The rest of the 99 percent of the revenues will be channelled to other artists whom the fans may have not heard of. This system has a profound impact on smaller artists that have a limited audience, because their music will not have enough shares to achieve a sustainable income via DSPs. International superstars will always be the dominant shareholders, since it is a global market on music streaming.

Based on a research conducted by Nordgård, the Norwegian local repertoire share in the overall sales has dropped significantly from “22-30 per cent in the CD era (between 2007 and 2009, the Norwegian local share reached 40-50 per cent), while today it hovers around 10-12 per cent” (Wikström & DeFillippi, 2016, p. 177). With an immense supply of music and competition from international hits, the average local artists will struggle to breakthrough in this diluted market. Following the logic of ‘winner-takes-all’ (Elberse, Blockbusters, 2014; McAfee & Brynjolfsson, 2014) where the superstars will get the biggest share (if not all) of the

revenue, it is easy to see why the growth of music streaming will not benefit the majority of the artists.

2.4 'BLACK BOX MONEY'

In the digital age, “rapid and accelerating digitization is likely to bring economic rather than environmental disruption” (McAfee & Brynjolfsson, 2014, p. 22) to the music industry. I have listed some examples of the aftermath, and the root of the problems could be summarized as a lack of governance in copyright law; no access to a unified database; and top-heavy revenue distribution (Wikström & DeFillippi, 2016). If these issues are left unchecked, the economic gain of producing music will literally become running water, as predicted by David Bowie (Frith, 2007; Krueger, 2005). The late pop legend had suggested that hosting tours and live performances could be the answer to getting alternative incomes, but in reality, not all recording artists are popular enough to do so. Producing and selling music remains the main source of revenue for most artists, particularly for the budding ones. For the sake of making it in the music industry, a lot of them have chosen to offer ‘free labour’, and ‘self-exploitation’ is seen as a ticket to a brighter future (Hesmondhalgh, 2016). So, despite the low margin in music streaming, a lot of the artists see it as a platform to share their music with the public.

There is no reason to stop asking the question why artists are not getting enough pay if the industry is making money from music streaming. Setting the pro-rata distribution aside, why should artists tolerate with incompetency of the operating system in the digital market, and watch their potential earnings get washed into the ‘black box’. I want to challenge the taboo of speaking up about ‘black box money’, even “it's a sore and sensitive point that few people dare speak about” (Lindvall, 2008).

3. METHODOLOGY

David Byrne suggested that record labels were making ‘black box money’ from the advances they get “from the streaming services, catalogue service payments for old songs and equity in the streaming services themselves” (Byrne, 2015). However, his debate only offered a single-dimension observation from the perspective of an artist, which conflicted with other studies offered by various analysts such as Ethan Smith, Los Angeles Bureau Chief from The Wall Street Journal. Conversely, he expressed that “the ‘black box’ comes into the picture when there isn’t a clear path for royalties to flow from one country to another” (Smith, 2011). His theory, on the contrary, was primarily based on the royalty transactions from CMOs to CMOs, and it scored a contrasting point-of-view in comparison with the one Byrne had mentioned earlier. While one of them narrowed down the source of the problem to the ill working etiquette practiced by record labels, the latter discourse focused on a technical issue in cross border revenue allocation conducted by CMOs. Despite the differences, they were referring to the same subject – the ‘black box’. Their interpretation on the same subject varied greatly due to their perceptions on the matter, and inasmuch as they were trying to make sense of a subject that was incomplete, cloudy, contradictory or unclear (Taylor C. , 1971, p. 3)

People fear talking about the ‘black box’ because it was a sensitive issue to be discussed in public. Hence, it remained an illusive and confusing topic to tackle. As for those who have voiced their opinions, they had made very little impact thus far because their arguments lacked hermeneutical backing. In reality, people who attempt to identify a problem will unavoidably dive into an area where the prevailing epistemological prejudice might blind them to the nature of their object of study (Taylor C. , 1971, p. 5). Artists will more likely anchor their interest on their low payout with ‘black box money; business analysts will generally look into technical issues and vice versa. That said, the existing interpretation of the ‘black box’ has failed to justify its meaning. To articulate a true ‘meaning’ in the social research context, Charles Taylor, author of ‘Interpretation and the Science of Man’, emphasized that it had to fulfil three elements. First, ‘meaning’ is for a subject; e.g: the ‘black box’. Second, ‘meaning’ is of something; e.g: missing revenues from the artists. Third, things only have ‘meaning’ in a field in relation to other things; e.g: how ‘black box’ would relate and change according to other elements in the music industry (Taylor C. , 1971, p. 11). Noticeably, the current interpretations of ‘black box’ have not been able to put up a structural illustration on how it could relate to other key elements in the music industry. There were plenty of examples on the fact that the

artists' revenue margin was getting lower, but there was nothing about the dynamics of its existence with other components such as the copyright law, business practices, *etc.* Bearing that in mind, I have decided to take the qualitative approach to make sense of the 'black box'.

Qualitative research is known to allow researchers to gain greater focus on an in-depth study, and its 'thick descriptions' based data is most suitable to rectify "intricacies of a situation and do justice to the subtleties" (Denscombe, 2010, p. 304) of the subject. I have gotten the big picture of the 'black box' now, but I am still missing its details. The music industry is making more and more money, and there is no short of statistical evidence showing their turnover every year. However, the how's and why's of the 'black box' remain as untold stories. With the suitable research approach in place, I hope to shed light on my research questions more efficiently.

3.1 CASE STUDY ON THE 'BLACK BOX'

Given the assumption that social "realities are wholes that cannot be understood in isolation from their contexts, nor can they be fragmented for separate study of their parts" (Lincoln & Guba, 1985, p. 39), to realize the true 'meaning' of 'black box' requires a rather holistic approach. Dealing purely with isolated factors will not work well in this circumstance, since the 'black box' is an unclear social phenomenon that lacks sound interpretation. As a solution to gather more in depth information on the subject, case study strategy offers a look "into sufficient detail to unravel the complexities of a given situation" (Denscombe, 2010, p. 53). The core of this research strategy covers a wide spectrum of analytical practices, where "it allows the researcher to use a variety of sources, a variety of types of data and a variety of research methods as part of the investigation" (Denscombe, 2010, p. 54).

Without the textbook limitation on the research methods, I could easily formulate my own combination of methods that would work best to accommodate the sparse research materials that I could gather. The scarcity of creditable articles on the 'black box' issue troubled me at first because I thought it would diminish the calibre of my research outcome. But now, I could use it to my advantage to fabricate "a concentrated analysis that facilitates the recognition of specific details that often get overlooked by other scientific approaches" (Nordgård, 2016a).

3.2 OBSERVATION WITH SUPPORTING DOCUMENT

First and foremost, the ‘black box’ is an ongoing issue and there are many voices in the music industry who claim their arguments are more ‘legit’ than the others. It is akin to a chicken-and-egg situation, where each party holds strong to their opinion but neither of them is able to prove they have the ultimate answer. Furthermore, it is very hard to find a common ground to discuss the ‘black box’ issue because not all of the individuals share the same interest in the production of music. As I have mentioned earlier, when one is trying to resolve something that is unclear, there is a huge possibility that the person will be blinded by his/her prejudice towards that matter. To prevent a similar influence on judgement that could happen to my research, I will begin my case study starting from observation on music roundtables “to understand the culture and processes” (Denscombe, 2010, p. 197) in intimate detail directly from the professionals in the music industry. Importantly, observation is not based on the premise of “what people say they do, or what they say they think. [...] Instead, it draws on the direct evidence of the eye to witness events at first hand” (Denscombe, 2010, p. 196). In that manner, I would be able to harness the basis of the argument in its rawest form, and start to build up my own interpretation by relating it with other factors.

3.2.1 THE KRISTIANSAND ROUNDTABLE CONFERENCE

The music roundtable that I would like to discuss in my observation is The Kristiansand Roundtable Conference. I first chanced upon The Kristiansand Roundtable Conference in 2015, when it was introduced to me by one of the co-founders, Daniel Nordgård. It was an ‘invites-only’ conference based in Kristiansand, Norway, and funded by the University of Agder. They kickstarted their first conference back in 2007, and their aim is “to facilitate a dialogue for progress in an industry that has been undergoing considerable technological and legal challenges, while providing potential for discussing the future shape of the industry” (Nordgård, 2016b). Throughout their instalments, they have invited some of the most important figures from the music industry, including the chiefs of major labels and CMOs. With great honour, I was asked to be an observer in 2016, and in time I took that same opportunity to pen down my first observation research.

As Denscombe has pointed out, the disadvantage of participant observation is that it “relies so crucially on the researcher’s ‘self’ as the instrument of research, it becomes exceedingly

difficult to repeat a study to check for reliability” (Denscombe, 2010, p. 214). Even though the two-day event was a fruitful experience for me, I realized my field note has not been able to transpire some of the information that I have observed during the conference. So, to reaffirm that what I have learnt from The Kristiansand Roundtable Conference was accurate, I would use the recommendation mentioned by Denscombe – combining observations of events within the case study with the documents from official meetings (Denscombe, 2010, p. 54). In this case, I will draw on the roundtable reports from the Music Managers Forum (MMF) to fortify my findings.

3.2.2 MUSIC MANAGERS FORUM

The MMF is a professional community of music managers from the UK established in 1992. They pride themselves on providing education and information to assist their members and music managers alike. They also work to promote a fair and transparent business environment in the digital market, and seek to unify the voices of their members. As part of their vision, they have commissioned CMU Insights² to come up with a report to put their debate about music streaming into words so they could have a better grasp on this trending issue. Co-founder and Business Editor of CMU Insights, Chris Cooke, took on this project and produced a two-part report named “Dissecting the Digital Dollar”. This report comprises reviews and feedback from “30 leading practitioners from across the music, digital and legal sectors, and [survey from] 50 artist managers in five markets who, between them, represent artists signed to all three major music companies and over 100 independent labels” (Cooke, 2015). With this pool of constructive data recorded by a non-affiliated third party, I have a concrete referential document to rectify the reliability of my observation even though I could not repeat a similar study on the former roundtable.

3.3 DOCUMENT ANALYSIS

I have also decided to include some other written documents as my main focus in the case study. Documents such as official statistics “have come to provide a key source of documentary

² CMU is a service provider to the music industry best known for its media: free daily news bulletin the CMU Daily and premium services the CMU Digest and CMU Trends Report. (Source: Cooke, 2015, p. 4)

information for social scientists” (Denscombe, 2010, p. 217). They satisfy the three important elements for social research, 1) Authoritative, they have high credibility; 2) Objective, the statistic is impartial without bias to any parties; 3) Factual, “they take the form of numbers that are amenable to computer storage/analysis, and constitute ‘hard facts’ over which there can be no ambiguity” (Denscombe, 2010, p. 217).

As my goal is to verify the dynamics between the ‘black box’ and its related elements, statistics provided by the CMOs could offer me insights different from those I would find through my observations. In addition to that, according to some analysts such as Gervais (2010), Smith (2011) and Cooke (2015 & 2016), there is a high possibility that money will be ‘trapped’ inside CMOs. This argument may sound strange for some because CMOs were entrusted by the artists themselves to collect and distribute their royalties. However, this conspiracy theory gave me even more reason to start my investigation on the financial reports.

In reality, ‘black box money’ is missing revenue, or in other words, money that has disappeared in the revenue stream. To help me identify these sums of money, I would need some special guidance because they will be camouflaged under different accounts in the financial reports. Hence, I will be focusing on the CMOs in Norway such as TONO and GRAMO as I have access to in depth implicit information provided by reliable sources. Furthermore, I will be including their financial reports from 2010 to 2015 so I can analyse their variables along the years in detail.

3.4 QUESTIONNAIRE

Bearing in mind that ‘black box money’ is not an easy subject to be discussed openly (Lindvall, 2008), I have decided to advance my case study via a web-based questionnaire. Unlike conventional paper-and-pen questionnaires, this has the “twin benefits of speed and accuracy in terms of data collection” (Denscombe, 2010, p. 174). Respondents will receive an email invitation where they will be provided with a link to my questionnaire. With just a click, they will be directed to my questionnaire and they could submit their answers with another keystroke once they have completed it. The process is simple and easier to understand, and the system will collate the answers into a spreadsheet or database for me automatically. Later, I could check and compare my respondents’ answers at ease without a hassle.

Using a web-based questionnaire also allowed me to introduce sensitive questions to my respondents less aggressively. Without being in front of them while collecting their responses, I could “help to overcome embarrassment on topics and allow the respondent to open up in a way that is unlikely to happen in the physical presence of a researcher” (Denscombe, 2010, p. 193). Even better, web-based questionnaires will not have time and space constraints, hence the participants can respond at their own convenience.

There are a total of eight questions in my questionnaire, and I have avoided using key words such as ‘black box’ so I would not affect the participants’ attitudes unintentionally (Denscombe, 2010, p. 155). My main intention is to find out their views on the growth of music steaming in relation to missing revenue and the low earning margin for the artists/creators. Before sending out the invitation to my questionnaire, I sought the approval of my advisors to make sure they are suitable and match my research subject. At first, I sent out more than 10 invitations to specially selected target groups suggested by my advisors. They are professionals at senior management level in different entities, ranging from music management agencies, CMOs, publishers to labels. Unfortunately, I only managed to get three of them to reply. Prior to revealing the identity of my respondents, I have received their permission to publish their answers and quote them in my research. Below is a summary of their biographies and a sample of my questionnaire.

