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### Introduction

In April 2010, a series of newspaper reports emerged surrounding the supposedly infinitesimal payments received by creators when their music is accessed through the Spotify music streaming service.<sup>1</sup> Most of these stories centered on the suggestion that Lady Gaga received around £100 when her song *Poker Face* was streamed one million times on Spotify. Three years on, Spotify continues to grow but debates surrounding its fairness to creators remain unresolved, as illustrated in the decision by Thom Yorke of Radiohead to remove his *Atoms for Peace* project from the service in June 2013.<sup>2</sup>

Music streaming as a means of disseminating recorded music is in its infancy. While Apple's iTunes has constructed a dominant platform and market for legitimately downloading music,<sup>3</sup> streaming services have yet to gain comparable traction. However, Spotify appears to have made a significant breakthrough in creating a cohesive, internationally accessible service by gaining footholds in a number of major music markets, including the UK, USA and Germany.

Theoretically, at least, the growth of services such as Spotify represents a significant development in the shift from ownership to access models as the dominant channel of delivering recorded music to consumers. In 2013, for the first time, the value of digitally delivered music exceeded that of physical product, resulting from a combination of growth in digital markets and the decline in sales of physical formats on an increasingly steep trajectory.<sup>4</sup> These trends suggest that the transition from an industry built around selling tangible physical products to an industry offering access to intangible musical services is well underway. Therefore, it is an appropriate time to scrutinize the ramifications of this development for popular music stakeholders: creators, investors and consumers.

Just as music streaming is in its infancy, so too is the academic study of these services. It is an under-researched area. However, the rapidity at which nascent digital music platforms emerge, and in some cases disappear again, presents a significant challenge to research in this realm. The whimsical nature of these unproven business models makes research in this

area particularly challenging given the comparatively ponderous pace of academic study and publication. At the time of writing, Spotify *appears* to be at the vanguard of a fundamental shift in how recorded music is delivered and consumed, yet it is an untested, loss-making operation with an uncertain future. While it may not be possible to ‘future-proof’ research, it is possible to construct a sound theoretical framework for the study of music streaming. Laying the foundations of this theoretical framework is the primary aim of this article.

### *What is Spotify?*

Spotify is an interactive music streaming service founded in Sweden that, according to its own website, currently operates in 28 countries, with over 24 million users, of whom 6 million are reported to be paying subscribers. The service hosts a catalogue of 20 million tracks and this grows by approximately 20,000 per day.<sup>5</sup> In practical terms, Spotify offers listeners access to music without the listener purchasing a musical artefact such as a CD or MP3 file. There are three levels of service on offer: a ‘feels like free’ service where the music is interspersed with advertisements that generate revenue, an ad-free premium subscription service with enhanced functionality and an intermediate mid-priced option with a limited level of service. In order to offer these services legitimately without infringing copyright, Spotify must obtain permission from the relevant rights holders: they are the owners of rights that subsist in a sound recording, traditionally a record company, and composers or their publishers. In return for this use, these rights holders receive financial payments.

### *Why Spotify?*

It is important to note that although Spotify is the focus of this article, it seems reasonable to assert that the issues raised here may equally be applied to the many other services vying for position as the pre-eminent music streaming platform. This said, why Spotify? Although it is by no means the only commercially operated streaming service,<sup>6</sup> in the UK the profile of Spotify appears to exceed by far that of similar operators. The significant weight of journalistic and ‘blogosphere’ attention devoted to the service suggests Spotify may indeed be considered ‘... the legitimate online music service of the day’.<sup>7</sup> Where Napster is synonymous with the early phase of P2P file sharing, Spotify appears to inhabit a similarly prominent position in the sphere of music streaming. In spite of continued and increasing financial losses,<sup>8</sup> Spotify’s founder, Daniel Ek, points to expansion into new territories, exponential growth in user base and catalogue as a measure of success.<sup>9</sup> Irrespective of losses to the company, the Association of Independent Music (AIM) reports Spotify’s revenues to be in the top three digital revenue generators after Amazon and iTunes. Martin Mills, founder of independent record label Beggars Banquet and chairman of Beggars Group, has stated that streaming represents a significant share

of many artists' income. 'Some of our catalogue artists earn more from streams than downloads of individual tracks [or] any other format ... If we didn't have digital we wouldn't have a business.'<sup>10</sup> This high profile and rapid growth make Spotify a hugely significant development in the popular music industries worthy of further scrutiny.