3.4.1 PARTICIPANTS’ BIOGRAPHY

Niels Mosumgaard

Niels Mosumgaard is chairman of *Danske Populær Autorer* (DPA)³. He represents DPA in Koda⁴'s board of directors, where he is also the chairman of the board. In addition, he represents DPA in the European umbrella organisation for composers, Alliance of Popular Composer Organizations in Europe (APCOE)/European Composer and Songwriter Alliance (ECSA), and

³ *The Danske Populær Autorer* (DPA), also known as the Danish Songwriters Guild in English. (Source: <https://dpa.org/dpa-english>)

⁴ Koda is a non-profit collective rights management society that administers Danish and international copyrights for music creators and publishers, when their music is performed in public. (Source: <https://www.koda.dk/about-koda>)

Nordiske Populærautorer (NPU). Niels is an active songwriter, author, and composer of music for documentaries.⁵

Erica Smith

“Erica K. Smith has been the CEO of COSCAP⁶ since 2000 and has over these years developed a sound reputation locally and regionally in collective management. Academically, she has specialised in intellectual property law and international business and has focused on corporate governance and business management as well as business strategy development. Erica has written several papers on the commercialisation and development of the copyright regime, innovation and the creative sector in the Caribbean.” (COSCAP, 2017)

Jim Griffin

“Jim Griffin is Managing Director of OneHouse, dedicated to the future of music and entertainment delivery, and works as a consultant to absorb uncertainty about the digital delivery of art. In addition to serving as an agent for constructive change in media and technology, he is an author, serving as a columnist for magazines, and is on the boards of companies and associations. He started and ran for five years the technology department at Geffen Records. Prior to Geffen he was an International Representative for The Newspaper Guild in Washington, D.C.” (OneHouse, 2014)

⁵ The biography of Niels Mosumgaard was written in Danish originally. (Source: <https://dpa.org/bestyrelsen>)

⁶ COSCAP is a non-profit copyright membership organisation representing, the performing and reproduction rights in music of composers, authors and publishers, and the related rights of performers and producers of sound recordings and videograms. (Source: <http://coscap.org/about>)

3.4.2 QUESTIONNAIRE SAMPLE

Q1. The music industry has not clearly defined whether a stream should be considered a sale, a broadcast or something else entirely. What is your interpretation on that?

Q2. We have seen some old business practices in physical distribution being carried over to music streaming, and some argue that previous practices such as 'break-even'⁷ should not be applicable to music streaming since streams are not tangible items. Do you agree with this argument, and why?

Q3: Are there any other practices that you think should or should not be used in music streaming?

Q4. In recent years, record companies have seen a significant decrease in their global turnover, whilst most of the Collective Management Organisations (CMOs)/ collecting societies were in the contrary. Is this true from your personal experience too?

Q5: Several experts claim that if metadata were to be coordinated, the music industry as a whole could save billions of dollars yearly. That being said, none of the attempts at creating a Global Repertoire Registry (e.g: GRD, IMR) were successful. If you were given the opportunity to take up another campaign to setup a GRR, what would your main objectives be, and would you go for a different approach?

Q6: Due to the nature of the copyright law in some territories, a rights holder does not necessarily have to be the creator. Many believe that rights holders and other stakeholders are trying to manipulate the system in order to reduce payment to the creators. What is your take on the existing copyright law and what are the improvements that you would like to see in the near future?

Q7: In a situation where there is a sum of unallocated revenues circulating in one's establishment, what is your best suggestion to relocate this money as fair as possible?

⁷ 'Break-even' is another term for 'breakage'.

Q8: Monies are withheld in the management of royalties in the recorded music industry. Who do you think are not accountable, and mostly to blame? (Participants were given these choices)

- Record labels
- Publishers
- Collective management societies (CMOs)
- Consumers (piracy)
- Digital Service Providers (DSPs) e.g: Spotify, Apple
- Platform services e.g: Google, Facebook, Soundcloud *etc.*

4. FINDINGS

The roundtable reports from MMF turned out to be more informative than I had expected, and they lined up very nicely with the field notes I had obtained from The Kristiansand Roundtable Conference. The collection of personal testimonials that was incorporated in the reports gave me a vivid impression, as if I had personally attended the roundtable myself. Even though there was plenty of interesting information that could be found inside the reports, I had to collect the data more selectively so I would not drift away from my research subject. In relation to solving my research questions, the findings that I had uncovered from both the music roundtables had helped me make sense of the negative impact of music streaming on the revenue of artists, and how the changes in the music industry had ‘misguided’ the missing revenue into the ‘black box’.

On the other hand, the financial reports cleared up the debate over whether CMOs are keeping their own share of ‘black box money’ or not. The process of identifying the missing revenue took me a great deal of time, but it was certainly worth my effort. One interesting note I had discovered is that the information provided in the English version of the financial reports was not as comprehensive as those in Norwegian. For instance, TONO’s English version financial report in 2015 only had 12 pages in total, whereas the Norwegian version had 60 pages; 80 per cent of the information was lost in the translation. Considering my interest in the financial reports was to dissect the statistical figures provided by the CMO, I decided to use the Norwegian reports although I am not a Norwegian speaker. To make sure there was no misunderstanding in my analysis, I consulted the Chairman of TONO, Bendik Hofseth, on the technical terminology used in the reports.

Finally, the answers that I received via my web-based questionnaire have reaffirmed most of the findings I discovered in the first two research methods. Furthermore, my respondents also suggested some valuable solutions for reducing the ‘black box money’. In the next chapter, I will analyse some feasible solutions to the problems in music streaming, and what different entities in the music industry could do to prevent more missing revenue in the future.

4.1 MUSIC ROUNDTABLES

When the copyright law and authorities were unable to address the ‘black box’ issue promptly, the music roundtable became an alternative platform for individuals to voice their dissatisfaction and discuss it directly with the opposite party, as well as other important figures in the music industry. Such events were created to stimulate dialogue among different sides in the music industry, and to provide an equal platform for all to exchange ideas. Although these music roundtables do not always produce solutions, the outcome of the debate is often neutral and non-biased.

4.1.1 OLD ORDER, NEW STRUCTURE

The opening theme of both roundtables was rather similar, as if there was a mutual understanding that the music industry was in need of a major overhaul. Many of the current issues in the industry are unavoidable because the old system that was applied on physical goods has been brought into the digital realm. Although the music industry is now mainly relying on music streaming to keep their sales afloat, the standard models for music licensing, royalties calculation and distribution are still very confusing (Cooke, 2015, p. 5). In music streaming, consumers do not own a copy of the music permanently, like a CD or a vinyl. But, they have control of which music they would like to listen to, whenever and wherever they want. The current system has not matured enough to adapt to this on-demand subscription-based model because none of the existing models were made to convert transactions from music streaming. So while the music industry is busy evolving new licensing standards, many of the older ones are still applicable to music streaming services.

The list of old system order over new structure in music streaming continues in other areas, which include the copyright law too. In spite of the huge transformation in the music industry, the fundamentals of the copyright law have remained fairly the same over the past decades. Other than new enactments created in relation to sharing of information goods on the internet (e.g. making available right, DMCA and safe harbouring), the blueprint of the copyright law remains unchanged. In addition to that, an anonymous representative from an agency pointed out the Berne Convention might not be relevant to the modern music industry anymore (The Kristiansand Roundtable Conference, 2016). When this centuries-old copyright agreement was put to the test, it often shows incompetency in catering copyright protection for music

streaming. Take the creation of a centralised data and registry, for example. The Berne Convention quickly became a deal-breaker for bringing all the countries on board because it prevented formality and dependency amongst countries; according to Article 5(2), “a country party to the Berne Convention...can't impose a mandatory registration system for copyright” (Gervais, 2010). Although there are researchers who think that was a bad interpretation on the Berne Convention and it “could not be served as a barrier to legislation treatment” (The Kristiansand Roundtable Conference, 2016), it certainly prompted us to question whether the existing copyright framework is fit to govern the music streaming business.

In extension, the Berne Convention has not been very clear on "the specifics of assignment or licensing agreements, or how the ownership and control of individual copyrights is divided and transferred” (Cooke, 2015, p. 26). Artists may end up losing the rights to their music creations through unregulated rights assignment and several changes of ownership, and be relegated to the bottom of the revenue chain. The alienation between the rights holder and the creator has allowed those with greater rights to exploit the system (Cooke, 2015), and ‘black box money’ could be one of the most notable by-products. A scholar in The Kristiansand Roundtable Conference concludes that the Berne Convention could be the paradox of copyright (The Kristiansand Roundtable Conference, 2016) when it is preventing greater protection to be done in the current music industry.

4.1.2 THE USE OF TERMINOLOGY

The leap from analogue to digital music has brought the competition to an international level, where there is no geographical limitation. As long as there is an internet connection, artists could deliver their music to every corner of the globe. However, there is a major setback in synchronizing the music copyright across different nations, because the use and understanding of terminology varies significantly between the ‘common law’ and ‘civil law’ (Cooke, 2015, p. 6). In certain contexts, ‘neighbouring right’ is understood as the ‘sound recording right’ in some of the civil law systems, as opposed to the ‘author right’. But now, it is often used to refer to the ‘performing rights’ in sound recording, or even as the performer equitable remuneration. The term ‘neighbouring right’ was granted multiple meanings due to the variation in different copyright laws and business practices. Similarly, the term ‘streaming’ has a very different definition, depending on which country we are talking about. For some countries, streaming is exploiting both ‘reproduction right’ and ‘performance right’; or probably the ‘making available

right' (Cooke, 2015). Yet in the US, 'reproduction right' is exempted from music streaming and only applicable to digital downloads. On top of that, no one is certain whether music streaming should be considered as a sale or not, which prompted the music industry to redefine the terms that are being used in the DSPs (The Kristiansand Roundtable Conference, 2016).

The use of words here is not child's play because assigning and distributing rights are the essence of the music business. Royalties allocation will become a disaster if the involved parties do not perceive the terms or rights in the same way. Cooke has suggested an alternative solution for the artists to seek higher payout from music streaming through 'performer equitable remuneration' (performer ER), but that idea is being hindered by the confusing use of terminology. Originating from the Rome Convention of 1961, performer ER is one of two main sets of 'performer rights' or 'moral rights' granted to all performing artists. Featured artists and session musicians are entitled to receive remuneration from certain exploitations of their sound recordings. These 'performer rights' are usually 'non-waivable', but "corporate rights owners will usually insist that they are, which may make these rights ineffective in real terms" (Cooke, 2015, p. 27).

On the other hand, if these rights were to be accepted, corporate rights owners will argue they are not being recognized in music streaming because it exploits a separate performing right called the 'making available right' (Cooke, 2015). Since music streaming does not fit into the bricks and mortar distribution method, it creates a loophole for people to interpret according to which copyright system they are inclined to. In an ideal scenario, performer ER should be due regardless of which rights were being exploited in music streaming. Cooke explains "this would mean a significant shift in negotiating power for featured artists unable to secure better digital royalties from their labels, while opening up a new revenue stream for session musicians who usually have no contractual right to a share of digital income" (Cooke, 2015, p. 60).

Perhaps this is the reason why the discussion about performer ER in music streaming is often unheard of. The fear of sharing higher revenue with the artists makes the labels want to withdraw themselves from acknowledging this issue. Based on a survey, label representatives expressed their concern that the implementation of performer ER might mean a 50/50 split between labels and artists, which could destabilise their business (Cooke, 2016, p. 8). They argue that the music business remains a high risk business in the digital market. Therefore, they could not afford to increase their artists' royalties. To put it bluntly, why give the artists a

higher payout when they have to make money from ‘free’ music. Moreover, copyright law does not have a definite description on what performer ER really is (Cooke, 2015; Cooke, 2016), which makes it an elusive topic to deliberate on. Despite that, 91 per cent of artist managers still insist that performer ER should be included in music streaming (Cooke, 2015, p. 50). Or, as suggested by one of them, “it would need to be a minimum rate, because artist deals vary so much. Artists with distribution deals may be getting a higher rate already than what we are proposing they would get from equitable remuneration” (Cooke, 2016, p. 42).

4.1.3 LOST IN COMMUNICATION

Most of the artist managers have no clue about the revenue share arrangement and minimum payments of their artists in music streaming services. Their enthusiasm to learn is being put off by the apathetic opportunity given by their labels, publishers, DSPs and even CMOs (Cooke, 2015). Less than a quarter of them have ever been invited by their labels and/or publishers to attend briefings about digital income and royalties of their artists. Only 9 per cent of them know about the charges and deductions made by their labels before paying their artists, and 13 per cent of them are certain that digital income was not clearly stated on their artists’ royalty statement (Cooke, 2015, p. 49). On a side note, more than half of them did not know whether their labels have ever shared the unspeakable ‘black box money’ with their artists or not (Cooke, 2015, p. 49).

As I have mentioned, this disconnect of information is due to the ‘NDA culture’ (Cooke, 2015, p. 64) in music streaming services. Artists and managers are being kept away from their basic rights to understand their revenue stream, and this is not a myth but a fact. Rights owners and DSPs are pointing fingers at each other when it comes to being guilty of promoting the use of NDAs, and they claimd they are just following the competition law (Cooke, 2016, p. 10). Thus, they need to maintain market competition by regulating anti-competitive conduct (Taylor M. D., 2006), such as classifying the figures as non-disclosure. With little insight on the deals arrangement and being handicapped under the copyright law, working for labels is simply cooperation slavery in disguise.

4.1.4 GREATER POWER FOR THE LABELS

There is a growing consensus that the streaming business is tilting over to the advantage of the labels, where deal negotiations always start with them, followed by the publishers and CMOs. Since DSPs “having already committed up to 60% of its revenues to those who control the recording rights” (Cooke, 2016, p. 32), publishers have to live up with a smaller split and never get to negotiate with the labels directly. The power of negotiation is very critical in the music industry – in fact, in any other industry – because whoever gets the lion’s share will get to determine the other’s fate in the revenue chain. Take the performer ER for example, the actual implementation of it in music streaming will very likely remain as an idea if the labels do not come on board. Since the labels have more power in the music industry, their opinion is enough to influence the entire industry, which sometimes included the lawmakers. History has shown us that governments have the tendency to protect influential establishments in the entertainment industry by amending the copyright to protect their interests. Long ago in the United States, President Clinton passed a special copyright extension called the Sonny Bono Act to save Walt Disney’s most important cartoon figure, Mickey Mouse, from falling into the public domain (Lee T. B., 2013). This unconventional extension stretched the initial 56 years of copyright ownership to 75 years, an additional of 19 years, just to keep Mickey safe before Disney’s copyright expired. So, granted that some European countries are getting their hands onto the performer ER issue, the result is less optimistic and yet to be determined (Cooke, 2015, p. 60).

Furthermore, the labels also have a direct impact on the distribution networking in the DSPs. As the main music providers, major labels get to persuade the DSPs which artists they would like to showcase. Consequently, only those who are handpicked by the labels will excel in the music industry, which resonates with the “Superstar Effect” that I have mentioned earlier. The major labels are dominating the music industry now because they could flex their muscle both in the supplying and receiving ends. Hence many new music managers think it is difficult to build their artist’s career because the major labels have become the gatekeepers once again (The Kristiansand Roundtable Conference, 2016).

4.1.5 GOOD CMOs & BAD CMOs

While the limelight is on the labels, some artists are hoping their trusty CMOs could step in and provide some much-needed assistance. Back in the days of physical distribution, labels

and publishers would have the CMOs to collect the royalties within a collective licensing system. Considering the music albums were 'rights ready', labels and publishers did not need to negotiate terms and conditions with the music stores. Instead, the task of collecting royalties falls under the CMOs and its being done collectively for both labels and publishers. However, collective licensing is less common in music streaming since the labels and publishers negotiate directly with the DSPs. Hence, the system gave way to NDAs and the rest is history.

To achieve fairer pay in music streaming, many artists hope to see more digital deals done in the fashion of collective licensing (Cooke, 2016, pp. 72-74). They believe the system would give them a standardized per stream payout because it prevents any disproportionate agreements made in the NDA. However, collective licensing is not entirely reliable and it poses other problems. It depends heavily on the efficiency of the CMOs, and some of them could be "slow decision makers, lack transparency and charge high commissions and fees" (Cooke, 2016, p. 12). In addition to establishing an international collective licensing, local CMOs have to form reciprocal agreements with their overseas counterparts, which they do not have direct control over. The quality of license negotiation, record of usage data, royalty collection, and distribution are not always guaranteed, plus the process will take longer along with more commission fees (Cooke, 2016). In such an event, artists may end up losing more royalties rather than gaining.

There are a handful of good CMOs out there, but there are some bad ones too; and they could possibly be corrupted (Cooke, 2016, pp. 74-76). I have learnt that there is no instant solution for the issues in music streaming, and 'black box money' is just the destination of the problems. Being able to identify how revenues end up in the 'black box' and preventing it from happening is more crucial than sourcing the 'black box money'. Generally, labels do not respond well when they are questioned about the 'black box money' (which they prefer to call 'breakage'). They have not addressed this issue openly until it fell under media scrutiny in 2015. Only then did the major labels promise to share the 'breakage' with the artists (Cooke, 2015, p. 63). Their passive attitude towards the 'black box' and many other topics regarding NDA and revenue stream makes it difficult for the artists to establish a discussion with them. To quote from an anonymous artist manager: "because of the total lack of transparency, you often don't know the question you need to ask – and that's the big problem. If you don't know what's going on, you can't properly assess how the label arrived at x, y or z" (Cooke, 2016, p. 62).

4.1.6 TRANSPARENCY VS TRUTH

One key word was heard repeatedly in both roundtables and that is ‘transparency’. The word is directed towards the operating system in the digital music business and the information that was given to the artists. As I have discussed earlier, the labels are struggling to reveal more information to their artists because they must withhold their negotiation power in light with the competition law. That being said, even if the labels had agreed to reveal more information, no one would have the confidence to guarantee their information is genuine. A lawyer who had participated in The Kristiansand Roundtable Conference pointed out the labels might let go of transparency but not necessarily the truth (The Kristiansand Roundtable Conference, 2016). Being an open book will not benefit them and it may even cause some serious damage to them, as well as some of their artists. Although many artists credit themselves as singer/songwriter on their resume, in reality, their contribution to a song might not be more than one percent. Many labels are aware that not all of their artists would have the talent and capacity to compose a song solely by themselves, so they will assign one or more composers to help them. And by the time a song is completed, the creators on that song will come up to four or five persons. Nevertheless, when the labels are promoting these artists, they will certainly hide this information from the public to make the artist look more appealing.

Another reason the labels are not telling the truth is because they may not have the true answer as well. Bookkeeping and archiving music are known to be tricky and complex. Thus, some of the information will go missing along the way, through generations, if they were not recorded diligently. Even if the labels had migrated their data to high performance computerized systems, they still would not be able to assure the information that they acquired from the past is accurate. When they are in doubt, it is better off for them to keep it a secret to make sure their revenue stream will not be compromised. To draw a classic example, Harry Fox Agency from the United States has a record of demanding rights clearance although they were not sure whether they possessed the rights. Based on a personal testimony, one of the upset requesters said, “Five months after first receiving our request for a license to buy these CDs (on a hard disc) from Loudeye, the Harry Fox Agency concluded that no license was necessary. Four hours later, Harry Fox's New Media Coordinator called me back to say they had changed their mind and decided Loudeye did need a license from them.” (Schwartz J. , 2003) Similarly, based on an transcript created by Nordgård (2016a), there was a DSP that had requested a list of music to be verified by the Harry Fox Agency. The DSP was hoping Harry Fox could point out

which songs needed to be cleared by them. But instead of having clear assurance on the list of songs that they had to pay for, they were given multiple song titles that Harry Fox themselves were unsure of, and were advised to make payment upfront to avoid any legal issues in the future. At the end, the DSP decided to verify the music by themselves and were said to have collated a list data that was more accurate than the one Harry Fox had in their system.

4.1.7 CONCLUSION

All in all, it was an eye opener for me to learn about the findings from both of the roundtables. They have deepened my understanding of ‘black box money’, and helped me to realize that the missing revenue is just a piece of the jigsaw in a bigger puzzle. Neither CMOs nor the labels would have the opportunity to manipulate the ‘black box money’, if the copyright law could oversee music streaming more thoroughly. And from a more radical point of view, I am convinced that “copyright is not entirely a right [but] it is capitalism” (The Kristiansand Roundtable Conference, 2016). Copyright is made to protect the creators and provide them with incentives, but in turn it “gives enterprises excessive market power” (Frith & Marshall, 2004, p. 60). Through acquisition rights from the artists and/or creators, corporate rights holders have become some of the biggest rights holders in the music industry, and get to dictate how to capitalise on them. In a similar fashion, big corporate rights holders such as record labels were leaching on these copyright loopholes in music streaming and found their way to reduce the artists’ earning margin. As music streaming becomes more popular, the problem of low margin is being magnified too. Eventually, all these evaporated revenues will end up in the ‘black box’ and “it's perfectly legal” (Rosoff, 2011).

4.2 CMOs’ FINANCIAL REPORTS

Transactions made in the music streaming services are less straightforward or transparent as I have mentioned earlier, and the labels seem to have problems sharing that bit of information with their artists. They are worried that giving out such information could lessen their power of negotiation, so they would rather it remain a company secret, by rule of the competition law. On the other hand, most CMOs will publish their financial reports annually and make them available to their members. Very often, these CMOs are non-profit organisations and they are obliged to have full disclosure of their financial records as well as their overall performance. TONO (2017) and GRAMO (2017), for example, are cooperative organisations which are

operated and co-owned by their members. It is their duty to keep their members informed of their operations and to be transparent in the manoeuvring of money. However, these artists-owned autonomous organisations could not escape the guilt of having their share of the ‘black box money’. According to an anonymous CMO representative, it is very hard to find out which part of their revenue is ‘unallocatable’ unless you understand where the money came from and how it was being distributed. So, even though the financial report is made black and white to the public and audited by the authorities, an average person could not have noticed there is ‘black box money’ within the CMOs.

Similarly, when I first got my hands on the financial reports of TONO and GRAMO, I was just as clueless. The ledger in the reports showed nothing more than ordinary accounting and the figures were clear and tallied. But soon after I was given some specific pointers, I slowly realized how easy it is to manipulate the ‘black box money’ without leaving a trace. Before I dive into the analysis of these financial reports, I have to highlight that ‘black box money’ is just an umbrella term for ‘unallocated revenues’. It does not necessarily have a negative connotation, as not all ‘black box money’ is created on purpose. Other than ‘breakages’ and ‘unallocated advances’, a huge percentage of ‘unallocated revenues’ are associated with incomplete or conflicted data. These revenues are commonly found inside the CMOs, when they could not identify the rights holders and subsequently this amount of money will be absorbed and repurposed to benefit other artists (Møller, 2016; Smith, 2011). Of course, the CMOs could choose to investigate further and clarify who are the rights holders, but then the expenses of administrating this process would have dwarfed the revenues that they are going to distribute. For this reason, CMOs generally would not dig deep into that matter because their performance is based on how well they could collect and distribute the revenues with the least amount of administration fees.

In addition, keeping ‘black box money’ within the CMOs themselves will not benefit them. Unlike the labels, CMOs that operate as non-profit organizations are not supposed to have excessive amounts of cash stuck in their establishment. It is illegal for them to profit from ‘unallocated revenues’ and they will be deemed incompetent. The pernicious effect of keeping extra money that they are not entitled to will eventually lead them to a lawsuit because it is against their principal as CMOs. Thus, they have to “ensure that creators receive payment for the use of their works” (WIPO, 2017). In spite of that, whenever they are unable to identify the rights holders of a particular song, they have to find an alternative and rational way to distribute

the ‘unallocatable’ revenue accordingly. Although the method of allocating the ‘black box money’ might vary in different CMOs, their goal is the same – to distribute the revenue.

Now, back to the analysis. The performing rights collecting society of Norway, TONO, has a good reputation of being an efficient CMO. Over the years, they have maintained a steady growth and their progress on high revenues and low expenses is simply remarkable.

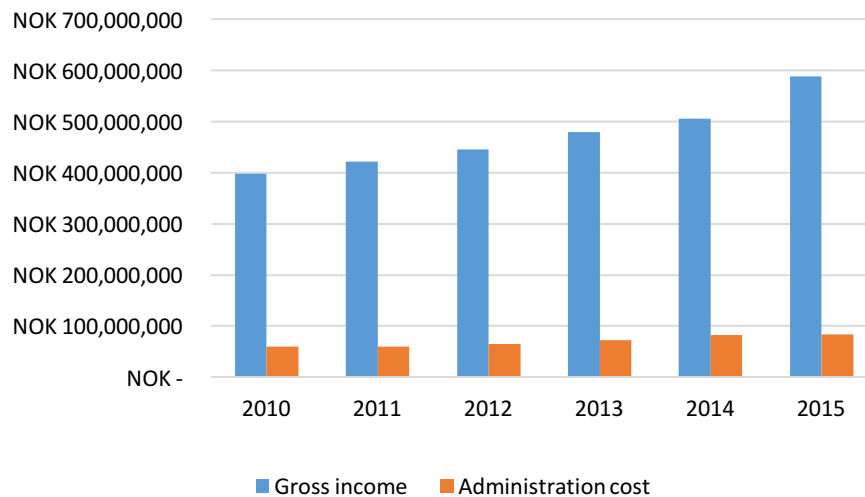


Figure 2: TONO – Gross income x administration cost from 2010 to 2016

According to their website, they collected NOK588 516 050 (approximately \$68,793,892.07 USD) music royalties in 2015, while their administration costs remained as low as 14.33 per cent of the total of their gross income (TONO, 2017). In comparison to the previous year, they lowered 1.97 per cent of their administration costs while their gross income rose to 1.19 per cent (TONO, 2017). When they have a cost effective solution to collect and distribute the revenues, their artists will get more money in return. But to my surprise, the reality might tell a very different story.

During my brief conversation with Bendik Hofseth, he told me that TONO does not always have the data of the music when they are collecting the revenues. From what I have learnt, a lot of music from online distributions and live concerts are being reported without stating clearly which song they had used or the data they provided was inaccurate. Misspelling (e.g, artist name Billy Bragg written as Bily Brag), incomplete song title (e.g: Work by Rihanna but the part ‘ft. Drake’ is missing; or, Womanizer by Britney Spears without clarifying whether it was the original version, remastered, acoustic, or Benny Benassi extended), and conflict of data

with the registry, are some of the common mistakes they have encountered. So whenever TONO tries to process the data, they will have trouble matching the music with their respective rights holders. Or in some other cases, TONO was simply unable to trace the rights holders of the music. Music used as background music (used in hotel, restaurant, gym, *etc.*) and for random usage (in dance and sports events) are mainly programme-less, so they are covered by a form of blanket license. Given this situation, TONO will never get to sort out which music they had used in their premises unless the users kept a record and reported back to TONO diligently. As a result, not all revenues will be channelled back to the rights holders as they would have anticipated because part of their revenues were unfortunately ‘unallocatable’.