### **A review of existing literature**

Spotify launched in the major Western popular music markets, the UK, USA and Germany, in 2009, 2011 and 2012 respectively, so unsurprisingly there is little existing academic literature devoted to the service. In this article, the focus will be on the material surrounding its launch in the UK. Much of what has been written about Spotify can be found in national newspapers, technology blogs and in the communications of music industry trade organizations. This body of material is expanding on a daily basis not only in volume but also in scope as Spotify increasingly pervades music industries and public consciousness. Although much of the discourse found in this material is highly politicized and poorly evidenced, it cannot be discounted out of hand as, in spite of these limitations, it is within these pieces that many of the debates surrounding Spotify and music streaming are initiated.<sup>11</sup> Among the most frequently recurring strands of these debates is Spotify's potential effectiveness as an antidote to the perceived threat of illegal downloading and a means of restoring recording industry revenues in the post-Napster age. The fairness of the level of payment the service offers to creators of music has also come into question, as well as the apparent lack of transparency concerning their financial arrangements with rights holders and collecting societies. In short, Spotify's entry to the UK music market has been the source of considerable dispute.

### **Broadening the scope**

Given the sparse and fragmentary nature of the academic literature, it is impossible to compare and contrast differing academic orthodoxies relating to Spotify and music streaming more generally in a way that might be possible for more established research topics such as digital sampling or illegal downloading. With these limitations acknowledged, it is essential first to identify the fundamental issues at stake in Spotify's entrance to the market in order to create a context for further research. It is the nexus among copyright, technology and new business models in the complex relationship between Spotify and popular music stakeholders that is

of central significance. Emerging from this it is possible to identify three key concepts which provide a means of undertaking a robust consideration of the issues: the 'basket of rights', 'disruptive innovation' and the 'celestial jukebox'.

#### *Copyright: the 'basket of rights'*

To operate within the law, Spotify must contribute to the so-called 'basket of rights' that is said to be a foundational element of the popular music industries. This 'basket' emerges from the copyright that subsists in a musical composition and the sound recording thereof. In the UK, under the terms of the Copyright, Designs and Patents Act 1988, these exclusive rights allow their owner to copy the work, issue copies of the work to the public, perform the work in public, communicate the work to the public and make adaptations to the work. Initially, all rights lie with the creator of the musical work, but these rights are commonly sold or assigned to record companies or music publishers. The subsequent commercial exploitation of these exclusive rights is considered vital for continuing profitability of the music industries. Although the extent to which copyright incentivizes musical creativity is highly questionable, without the 'basket of rights' it seems unlikely that creators of popular music could earn a living from their recorded work in the global marketplace on anything more than a 'cottage-industry' level. Frith and Marshall state that 'without a form of protection to encourage investment, it is difficult to imagine any form of industry structure that would enable artists to communicate with listeners beyond their immediate locale'.<sup>12</sup>

It is principally because of its significance as an economic device that copyright is the focus of such rigorous academic scrutiny, and for this reason it has been attacked on a number of fronts. A recurring criticism is that copyright is unnecessarily monopolistic, encouraging concentrated patterns of private ownership,<sup>13</sup> resulting in the majority of rights being controlled by a small number of consolidated industries' behemoths, primarily the 'Big 3' music companies.<sup>14</sup> Fiona Macmillan argues that corporate control of copyright has become excessive and calls for greater transparency in these markets. Macmillan states that this is an 'era of cultural homogenization and domination',<sup>15</sup> warning that 'if we want to legitimate the power of the corporate sector then we have to introduce mechanisms of accountability'.<sup>16</sup> Roger Wallis states that 'the composer is at the bottom end of the music industry "food chain" and has thus traditionally been in a vulnerable position'.<sup>17</sup> Issues of corporate dominance and accountability are highly relevant to the Spotify story and shall be revisited later in this article.