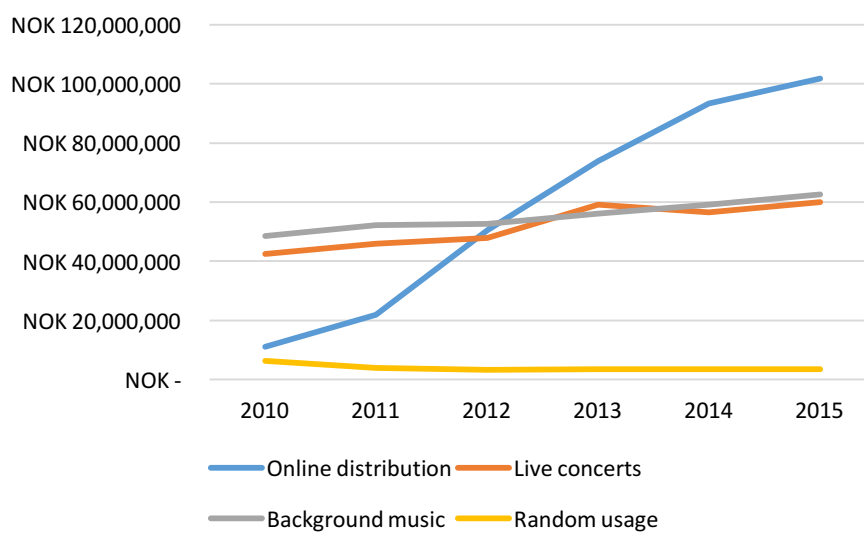


Figure 3: TONO – Separate revenues from 2010 to 2015

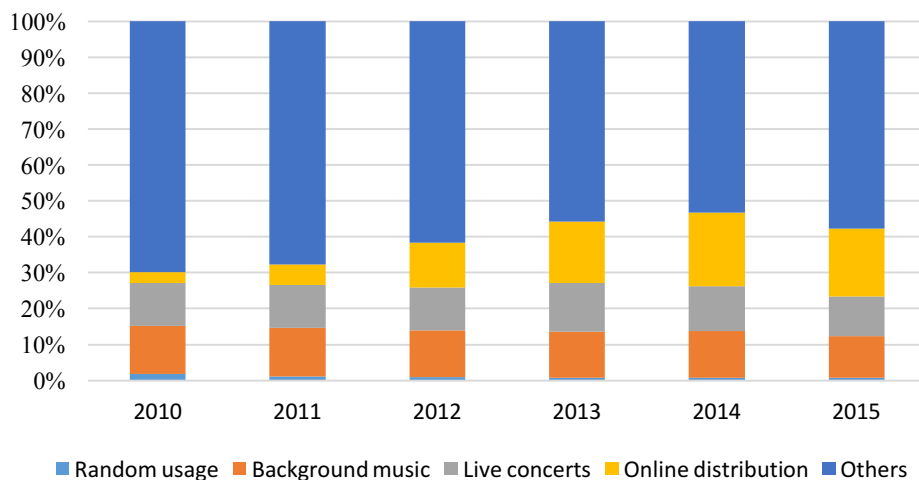


Figure 4: TONO – Revenues in percentage from 2010 to 2015

On a rough estimation made by comparing TONO's financial reports from year 2010 to 2015, over a quarter of their yearly total revenue could possibly be the 'unallocatable' revenues. This handsome amount of money is believed to be anything between 100 million to 150 million Norwegian crowns (approximately USD \$12 million to \$18 million) and it may get higher in the future. With the exception of random usage, other sources of revenue like live concerts and background music are growing gradually every year according to the chart in Figure 3. And most noticeably, online distribution has skyrocketed, with an approximately one thousand per cent increment from year 2010 to 2015. Although not all of the revenue from online distribution were 'unallocatable', its relationship with the the growth of 'black box money' should be parallel. As explained by numerous analysts and researchers such as Cooke (2015; 2016), Gervais (2010), Nuaman (2016), Wikstrom (2013) and DeFillipi (2016), online distribution relies heavily on music data and the current database is flawed, which means it is certain to have 'unallocated revenues' within the revenue stream.

To deal with this constant flow of 'unallocatable' revenues, TONO has fashioned their own standard procedure to reallocate these monies. For instance, revenue generated via background music will typically be distributed to other artists based on the trending playlists from the radio stations or music streaming services. Even though this method is undoubtedly biased towards superstars and highlights the winner-takes-all effect, it is by far the most practical solution. As I have discussed before, TONO has no way to retrieve the information of the music that has been played as background music, unless the users report back to them voluntarily. Therefore, it is logical to distribute the revenues to other artists according to the trending playlists. Seemingly, most premises would be playing popular hits unless they have a very specific preference on music. For other 'unallocatable' revenues, TONO will keep them under probation and wait for the corresponding rights holders to appeal and reclaim their ownership. If the revenues are unclaimed within a set period of time, the board of senior management from TONO will get to decide how to repurpose them. Very often, they will be turned into scholarship or used to support other projects and music festivals like by:Larm to benefit other artists. Through diverting these 'unallocated revenues' back to artists, TONO has neutralized the risk of keeping the 'black box money' while making sure they are fulfilling their duty as a CMO.

Likewise, the retransmission and mechanical rights collecting society of Norway, GRAMO, has a similar ideology towards the treatment of 'unallocatable' revenues. Their repertoire and

ISRC specialist Morten Møller (2016), gave a couple of examples to me during a workshop I attended, and they were almost identical to those that I have learnt from TONO. In a similar manner, revenues that were made from background music licenses will be distributed according to the radio playlists because they did not receive any status reports from the users. As for other ‘unallocatable’ revenues, GRAMO will reallocate them if they are unable to rectify with the rights holders within three years. However, it is harder to isolate which portion of their revenues in the financial reports could be ‘black box money’. On a quick glance, GRAMO’s financial reports have a simpler revenue demographic compared to the ones from TONO. They have a more general revenue projection, with television and radio broadcasters as their main source of income, followed by miscellaneous background music users and 35 web-casters. Yet in contrast to their simple report, they have dedicated a separate account for a cultural fund, which prompted me to do a further investigation. Moreover, I was given a hint that the cultural fund has a close-knit relationship with the ‘black box money’ and to what has been known as ‘American money’.

Before the 21st century, Norwegian radio leaned towards playing American music (Møller, 2016), since America produced some of the best international hits in the 20th century. But, there was a hidden agenda behind this preference. Due to the lack of reciprocal agreement between Norway and the United States, the Norwegian radios were bidding on not having to pay for the usage of American music in their programmes. Hypothetically speaking, the Norwegian radios were right about that because GRAMO would not have the rights to license American music to the radios without a reciprocal agreement. Since GRAMO did not have a proper path of issuing and collecting the rights on behalf of the American CMOs, the radio stations found a loophole to exploit the unprotected music. Realizing the absent of reciprocal agreements will harm the economic interests for both local and international repertoires, the Norwegian parliament created the Fund for Performing Artists or *Fond for Utøvende Kunstere* (FFUK) in the summer of 2000 to put a stop to this ill practice (Fond for Utøvende Kunstere, 2017).

Since then, the Norwegian rights collecting system has evolved into a dual collecting system. First, the usual rights collecting system that we are familiar with; second, the new cultural-political scheme or *kulturpolitisk ordning* (Fond for Utøvende Kunstere, 2017). The latter will allow the CMO, namely GRAMO, to collect levy from the usage of unprotected music like the American music and use it to subsidize the FFUK. Under the new dual collecting system, the users have to pay GRAMO no matter which music they are going to play in their services or

premises (Møller, 2016). Granted that the creation of the FFUK has rehabilitated the balance of fair competition between the local and international repertoires, but its function is somewhat less convincing than its intention. The source of the funding mainly came from the American music, but the FFUK is only accessible for those who are living and working in Norway (Fond for Utøvende Kunstere, 2017). And behind the façade of the FFUK, there is a glorified ‘black box’ that was created at the expense of American music to benefit the artists in Norway.

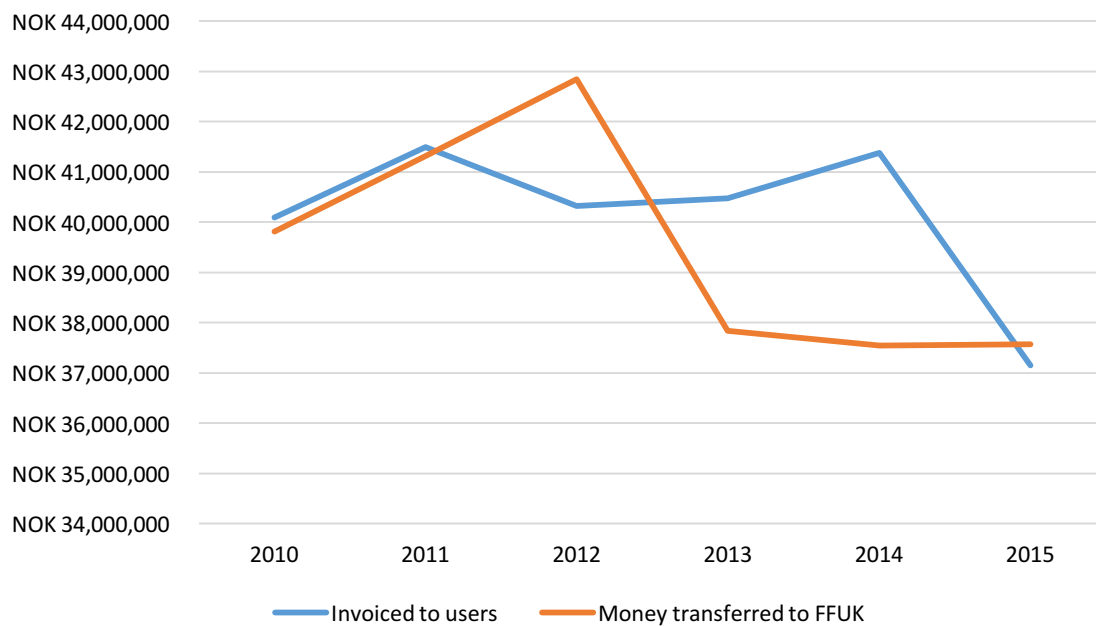


Figure 5: GRAMO – Revenue stream of the Cultural-Political Scheme from 2010 to 2015

Year after year, GRAMO has collected more than 20 million US dollars of ‘American money’ on behalf of the FFUK. Despite this enormous amount of money stemming from American music, the Norwegian parliament did not see them as royalties of the American artists. Legally speaking, they are compensations made to protect the local repertoires and collected through the cultural-political scheme. Thus royalties and the American music levy are two very different things from two different collecting systems. Without the American music, there is no cultural-political scheme and the FFUK would not have existed. Even if FFUK did not take the royalties from the American artists, they are still benefiting from the existence of American music. From an ethical point of view, it is rather bizarre to think it is alright to make money from others without giving them credit. Nonetheless, the final judgement is still in the hands of the Norwegian parliament because American music is literally unprotected in their territory.

So perhaps ‘American money’ will never be classified as ‘black box money’, because the CMO is not making profits out of it and they are used with good intention in the name of cultural and political interests.

In all fairness, I would describe the CMOs as intermediaries, facilitators, or “essentially data collecting and processing entities” (Gervais, 2010, p. 8). Their main purpose is to assist their artists to manage their rights and what comes after would be beyond their responsibility. If the data they were given are incorrect or incomplete, they are not obliged to revise them because their duty ends once the money is being distributed according to the existing information they have (Møller, 2016). Therefore, the best they can do whenever they are dealing with ‘unallocatable’ revenues is to reallocate them in the best alternative way. As for the ‘American money’, it is a one-of-a-kind policy legislated by the parliament, and the CMO, GRAMO, was just a mere intermediary. To conclude my analysis, it is confirmed that ‘black box money’ does circulate in CMOs regardless of their performance. They might be liable for not enforcing a more assertive music data submission from the users, but the core problem of missing revenue still goes back to the absence of an accurate international database and an outdated copyright law in music streaming.

4.3 THE RESPONSES

Across two continents, and three nations, these three very different individuals represent different aspects in the music industry. Some of them offered their opinions on legislation matters and some others offered suggestions that have more business undertones. In spite of that, they, too, could not agree on what streaming should be considered as in the ever growing digital market. Smith was determined that it should be taken as broadcast while Mosumgaard thinks it is too early to judge. Personally, I am more inclined to the latter idea because music streaming is still developing and copyright law was not designed for ‘one-size-fit-all’. More work needs to be done before we can conclude which business model music streaming really belongs to, though in the meantime, we have to find feasible solutions to the problems in the music streaming services. Nonetheless, just as Griffin mentioned, music streaming certainly does not fit into the mould of selling tangible items, so the new business model has to be differentiated from physical distribution.

Next, in the topic of whether ‘breakage’ should be applicable to music streaming or not, Smith and Griffin were on the same page – they think the involved parties have to acknowledge the startling differences between the old industry and the modern one. There must be a moderation between keeping up with the tradition and holding on to out-dated practices. On the other hand, Mosumgaard thinks ‘breakage’ is there to stay because it is part of the investments. Aligned to the reason provided by the labels, he argued they are pumping in money to support their artists from making music, to distributing it to the public. So regardless of whether it is online or offline, labels should be entitled to apply ‘breakages’ since it remains as a high risk investment to groom an artist (Cooke, 2016). The argument of using risk taking as a free pass to collect additional money has become less convincing in the digital market since the margin has become drastically low nowadays. On a typical arrangement, labels can charge up to 20 per cent of ‘breakage’ to their artists, which is considerably very high when most of the artists only earn around USD \$0.004891 per stream (Resnikoff, 2016). If they still insist this is a reasonable precaution, at least the labels could lower it down to a more rational percentage, or start explaining how they come up to 20 per cent.

We have learnt that the music industry has been through a rough time in the past decades since the emergence of P2P sharing and online piracy. The rise of the disruptive technology has forced the industry to seek a different approach on distributing their music and only recently, they found a promising solution in music streaming. However, based on the reports issued by IFPI (2016) and CISAC (2016), the growth in the global turnover is not parallel across different regions. In North America for example, CISAC reported they have the “strongest growth with a 33 per cent increase in collections year on year” (CISAC, 2016, p. 12) while IFPI showed only a 1.4 per cent increment (IFPI, 2016, p. 11). Of course, there are some other regions such as Latin America, where IFPI shows higher growth than CISAC, but in the overall global turnover, CMOs seem to perform better than the labels. Out of curiosity, I decided to verify this with my respondents and most of them have attested to that phenomenon. This may signify that collective licensing could be a more efficient way to collect royalties in music streaming, so many artists are hoping this will become the primary method in the future (Cooke, 2016).

I also shared my concern on the creation of a (full meaning of ‘GRR’) GRR and wanted to find out what other solutions they had in mind. Over the years, many CMOs have attempted to create a GRR but none of them have managed to succeed. First, there was the International Music Joint Venture (IMJV), which pledged to create a “system for processing music rights in

a world where everything is watermarked and trackable” (Clark-Meads, 1999). Spearheaded by the former CEO of Burma/STEMRA, Cees Vervood, they, together with ASCAP and PRS, have invested USD \$20 million into this pioneering project and projected that they could save up to 15 percent of their administration cost in return (Clark-Meads, 1999). As promising as it might sound, the IMJV ended in failure (Milosic, 2015) and no further explanation was given by them. Similarly, the International Music Registry (IMR) and Global Repertoire Database (GRD) that were initiated in the following years ended in failure too, even though they were backed by WIPO and CISAC respectively (Milosic, 2015).

The GRD project alone was reported to have left behind a debt of more than USD \$13.7 million by July 2014, and some of the CMOs have begun to pull themselves out of the project (Milosic, 2015). Other sources suggested that the CMOs feared “losing revenue from operational costs under a more efficient GRD system” (Milosic, 2015). With lower revenue, CMOs might need to face the horror of downsizing their organisation and laying off their employees. According to Møller (2016), he too recognized that having a GRR would eventually lead them to replace their human workforce with more computers and servers. Also, there was a potential dispute amongst CMOs over the control of the global database (Milosic, 2015). Although creating a GRR is a joint effort voluntary project, it is hard to decide when it comes to who should have control over the database. Should it be overseen by a neutral third party or should a new cross-border union be set up to monitor the database?

That said, Mosumgaard and Griffin both recommend developing a decentralized system. A centralized system normally stores all its information in one place or prioritizes all the resources onto a main asset, so if something went wrong with the primary component, the entire system will fail. A decentralized system, on the other hand, works through a network of individual units – they share and verify information with each other so it has a higher fault tolerance. The idea of a decentralized system was first introduced by Paul Baran in 1964 to improve the telecommunication network during the Cold War. He realised it was hard to guarantee the survivability of any single telecommunication station during the war, thus decentralizing the main station would allow the communication system to anticipate the “worst-case destruction of both enemy attack and normal system failures” (Baran, 1964, p. 16)

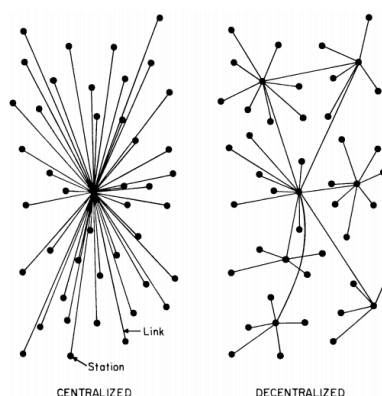


Figure 6: Centralized and decentralized networks by Paul Baran⁸

This method is applicable to organizing music data as well. Instead of creating a single access platform which is run by a dedicated back office, a GRR could be developed through connecting various regional offices to form an international metadata exchange hub. First, regional offices such as CMOs will collate repertoires into their own databases locally. Then, they could exchange and verify the data that they have obtained with their overseas counterparts. Through this process, they can filter out any repeated or incomplete repertoires because they could compare their data against one another. The broader the network is, the more accurate their metadata will be, since there are more samples they could verify with. And above all, CMOs in this system can act autonomously without worrying who is going to dictate the network. The FastTrack system that was suggested by Mosumgaard earlier was based on a similar framework, and even better, it has incorporated the International Standard musical Works Code (ISWC) identifier (FastTrack, 2016) into its system. To date, they are providing “122 CMOs with access to metadata on more than 36.1 million single musical works and 3.7 million audio-visual works, and information on agreements and sub-publishing agreements” (FastTrack, 2016).

Alternatively, the other suggestion for a decentralized system is to harness the Domain Name System (DNS) technology that have governed the internet since the beginning of the World Wide Web (WWW). Endorsed by Griffin himself, the DNS can identify metadata easily by deciphering information from the internet with their domain names and Internet Protocol addresses (IP addresses). Because every single IP address associated with the information is unique, like a fingerprint, it keeps the possibility of retrieving the wrong piece of information to a minimal. In line with that, a tech company called MusicBrain has developed their own

⁸ This illustration is captured from Baran, 1964, p.2

music identifier, MusicBrainz Identifier (MBID), based on a similar theory. They have assigned a unique MBID to each of their entities in their database which includes artists, release groups, releases, recordings, works, labels, areas, places and URLs (CallerNo6, 2016), instead of recalling them semantically. They are confident that their MBIDs can be used for disambiguation since entities that share the same name could be distinguished immediately with their different MBIDs. For example, soundtrack composer John Williams has a MBID of ‘53b106e7-0cc6-42cc-ac95-ed8d30a3a98e’ and classical guitar player John Williams has ‘8b8a38a9-a290-4560-84f6-3d4466e8d791’ (CallerNo6, 2016). There is no resemblance between these two MBIDs even though the artists’ names are the same. In other words, this system could eliminate human error in music data registry such as misspelling and increase the accuracy of the data.

While there are some promising suggestions offered by Mosumgaard and Griffin, Smith thinks creating a GRR would be a mission impossible from a political standpoint. Countries where copyright is the main export will be at a disadvantage if they were to share their valuable data with other nations freely. In the USA, for example, the copyright industry has been the driving force behind their economic growth. The industry as a whole has offered more than one billion employment opportunities and contributed up to 11.69 percent of their overall economy (Siwek, 2016). Opening up their database might bring unforeseen circumstances to their copyright industry, and put their \$2.1 trillion USD industry at risk.

Moving on, I want to address the elephant in the room, the belief that rights holders and other stakeholders have manipulated the system to their advantage (Cooke, 2015, p. 22). To recap what I have highlighted before, the copyright law is very flexible and it does not govern how copyright is being assigned, transferred or divided among different rights holders. And in some less favourable arrangements, creators end up losing control over their creations and are sabotaged in both revenue stream and artistic expression. Among my respondents, Smith described them as ‘nefarious practices’ and Griffin just cut to the chase, pointing out that was a ‘black box’ in the system. Again, the alleged wrongdoings of the corporate rights holders and stakeholders are further confirmed by the professionals. It shows that these are not assumptions, but have actually happened, and are possibly worsened in DSPs like YouTube and Soundcloud, behind the more controversial safe harbour legislation.

Year over year, YouTube has been growing based on their user-generated content (UGC) and within these content many of them were unlicensed copies, remakes, or covers from other artists created by the users themselves. In that sense, YouTube should be held accountable for copyright infringement since they have failed to monitor the unlicensed content on their platform. Yet, they have managed to get away with it through the safe harbour law (Cooke, 2015, p. 12). The law protected YouTube from liability, “as long as they respond to takedown notices from rights holders” (Levine, 2016). Nonetheless, this takedown process has become redundant since there is too much content to be monitored across the platform and similar content will be uploaded soon after one has been taken down. American artist manager Irving Azoff bewails that YouTube is “a serious threat to artists” and “a system that is rigged against the artists” (Kosoff, 2016). Artists and rights holders are losing revenue to safe harbouring, and DSPs have found a new way to churn in their share of the ‘black box money’.

Since it is unavoidable to have ‘unallocated revenues’ circulating in labels, CMOs and now even in the DSPs, the solution hinges on creating a decentralized GRR, amending the copyright law and improving transparency in the industry. At the same time, the current method of redistributing ‘unallocated revenues’ among the CMOs has received the green light from my respondents. Recycling the monies back to the distribution pool seems to be a reasonable solution and contributing part of them to cultural and developmental activities even had the seal of approval from Smith. Even though these ideas do not help relocate the ‘unallocatable’ revenue back to the rights holders, the revenue is not being taken advantage of, to say the least.

Finally, in my short survey of who should be held accountable for creating the ‘black box money’ in the music industry, the vote was unanimous that record labels are the one to blame, followed by a separate vote for publishers, CMOs, DSPs and other platform services (e.g: Google and Facebook) respectively. Sure enough, record labels are possibly the guiltiest of creating the ‘black box money’ because they have been caught red handed on several occasions. From the substantial amount of advances received by Sony (Cooke, 2015; Singleton, 2015) to Lady Gaga’s missing revenue from DSPs (Resnikoff, 2014 & 2015), the evidence consistently shows record labels making ‘black box money’ on purpose. Notwithstanding, it would take two hands to clap in the process of generating ‘black box money’. There must be loopholes in music streaming in order to satisfy the production of ‘unallocated revenues’, ‘unallocated advances’ and ‘breakages’, otherwise artists would not be protesting they were not getting paid enough from DSPs.

5. ANALYSIS

Looking at to the information that I have unearthed, I can confidently say music streaming has reduced artists' revenue tremendously. We have seen how the copyright law has not been able to cope with the rapid development and changes in the digital age, and the lack of governance towards newer technologies has reduced the transparency in the operating system drastically. As a result, the complexity in the digital market has spiked up and artists have become the ultimate victims. The average per stream payout in Spotify for an artist has dropped to USD \$0.004891 (Resnikoff, 2016), and sometimes it would go as low as USD \$0.0003 (Information is Beautiful, 2015) for some other DSPs like YouTube. These figures are alarming because they put in doubt the sustainability of the revenue stream for most performing artists through music streaming. Knowingly, this phenomenon was predicted by David Bowie (Frith, 2007; Krueger, 2005) where the value of music was reduced significantly after digitalization, but artists should not be earning less from the digital market, when music streaming is bringing in a handsome amount every year.

According to the latest IFPI report, the music industry has reached another new milestone in 2016, where they have achieved the highest growth rate since 1997. (IFPI, 2017, p. 10) The global recorded music market has grown 5.9 percent and the digital income accounted for half of the global revenue growth. Within these promising improvements, "streaming has been the clear driver of this growth, with revenues surging by 60.4 per cent" (IFPI, 2017, p. 10). This is not the first time that music streaming has been crowned as the main contributor to the music industry (Shaw, 2016), and its performance has been consistent in the past couple of years. Having said that, artists have not been able to enjoy the positive impact brought by the growth in the industry, and to make it worse, their earning margin has decreased over the years.

Evidently, artists are getting a smaller share from a bigger pie due to the play of 'black box money' in the system. Inside the 'black box', there are 'unallocated advances' and 'breakages' which have a close relationship with the NDAs signed between DSPs and record labels. But on the whole, 'unallocated revenues' are the most prominent source of the 'black box money'. Since CMOs have not succeeded in creating a GRR, locating the correct rights holders would have to rely on the music data they have acquired from the rights holders and users. If the data given to them was incorrect or incomplete, the corresponding royalty will be deemed as 'unallocatable', beyond the reach of the artist. These 'unallocated revenues' will eventually be

repurposed by CMOs as cultural funding or reallocated to other artists' revenue stream. CMOs have put in ample effort to amend this problem, but none of them have managed to pull it off thus far (Milosic, 2015). The main obstacle in creating a GRR still rests between money and information, where CMOs have underestimated the budget involved in the project, and the amount of data they would need to contribute to the system. (Milosic, 2015) Coincidentally, the data that they have to reveal touches the transparency part of the subject again, thus making the 'black box money' an even harder issue to tackle.

The problems and struggles of making music streaming a more sustainable outlet should not be the concern of recording artists only. If the core members, namely the creators, in the industry are having a hard time surviving through music streaming, it will eventually affect the entire system. Of course, some might argue the music industry will never run out of supplies, since they are 20,000 new tracks emerging every day (Wikström & DeFillippi, 2016, p. 196). But would it not be modern day slavery in disguise if we are going to ignore it completely? The 'black box' issue is something happening in the music industry that we desperately need to have a conversation about. Every individual in the industry should be ready to make changes for the better, instead of worrying that their share of revenue would be affected.

5.1 THE COPYRIGHT LAW

According to what I have learnt from The Kristiansand Roundtable Conference and MMF, the current copyright law is struggling to keep up with the advancement of technology. It would take more than a decade for lawmakers like the EU directive to make a new amendment in the copyright law (Jenner, 2016), because there are different stages of consultation and confirmation before a suggestion could be delivered to the directive. If we do the maths correctly, copyright law will always fall behind the technology unless the policy making process gets an upgrade with a shorter procedure. Or there should be an emergency act that could take place when needed. Otherwise, the music industry will be overrun by the *de facto* standard and problems such as the 'black box' issue will be prolonged indefinitely.

5.1.1 SAFE HARBOURING & 'VALUE GAP'

Two decades ago, when the US Congress passed the DMCA, they introduced a couple of new provisions into the copyright law as an effort to keep up with the growing Internet community.

One of the provisions they added was the safe harbour provision, which would function as a protection to DSPs from copyright liability from their UGC. DSPs will not be held accountable for any of the copyright infringing materials uploaded by their users as long as they exercise the takedown action in their services. However, the provision appeared to be ambivalent because it does not require the DSPs to monitor the UGC (Lee E. , 2009, p. 3) nor to “affirmatively seeking facts indicating infringing activity,”⁹. Put differently, rights holders have to notify the DSPs individually in order for the takedown process to happen. In the end, the provision does not serve its purpose to govern the digital market, but it has become the most challenging legal issue in music streaming based on Mosumgaard’s response.

Fast forward to the present, the safe harbour issue has stirred up huge media attention after 186 artists (including Lady Gaga, U2, Taylor Swift and Sir Paul McCartney), songwriters, managers, labels, publishers, and CMOs signed a petition demanding DMCA to be reviewed (Ingham, 2016). It was the the first time “the entire industry is united and committed to pursuing a fair resolution”¹⁰ (Ingham, 2016), and it has definitely worked like a charm. In 2017, the European Commission officially identified the ‘value gap’ caused by the safe harbour provision as market distortion, and is drafting a new legislation “clarifying that services that engage with the content uploaded by users are liable for that content and need to be licensed” (IFPI, 2017, p. 27). The term ‘value gap’ first made its appearance in 2015 when it was mentioned in the IFPI report by their CEO, Frances Moore. She describes it as “a fundamental flaw in our industry’s landscape, which sees digital platforms such as Daily Motion and YouTube taking advantage of exemptions from copyright laws that simply should not apply to them” (IFPI, 2015, p. 5). Whilst safe harbour was initially drafted to provide shelter to DSPs for passive hosting, as the Internet grows and consumer behaviour evolves, most DSPs like YouTube have found a way to make profit from this loophole. So it is a worrisome matter for the entire music industry because everyone in the revenue chain is being affected. It would be interesting to find out how the EU directive would respond to the new legislation, and it certainly provides a glimpse of hope that copyright law could be improved at a faster tempo if the industry could work together as a collective.

⁹ 17 U.S.C. § 512(m)

¹⁰ This was an excerpt by Irving Azoff, chairman and CEO of Azoff MSG Entertainment.

5.1.2 STANDARDIZATION & ‘ARTIFICIAL HOMONYM’

When we speak about standardization, we are talking about making something conform to a standard, very much like the way a government assigns a specific dialect to become the official language of a nation, so that the people could understand each other no matter which part of the country they came from. Comparably, the music industry is in need of a standardization because everyone is speaking in a different business lingo. As I have mentioned before, ‘common law’ and ‘civil law’ used terminology differently, hence there will have different interpretations on the same subject by various parties. For instance, ‘neighbouring right’ itself could be referred to as ‘sound recording right’, ‘author right’, or even ‘performing right’, depending on the given setting and situation (Cooke, 2015). Also, music streaming could be seen as a sale, a broadcast, or something entirely different, because the copyright law has not justified which rights are involved in music streaming. When there are no standard guidelines which people could use as references, confusion and miscommunication are destined to happen. In view of this phenomenon of having two or more meanings on the same terminology, I would refer it as ‘artificial homonym’.

These ‘artificial homonyms’ could be eliminated easily if there was standardization being done across the copyright law. All the lawmakers need to do is clarify and create a standard on terminologies that are being used in the music industry. There should be explanation in detail on what each term entails regardless of which constitution it was applied on. Together, lawmakers could take the same opportunity to correct the ‘flexibility’ of copyright law and settle the argument of whether performer ER should be applicable in music streaming or not, once and for all.

5.1.3 ALTERNATIVE BEYOND RECIPROCITY

There is a common perception that cross-border royalty can only be obtained through reciprocal agreements signed between CMOs and their overseas counterparts. But who would have guessed there is an alternative solution to bypass this restriction set by the copyright law? There was a visible decline in the FFUK funding since 2013, and the money they have received from GRAMO has decreased more than four million Norwegian crowns (approximately half a million USD) from 2014 to 2015. According to an anonymous representative from a CMO, some American artists have taken the matter into their own hands and found another solution

to retrieve their ‘American Money’. Instead of putting pressure on a settlement of reciprocity that could take years to happen, they have decided to join GRAMO and assign their rights to them separately. In this way, GRAMO has become their CMO officially and would have the right to collect their royalties on their behalf. This hassle-free solution has offered a quick fix to the American artists, and it is believed that more artists will take up this path to collect their royalties in Norway.

Perhaps bypassing the reciprocal agreement could be argued as another form of system manipulation, but on paper, artists have every right to become a member of multiple CMOs as long as they satisfy the CMOs’ requirements. It is unavoidable that artists take extra measures to get their royalties. Otherwise, they will become another huge sum of ‘unallocated revenues’. If safe harbour is hindering the revenue stream, and rights holders are not getting paid as they should be for their copyrighted materials, maybe the lawmaker could look at the need for reciprocal agreements.

5.1.4 TRANSPARENCY IN NDA

In reality, “creators are owed some fiduciary level of care for the proceeds of their art” (Rethink Music, 2015, p. 25) especially in music streaming. Since the NDA has become the preferred choice in most digital deals (Cooke, 2015, p. 61), artists have been censored away from the access of information even though they are one of the main beneficiaries in the agreement. Among the information that has been hidden away from the artists, there are particulars about division of revenue, usage of advance, and even calculation on breakage. Without this knowledge in hand, being an artist in music streaming is just like being a glorified sweatshop worker, where the basic right to information of why and how one is being paid has been taken away. Besides that, there is a theory about record labels and publishers taking advantage of this exclusive arrangement to get hold of more money (Cooke, 2016, p. 67), which immediately triggers the red flag for the transparency and ‘black box’ issues that we have discussed earlier.

Many questions have been raised in different roundtables (The Kristiansand Roundtable Conference, 2016; Cooke, 2015; Cooke, 2016) concerning how the NDA has reduced the transparency in the system, but no one has actually come up with a feasible solution. For those who defend the NDA, they claim the confidentiality clause may become unenforceable (Cooke, 2015, p. 65) if every artist were able to demand for access. On top of that, there is the

competition law that they need be aware of (Cooke, 2016, p. 68), before they let loose of their negotiation power. In response to these conflicts, the European Commission has proposed the ‘transparency obligation’ for rights holders in their newly drafted Article 14. The article emphasizes “Member States shall ensure that authors and performers receive on a regular basis and taking into account the specificities of each sector, timely, adequate and sufficient information on the exploitation of their works and performances” (Cooke, 2016, p. 67). Granted that this is an EU-initiated proposal, analysts are concerned that the ‘transparency obligation’ might not be as effective because it does not state clearly what is the “appropriate level of transparency” (Cooke, 2016, p. 68) being referred to in the article. Again, it might be left to the labels and publishers to interpret the true definition of ‘appropriate level’, which defeats the purpose of having this article in the first place.

To establish a middle ground within the NDA and competition law, I support the idea of strengthening the right to information for creators, in lieu of letting the labels and publishers control what information they would like to let out. For example, the Rethink Music programme from the Berklee College of Music has proposed the ‘Creators Bill of Rights’, which highlights that “every creator deserves to know the entire payment stream for his/her royalties” (Rethink Music, 2015, p. 4). It resonates with the fundamental idea of the Freedom of Information (FOI) laws, which allows the public to exercise their ‘right-to-know’ (Chydenius, 2006, p. 4). Likewise, an artiste should be allowed to practise their ‘right-to-know’ to find out their revenue arrangement in the NDA through a government-monitored application. With the government as moderator, they can kill two birds with one stone, by neutralizing the risk of stepping over the competition law, and keep the transparency at an ‘appropriate level’. All of these initiatives are still at the proposing stage, and lawmakers have to keep in mind that the longer they take to resolve this issue, the more transparency issues will occur in the near future.

5.2 GLOBAL REPERTOIRE REGISTRY

It has been the goal of many CMOs to create a GRR, but unfortunately, none of them have managed to cross the finish line. Evidence shows that lack of funding was the main reason of failing for most of the GRR projects, but other sources also suggested that it might lie on the willingness to share information among rights holders and CMOs (Milosic, 2015). There is a potential risk where the GRR might take over the functionality of CMOs eventually, hence

some CMOs have become hesitant to contribute the data they have in hand (Milosic, 2015). Setting that aside, analysts like Smith is positive that legal barriers and political interest are the ultimate deal breakers in creating a GRR. Knowing there are differences between various constitutions in different countries, it is hard to pull together a GRR project that could satisfy the legal condition for all the nations. Moreover, setting up a more efficient database might do harm to some countries like the US, where more than 10 percent of their national economy is dependent on the copyright industry (Siwek, 2016). Entities such as the Harry Fox Agency play a crucial part in the copyright industry of the US, yet they also have a history of billing their clients without knowing whether they have the authority to license the copyrighted materials or not (Schwartz J. , 2003). So, to insure their lucrative copyright industry remains unharmed, it would be a better decision for for the US to stay away from any GRR related projects.

While there are so many complications in the process of creating a GGR, “there remains a fairly wide consensus in the music business that a better system of rights ownership information management is crucial to the developing digital music industry” (Milosic, 2015). Other than making an accurate, reliable and accessible global music database, there is no better solution to eliminate the ‘unallocated revenues’. Having that in mind, several independent organisations such as FastTrack and MusicBrainz have continued the pursuit of a GRR, and reinvented the approach after learning from past experience. They are focusing on how to ensemble a decentralized system with numeric data instead of semantic data, and this new structure has won the approval from researchers and analysts. However, these clusters of data registries are still working separately in the meantime, so they will have similar underlying problems if they were to push forward to become an international joint venture.

5.2.1 ‘BLACK BOX MONEY’ – AN ALTERNATIVE SOURCE OF FUNDING

According to the financial model of the GRD, the funding of a GRR could be divided into two main categories. First, the funds required for the initial setup, and second, the funds for the annual operating budget (Milosic, 2015). Generally, the capital of the project will mostly be financed by the participating CMOs that initiate the GRR, and it will be divided amongst themselves based on the size of the respective CMOs. On a rough estimate, each CMO that has

participated in the previous GRD must have contributed not lesser than €8 million¹¹ into that project. Although it might be a manageable amount for bigger CMOs, it is a huge financial commitment for any CMO. Since all of the CMOs are non-profit organisations, their main source of revenue is solely derived from administration fees collected from their rights holders/members. After covering their employees' payroll, the remaining proceeds will very likely be used to pay for other miscellaneous expenses like the electric bill, *etc.* Given this situation, most of them will have very little disposable income to spare, so it would be a very challenging task for them to support the GRR. Moreover, even if the CMOs managed to pay for the first instalment, the GRR would still be left with a debt of more than USD\$13 million (Milosic, 2015) after the project was shut down. Taking that into account, it is hard to imagine how much the CMOs should be anticipating for the next international joint venture GRR, and how to keep it afloat in the long run.

In order to make the next GRR project less of a burden for any participating parties, CMOs must be able to tap into a sustainable source of funding. It should be something easy to access and in abundance, so they do not need to spend extra labour to collect them. Although it might be a little naïve to consider that such money will ever exist, I believe the 'black box money' might just have the answer for them. According to the statistics that I have collated, CMOs such as TONO have a potential yearly income of 'unallocated revenues' which would hover around USD \$14 million¹². Of course this is just an estimated projection, since most of these money will eventually be redistributed to other artists and the rest will be turned into a scholarship or cultural funding (Smith, 2011; Møller, 2016). However, considering there is no official guideline from CISAC on how to make use of these 'unallocated revenues', it would be a great idea to use part of them to fund the next GRR project. May it be a percentage out of the 'unallocated revenues' or a fix figure regardless of the total, it will still be a viable amount for the GRR. Most importantly, CMOs will never run out of these monies till the day they have created a fully functional GRR to resolve the data registry issue, so there is no reason for CMOs to pull out from the project due to financial difficulties.

¹¹ The initial cost for the GRD was projected to be approximately €23 to 32 million and there were only four out of eight core members in the GRD are CMOs: Apple iTunes, Amazon, EMI, Nokia, PRS, SACEM, STIM and Universal Music Publishing. (Source: Isherwood, 2011; Milosic, 2015)

¹² The potential 'unallocated revenues' for TONO from year 2010 to 2015 is about 100 million to 150 million Norwegian crowns.

5.2.2 BLOCKCHAIN: MUSIC WITHOUT THE MIDDLEMEN

Those who have some knowledge about the ‘black box’ must have heard of the blockchain – a fully realized system made to process digital transactions. It was the talk of the town in various roundtables and workshops, and a lot of people were very interested to adopt it in the digital music market. Its efficient data tracking property is believed to be able to create a decentralised database, where it could “automate the division and distribution of royalties”, and provide “speed, efficiency and transparency in the royalties distribution process” (Music Ally, 2016). Every piece of metadata in the system will be stored in its own metaphoric ‘block’ and connected with other related metadata or a bigger data pool via a ‘chain’. As the metadata of a music will always be represented in a collective of Blockchain, it could reveal “information travelling with any given digital track wherever and however it is being used” (Music Ally, 2016, p. 1). When the required information of the music such as title, rights holders, revenue split, contract terms, related statute, *etc* were uploaded into the system, a normal digital transaction that would take time to process could be done in the matter of seconds by using blockchain (Rethink Music, 2015, p. 27). To illustrate how does this process due in a revenue stream, Rethink Music used iTunes download sale as an example:

[...] suppose a song is purchased from a digital music store, such as iTunes. After the store takes its cut, for ease of demonstration, we will hypothetically assume the revenue generated by the purchase comes to US\$1.00. This money would be split between the two different works contained in the song, with a 9.1 cent mechanical royalty going to the musical work, and the remaining 90.9 cents going to the sound recording. Next, if the contract between the publisher and songwriter specifies a

75/25 split of revenue from downloads, the publisher would receive 6.825 cents and the songwriter would receive 2.275 cents.

With an identical split at the record label, the label would receive 68.175 cents, and the recording artist would get 22.725 cents. The blockchain network could also further divide these 22.725 cents between the members of a band, if applicable.

This entire process would take place in less than one second, allowing all parties to access their money immediately after it is generated. (Rethink Music, 2015, pp. 27-28)

In view of this fast and almost labour-less transaction, blockchain could serve as a “low-cost, low-barrier-to-entry music service for dissemination and consumption, based on what the listener wants” (Rethink Music, 2015, p. 2). Therefore, it will encourage a more user-centric payment model as opposed to the pro-rata model commonly used by the DSPs. Artists in turn will receive a fairer payment according to the number of times their tracks are being played, because there is no room for the ‘winner-take-all’ effect if blockchain is employed into the system.

Even though blockchain offered a wide scope of benefits and checked all the boxes for being a great GRR candidate, Dr. Silver suggested it will need more than a decade for it to bring any significant impact to the music industry (Rethink Music, 2015, p. 3). It requires time to develop, collate data as well as resolve other legal matters before it could be fully integrated into music streaming. With that said, I remain optimistic that blockchain is a feasible solution for the data registry issue. If CMOs could join forces and iron out how to adopt it into the next GRR project, the future of music streaming will be more transparent and have more money for the artists.

5.3 LABELS

First and foremost, there are several questions that need to be clarified on the subject of the ‘black box’, and these questions can only be answered by the record labels. Being seen as the one that should be responsible for the low margin conspiracy in music steaming, labels have to

justify why ‘breakage’ is still in play in the digital age and how they came up with the figure that they are charging their artists. If risks from investing on the artists is the reason they are still applying ‘breakage’, then artists should be able to demand performer ER in exchange. In the diluted market of music streaming, not every artist will be able to break through to the crowd and have enough hits on their music to generate a revenue equivalent to the minimum monthly wage of USD \$1,260. They too have a high level of risks to be shouldered if they were committed to become full-time recording artists. Furthermore, it would be a double-standard if labels could casually decide which terms should be applied onto music streaming, since there was not written statement in the copyright law dictating how ‘breakages’ and performer ER should be applied in music streaming. So, if the labels are determined to dismiss performer ER in music streaming, it is only fair for them to drop ‘breakage’ in music streaming as well.

Record labels also have to explain why the ‘unallocated advances’ are not being shared with their artists. Even though two of the majors, Warner Music and Sony Music, have promised to share these monies with their artists, to date, “there has been very little detail about any of these commitments” (Cooke, 2016, p. 58). As stressed by most of the artists and managers, “the devil is in the detail” (Cooke, 2016, p. 58) Little information has been given by the labels in regards to when and how the actual implementation will take place. Rather than an act of goodwill, this empty promise risks being seen as a PR stunt to fool their artists. As long as these foul practices remain unexplained, we will never get to create solutions to reduce these ‘black box monies’.

5.4 PUBLISHERS

No more ‘rights ready’ (Cooke, 2015, p. 10) in music streaming means the status of publishers will not be the same anymore. They are less significant in comparison to record labels because DSPs usually conduct their deal negotiation starting with labels first rather than the publishers. After DSPs have “committed up to 60% of its revenues to those who control the recording rights” (Cooke, 2016, p. 32), publishers will have to settle with a smaller cut or initiate another round of negotiation with labels privately to ask them for a discount from their share. Being the latter party to enter the digital deal negotiation, publishers are being placed in a subordinate position.

One solution being floated during the MMF roundtable was a suggestion to adopt a model more akin to physical distribution. In other words, publishers should issue their licenses directly to

record labels and fabricate ‘rights ready’ contents for DSPs. In this manner, publishers would get to negotiate with the labels and prevent any biased arrangement that will normally be done secretly in NDAs. In addition, it will also minimize the differences of the artists’ payout, ‘breakage’ and ‘unallocated advances’ because every single term and condition in the deal has to be agreed on by both parties before it is submitted to DSPs. This ‘rights ready’ licensing model is commonly known as ‘pass through licensing’ (Cooke, 2016, p. 32) and has been used in digital downloads in the US and some other emerging markets. The fact that record labels might not honour any arrangement that would temper their power and revenue stream, publishers are in doubt that this model will ever work out in music streaming. But on a brighter note, if publishers could follow this in the future, record labels might be less aggressive and it will be easier to discuss and resolve the ‘black box’ issue with them.

5.5 COLLECTIVE MANAGEMENT ORGANIZATIONS

Along with the aim to crystallize a functional GRR, there are some other things that CMOs could work to increase the awareness of the ‘black box’ issue in the music industry. Many artists and managers clearly lack the knowledge in relation to their rights and the whereabouts of their royalties. More than half of the artist managers at the MMF roundtable were completely clueless on the revenue share arrangement and minimum payments of their artists (Cooke, 2015, p. 49). Dissecting artist contracts and revenue stream in the digital marketing could be really overwhelming for any budding artist and manager. Even for the more experienced ones, it is still hard for them to grasp the do’s and don’ts because copyright law is too flexible, and music streaming is still evolving. Thus, it is hard to predict which would be the right decision for them. Perhaps CMOs could initiate some educational programmes to better equip these artists and managers with the necessary information to help them navigate the complicated music streaming industry. It could be done through workshops or festivals, where artists and managers could ask some specific case-to-case questions, or via the internet to make the information available to everyone. When artists and managers are more informed, they can articulate themselves better in contract negotiation and avoid becoming the next ‘black box’ victim.

Also, CMOs have to be more open with their rights holders/members that there is ‘black box money’ circulating in their systems. From what I have learnt, most artists do not know their CMOs are keeping a share of the ‘black box money’, or that they might be benefiting from it.

A quick glance through the financial reports of TONO reveals no clear indication of which part of the money is ‘unallocatable’ and when that sum of money will be converted to a scholarship or cultural funding. While every single strand of ‘unallocated revenue’ has a three-year expiry period before they could be repurposed, it is very hard to reflect the progress of each individual transaction on the financial report. Royalties that are being branded as ‘unallocatable’ have various levels of problems in their data. Therefore, each and every one of them will have a different timeline before the CMO could decide where it should be transferred to next. Capturing this spontaneous yet massive pool of money into a single account is impossible, and even if it is, it will not be entirely accurate. Combining these complications, CMOs like TONO will be unable to record ‘unallocated revenues’ into their financial report. There might be a hint of secrecy for them to censor this away from their rights holders/members, as it could affect their performance and image as a good efficient CMO. However, not being clear and transparent to their rights holder/members might bring them other consequences too. I was told by an anonymous representative from a CMO, that a couple of organisations have stopped applying for cultural funding after they found out the money they had received previously was generated from ‘unallocated revenues’. I believe this backlash was not an outcome that the CMO would be expecting. It shows that rights holders have a higher respect for transparency over getting some extra cash from royalties that do not belong to them.

Evidently, the recognition of ‘black box money’ within CMOs are not as pronounce in comparison to those who have been taken by record labels. Therefore, the focus of the ‘black box’ debate by artists primarily centres around the labels and the system. If artists could be educated more comprehensively on the ‘black box’ issue, they would be able to understand the importance of having a GRR and be more diligent in registering their music. As a result, they could play their part in correcting the data registry problems, starting from reporting the use of their music and keeping track of any changes in the particulars of the rights holders.

5.6 DIGITAL SERVICE PROVIDERS

When music distribution marched into the streaming realm, consumers no longer paid for every single track. Instead, they are paying a monthly subscription fee to access the music provided by their DPSs. As the consumption method has evolved, DSPs have to make corresponding changes on their revenue allocation model. The new model that has been adopted into most DSPs is called the pro-rata, or ‘proportionate allocation’ (Maasø, 2014, p. 4). It promotes top-

heavy ‘quantitative listening’ where the more the music is being listened to, the higher revenues the corresponding rights holders will receive. In that sense, smaller artists with niche audience will have a harder time to generate an income that is close to their superstar counterparts, and music streaming is not as sustainable for them as the media would have portrayed.

To turn the tide around, Maasø (2014) suggests employing another model called the user-centric model, which would give all artists a fairer deal. This model disregards “how much each user streamed, but how much each user paid” (Maasø, 2014, p. 5). As opposed to ‘quantitative listening’, user-centric models focus on the true value of each stream. For example, if a consumer is paying USD \$10 for his/her monthly subscription and he/she only listened to one song that month, the true value of that stream will worth USD \$10. In contrary, if that consumer is a heavy user and streamed up to one thousand tracks in one month, each song will only worth USD \$0.01. Under this scenario, artists who have a small but dedicated audience will get to receive a higher payout from DSPs, because they will be receiving the true value of their songs, as determined by the consumers.

Without a doubt, a user-centric model will indeed create a fairer revenue allocating system in music streaming, but to implement it will require the support of some other key players. From a diehard consumer’s point-of-view, the money that consumers have spent should be channelled to the artists that they have patronized. But for record labels, in particular the majors, it does not really matter, because changing from a pro-rata to a user-centric model has very little impact on their share of revenue. As a matter of fact, the majors will lose one percentage point as a whole if they opted for a user-centric model (Maasø, 2014, p. 6). In view of that, ‘fairness’ seems to be a less affirmative reason for DSPs to persuade record labels to change their settlement model. However, if DSPs could successfully convince the labels in the future, they might be able to mend the low margin issues that average artists are encountering.

6. CONCLUSION

Daniel Ek (2016) says: “music is growing again, streaming is behind the growth in music”, but in my opinion it is one step forward, two steps back. Whilst trying to answer my research questions, I found that music streaming has caused a lot of problems in the core of the music industry. Granted, it has cultivated music buyers among consumers who have developed an appetite for free music, and boosted the sales of music after the long recession. But it has also heightened the flaws in the system that was governing the music industry.

To begin with, music streaming is constantly challenging the copyright law. A statute that was built to police the trades of intellectual property has failed to recognise what is a stream, and how to fit it into their rules and regulations. It is not a sale, nor a broadcast, and not exactly a rental. It is a stream which consumers can only access it when they have the internet, and they do not get to keep the music. To describe music streaming and make it really clear is a feat, because in the dictionary of copyright law, there is no clear definition for it just yet. Hence, corporate rights holders have been exploiting its weaknesses to make extra money by “twisting the rules” or “playing the system” (Cooke, 2015, p. 22). Analysts and researchers refer to these copyright-related issues as loopholes in the system, but I would rather call them blind spots. Lawmakers have to realise that music streaming is one of its kind, and copyright law is not one-size-fits-all.

What comes after a failed copyright law is a dysfunctional system in music streaming. Yes, music streaming is making money every year, but the wealth in the industry does not penetrate into the core where artists, authors and creators reside. All the missing revenue has been trapped inside the ‘black box’, and I can see no virtue in a system that allows unpaid labour and calls it a saviour of the industry. Evidently, ‘black box money’ is found in entities such as record labels, publishers, and CMOs. Due to the introduction of music streaming, the revenue allocation model, contracts and agreements have to evolve correspondingly. They have morphed into something more complicated and less transparent. A pro-rata system makes the rich richer and the poor poorer; NDAs are turning artists and creators into sweatshop workers; and, the lack of a GRR has turned many artists into generous donors to support other artists and funding without their will. As Vickie Nauman (2016) puts it, the music industry has transformed into a “high complexity, low margin” industry.

I have mentioned before, that the ‘black box’ is just the destination of the ‘unallocated revenues’, ‘unallocated advances’, and ‘breakage’. People might know of its existence but few will talk about it (Lindvall, 2008), since it involves personal, business, and political interests. When I was doing my research, it was like navigating a journey without a map or GPS. I have to dig deep and keep asking, and I do not always receive an answer. Nonetheless, the difficulties of this research has increased my interest on the topic immensely, and whenever I unearth some information that I have not learnt before, I feel like I have struck gold.

To sum up my thesis, I hope I have achieved the goal of showing how the growth of music streaming has affected the revenue of artists, and offered a clearer insight into where the missing revenue has gone. Since music streaming is a growing business, I am certain that more research could be done to solve the ‘black box’ problem. I wish my analysis on the ‘black box’ and suggestion on solutions will evoke more discussion, and the respective entities and lawmakers will eventually look into this issue more seriously. Lastly, I urge those who are reading my thesis to share your thoughts about the ‘black box’ with your peers and keep the conversation going. Because the first step to a more sustainable music streaming industry is to make the problems known to all. Like what Earl Nightingale would say, “Whenever we're afraid, it's because we don't know enough. If we understood enough, we would never be afraid.”

7. APPENDIX

	2015	2014	2013	2012	2011	2010
Gross income (before 2% DNK deduction & loss)	588 516 050	505 016 068	479 642 908	445 160 066	421 820 204	397 306 170
INCOME						
Broadcasting	180 452 330	167 846 526	169 698 263	167 200 173	178 124 175	174 601 313
Retransmission	112 166 358	57 415 541	54 129 389	60 556 852	62 631 624	55 166 613
Online	101 838 943	93 333 538	73 899 615	50 413 303	21 922 527	11 080 945
Cinema	10 072 765	10 120 845	10 872 914	10 426 864	8 407 530	10 690 722
Concerts	60 070 936	56 601 694	59 006 142	47 940 721	45 796 119	42 487 760
Church services	2 368 373	1 446 852	2 549 735	1 902 788	1 836 047	1 773 102
Hotel, restaurant, shop, transportations etc	62 654 304	59 166 860	56 023 330	52 595 758	52 119 622	48 477 621
Random users - dance, sports etc	3 520 274	3 480 665	3 501 144	3 341 596	3 993 428	6 283 549
Plays (revue) / music dramas	2 718 506	3 218 582	2 254 709	2 300 816	2 583 504	1 721 277
Other royalties	2 777 020	3 102 625	3 876 143	6 103 591	5 570 101	6 488 903
Performance compensation (TOTAL)	538 639 810	455 733 727	435 811 384	402 782 461	382 984 676	358 771 804
Loss	(2 360 566)	(2 287 533)	(1 995 232)	(851 755)	(2 960 549)	(1 457 144)
The Norwegian Composers Funds	(10 670 044)	(9 006 871)	(8 598 800)	(7 916 542)	(7 489 081)	(7 016 515)
Nett compensation	525 609 199	444 439 322	425 217 352	394 014 164	372 535 046	350 298 145
Income from overseas	43 567 894	35 221 806	30 271 013	27 974 935	26 589 532	27 034 366
Interest	6 308 346	14 060 535	13 560 510	14 402 669	12 245 995	11 499 999
TOTAL INCOME	575 485 459	493 721 664	469 048 876	436 391 769	411 370 574	388 832 511
EXPENSES						
Salary/fees/social cost	50 058 244	54 361 230	51 671 873	46 887 990	45 616 693	45 655 393
Write-offs	1 256 798	1 496 446	1 912 073	846 149	1 075 358	1 305 830
Operational cost	25 472 565	19 571 254	13 725 930	13 392 099	12 438 886	11 274 482
Cost, transportation, PR etc.	7 930 297	8 325 728	7 112 674	5 990 736	4 118 222	4 118 222
Interest	466 550	410 779	469 827	470 606	625 557	625 634
	85 184 454	84 165 437	74 892 378	67 587 579	63 874 717	62 979 561
Administration cost	(1 752 690)	(2 052 232)	(2 643 388)	(3 004 326)	(3 423 582)	(3 423 582)
TOTAL EXPENSES	83 431 764	82 113 205	72 248 990	64 583 253	60 451 135	59 555 979
Extraordinary income	0	0	0	0	0	0
Extraordinary expenditure	0	0	0	0	0	0
Before pension	492 053 675	411 608 459	396 799 886	371 808 516	350 919 439	331 877 696
Amendment pension commitment	-663 938	-126 706	-2 352 838	1 325 187	-759 802	1 133 889
Tax	0	0	0	0	0	0
Results transferred to sums to be shared	492 717 613	411 735 165	399 152 724	370 483 329	351 679 241	330 743 807

7.1 TONO – INCOME STATEMENT

	2015	2014	2013	2012	2011	2010
ASSETS						
Fixed assets						
Non-material possessions	1 029 000	1 470 000	2 100 000			
Equipments	2 225 465	2 374 920	2 803 015	2 364 553	3 019 343	3 300 621
Property, buildings						
TOTAL	3 254 465	3 844 920	4 903 015	2 364 553	3 019 343	3 300 621
Financial fixed assets						
Loan to subsidiaries	28 000 000	28 000 000	28 000 000	29 000 000	29 000 000	29 000 000
Investment in subsidiaries	100 000	100 000	100 000	100 000	100 000	100 000
Other investments	184 533	184 533				
TOTAL	28 284 533	28 284 533	28 100 000	29 100 000	29 100 000	29 100 000
FIXED ASSETS SUM	31 538 998	32 129 453	33 003 015	31 464 553	32 119 343	32 400 621
CURRENT ASSETS						
Receivables						
Accounts receivable	17 443 870	9 947 870	40 714 624	19 514 340	12 289 461	20 352 352
Other receivables	119 500 213	55 364	(321 709)	(51 942)	40 312 510	(77 048)
TOTAL	136 944 083	10 003 234	40 392 915	51 767 491	52 601 971	20 275 305
Investment						
Fund investment	210 209 054	307 108 920	277 095 257	218 297 876	208 780 311	252 935 211
Cash/bank/postgiro	238 736 627	92 990 141	66 773 667	100 503 772	104 422 477	106 542 507
CURRENT ASSETS SUM	585 889 764	410 102 295	384 261 839	370 569 139	365 804 759	379 753 023
ASSETS SUM	617 428 762	442 231 748	417 264 854	402 033 692	397 924 102	412 153 644

7.2 TONO – ASSETS

	2015	2014	2013	2012	2011	2010
EQUITY						
Paid-in capital						
Shared capital	2 050	2 050	2 050	2 050	2 050	2 050
Egenkap. før implem. av pensj.forpi.	2 050	2 050	2 050	2 050	2 050	2 050
Retained earnings						
Uncovered pension liabilities	(11 590 809)	(1 805 458)	(2 565 260)	(1 805 458)	(2 565 260)	(1 805 458)
Other equity						
Sum	(11 590 809)	(1 805 458)	(2 565 260)	(1 805 458)	(2 565 260)	(1 805 458)
Total sum	(11 588 759)	(1 803 408)	(2 563 210)	(1 803 408)	(2 563 210)	(1 803 408)
DEBT						
Provision obligation						
Funded	(2 849 505)					
Pension operation	14 440 314					
Pension obligation	11 590 809	1 805 458	2 565 260	1 805 458	2 565 260	1 805 458
Short term debts						
Sundry creditors	49 038 074	39 909 642	41 950 132	39 909 642	41 950 132	39 909 642
Unpaid tax/ payroll	3 281 668	1 385 967	1 944 914	2 385 967	2 944 914	3 385 967
Miscellaneous provisions	24 309 959	17 829 166	21 276 864	17 829 166	21 276 864	17 829 166
Cultural funds	37 559 474	29 717 849	30 775 365	29 717 849	30 775 365	29 717 849
Distribution totals	503 237 537	321 308 970	300 974 777	321 308 970	300 974 777	321 308 970
Total current liabilities	617 426 712	410 151 594	396 922 052	411 151 594	397 922 052	412 151 594
Total debts	629 017 521	411 957 052	399 487 312	412 957 052	400 487 312	413 957 052
TOTAL EQUITY AND LIABILITIES	617 428 762	410 153 644	396 924 102	411 153 644	397 924 102	412 153 644

7.3 TONO – EQUITY & LIABILITIES

	2015	2014	2013	2012	2011	2010
Outstanding tax (included also in trade)						
Outstanding at 01/01/201X	7 977 530	4 909 313	3 234 444	6 498 149	6 828 520	7 485 225
Invoiced	37 146 832	41 376 413	40 472 868	40 328 135	41 499 826	40 100 165
Retained FFUK	-37 568 108	-37 546 116	-37 840 749	-42 847 245	-41 319 930	-39 810 572
Irrecoverable	-525 559	-762 080	-957 250	-744 595	-510 267	-946 298
Outstanding by 31.12.201X	7 030 695	7 977 530	4 909 313	3 234 444	6 498 149	6 828 520
Proceeds not transferred to FFUK by 31.12.201X	4 957 667	3 244 310	2 313 783	724 539	2 817 951	4 395 374

7.4 GRAMO – FFUK

7.5 QUESTIONNAIRE ANSWERS

Niels Mosumgaard = NM

Erica Smith = SM

Jim Griffin = JM

Q1. The music industry has not clearly defined whether a stream should be considered as a sale, a broadcast or something else entirely. What is your interpretation on that?

NM: That it is still an immature technology and that the understanding of it sticks to what we know. It is a sale, a broadcast and something else but no matter what it is it should be a business model for all.

ES: Broadcast

JG: It is neither broadcast nor sale. It is something else entirely. It is certainly not the sale of property.

Q2. We have seen some old business practices in physical distribution being carried over to music streaming, and some argue that previous practices such as 'break-even'¹³ should not be applicable to music streaming since streams are not tangible items. Do you agree with this argument and why?

NM: No. There is still money involved in making, producing, recording and distributing music and this money has to be covered - so the business model between different partners is still the same. Unless you risk your own money.

¹³ 'Break-even' is another term for 'breakage'.

ES: I think the carry over of traditional trade practices to be deliberately dishonest. I am not sure if you mean "break even" or "breakage" but certainly in the case of breakage this is non-sensical. I do however believe that there are legitimate practices which are specific to digital distribution that can be applied but companies need to accept that the business models have to change rather than trying to hold on to old practices.

JG: Streams are not tangible items. The parties to these contracts should act accordingly without pretending the new world of services is the old world of products.

Q3: Are there any other practices that you think should or should not be used in music streaming?

NM: **interviewee skipped this question*

ES: I think the question of whether a stream touches on both "communication to the public" and the "reproduction right" should be resolved. As should the issue of the making available right and the right of performers to remuneration.

JG: I am open-minded and accept the practices to which parties agree as representative of their agreement.

Q4. In recent years, record companies have seen a significant decrease in their global turnover whilst most of the Collective Management Organisations (CMOs)/collecting societies were in the contrary. Is this true from your personal experience?

NM: Yes, it has been so for some years now, but it seems somehow that the record companies are coming back.

ES: No. For the larger CMOs at least there is growth. If you look at the CISAC Global report you will see evidence of this growth worldwide. However, I suspect that smaller CMOs may face real challenges.

JG: Yes, of course. Collective licensing is the past, present and future.

Q5: Several experts claim that if metadata were to be coordinated, the music industry as a whole could save billions of dollars yearly. That being said, none of the attempts at creating a Global Repertoire Registry (e.g: GRD, IMR) were successful. If you were given the opportunity to take up another campaign to setup a GRR, what would your main objectives be, and would you go for a different approach?

NM: There is a decentralized initiative Fast-track on the way with access to the databases of the societies. This is a way forward, and I think that the ISWC and ISRC code should be linked in the same way.

ES: I agree that there is a need for a Global Repertoire. I would start by trying to at least agree standards and have regional registries developed first before a full global initiative. One of the major issues concerns ownership and control and in this regard, the CISAC members should all have an equal interest but a third party should have oversight. Unfortunately, I think politically this is probably an impossible venture.

JG: These attempts are evolving. They proved the need if not the path forward. I remain convinced the DNS system for the internet is the right model.

Q6: Due to the nature of the copyright law in some territories, a rights holder does not necessarily have to be the creator. Many believe that rights holders and other stakeholders are trying to manipulate the system in order to reduce payment to the creators. What is your take on the existing copyright law and what are the improvements that you would like to see in the near future?

NM: I don't see a general conflict between publishers and creators in this respect. There is no doubt that publishers are doing a good job on behalf of creators who cannot handle both the creation of music and selling it at the same time. But as in any business transparency and the ability to renegotiate the contracts would be good. Unfortunately, we see a turn from collective

to individual negotiation on agreements and that is a wrong way forward. The most challenging legal issue is to get service providers like YouTube and Soundcloud out of the safe harbour.

ES: There have always been nefarious practices by record companies and music publishers. I think the issue has worsened now with the addition of platforms such as YouTube etc.

JG: The black box system does reduce pass-through to creators and, yes, the status quo clings to these pools of unattributed revenue.

Q7: In a situation where there is a sum of unallocated revenues circulating in one's establishment, what is your best suggestion to relocate this money as fair as possible?

NM: To make better meta data available and if it is impossible to find the right rights holder to recycle it into the cash flow.

ES: Most should be placed back in distribution pools but it is reasonable to apply some for cultural and developmental activities once there is transparency.

JG: Actuarial analysis replaces actual control where the latter proves impractical or inefficient.

Q7: In a situation where there is a sum of unallocated revenues circulating in one's establishment, what is your best suggestion to relocate this money as fair as possible?

NM	ES	JG	
✓	✓	✓	Record labels
		✓	Publishers
	✓		Collective management societies (CMOs)
			Consumers (piracy)
✓			Digital Service Providers (DSPs) e.g: Spotify, Apple
✓			Platform services e.g: Google, Facebook, Soundcloud etc.

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