While rights creators may occupy a weak bargaining position in some copyright negotiations, they are communally represented (alongside corporate rights holders) by collecting societies in instances where the negotiation of individual licenses would be impractical, such

as radio broadcast or live performance. Numerous accounts of the collecting society's position in the music industries suggest that, as with copyright, these societies' activities are the site of significant contention.<sup>18</sup> Martin Kretschmer challenges the suitability of collecting societies to operate in the 'conflicting interests' of both corporate rights owners and individual composers.<sup>19</sup> Kretschmer argues that upon joining a collecting society, such as the PRS for Music,<sup>20</sup> the composer subsequently has little control over their own work and how it is used.<sup>21</sup> Cyril Ehrlich's, *Harmonious Alliance: a History of The Performing Right Society* is the most comprehensive study of the PRS (Performing Right Society). Unfortunately, as Ehrlich's study was published 1989, there is no reference to digital technologies, illegal downloading or interactive streaming, so in this respect it is somewhat outdated. That said, many of the issues raised in Ehrlich's book, such as the suitability of collecting societies for negotiating compulsory licenses and, most interestingly, the tension between preserving confidential information relating to licensing deals while at the same time being transparent to members and the public, are of real and current relevance. Achieving this balance has been problematic since the inception of the PRS. Ehrlich said of PRS in the late 1970s that 'secretiveness, which stemmed originally from creditable motives, had become obsessive, leaving members poorly informed, and outsiders suspicious'.<sup>22</sup> In 1996, a Monopolies and Mergers Commission report on the administration of performing rights found that '... PRS failed to consult the membership adequately and that its policies and procedures were not sufficiently transparent'.<sup>23</sup> While the internal workings of the PRS are not the focus of this article, this lack of transparency is an issue that still stalks PRS, and has particular resonance with its dealings with Spotify.

Patrik Wikstrom is something of a pioneer in the study of operational streaming platforms, Spotify included, rather than a theoretical critique of an abstract battle between access and ownership platforms.<sup>24</sup> Wikstrom states that Spotify has been able to '... negotiate agreements with rights holders which are both sustainable and fair for all parties'.<sup>25</sup> This statement neatly encapsulates the areas most in need of further research: it is precisely the sustainability and fairness, or otherwise, of Spotify's contribution to the 'basket of rights' that has been the source of most dispute in the popular press and music trade rhetoric. This raises a question that will be further examined later: is the Spotify model sustainable and fair for all Popular Music stakeholders? It is now time to focus on the second key concept identified earlier and one that historically has threatened the effectiveness of copyright: 'disruptive innovation'.

### **Technology: 'disruptive innovation'**

A functioning music copyright regime and profitable 'basket of rights' requires not only a suitable legal framework, but also appropriate technologies of production, dissemination and consumption of popular music. The term 'disruptive innovation' has its origins in the

field of business studies,<sup>26</sup> but the process it describes is one that has occurred cyclically throughout the history of popular music. Several scholars have tackled this historical process of technology-facilitated 'disruption' to popular music industries.<sup>27</sup> The popular music industries have traditionally been very susceptible to the effects of 'disruptive innovation', as seen in the development of the phonograph, radio and digital sampling. Historically these threats have invariably been converted into profitable allies by way of legislative change and market reorganization.

The late 1990s and the first decade of the twenty-first century have been characterized, both in academia and the industries, as a prolonged phase of technologically induced 'disruptive innovation' in the popular music industries and also in broader contexts. The main catalyst for this 'disruption' has been the growth of internet technologies and digitization. The disruptive nature of the Internet, specifically to the recording industry, has been the focus of a number of studies.<sup>28</sup> Illegal downloading or file sharing allows recorded music files to be transmitted electronically without the rights holder receiving payment. This period of internet-induced 'disruptive innovation' has coincided with a downturn in the sale of the physical products of the recording industry. There is little consensus on the extent of the damage done. While the BPI<sup>29</sup> argues that illegal downloading has resulted in a 40% decline in the revenues of the recording industry,<sup>30</sup> other appraisals of the downturn claim the effect of illegal downloading is 'statistically indistinguishable from zero'.<sup>31</sup> Between these extremes lie more balanced assessments of the impact that are more convincing, suggesting that a more complex set of factors is involved. Financial analysts Pricewaterhouse Coopers claim the recording industry was slow to respond to on-line opportunities, giving peer-to-peer sites a head start in forming on-line music consumption habits.<sup>32</sup>

It is not possible to identify a consensus on the question of whether there is a direct link between illegal downloading and the decline in recording industry revenues. As the extent of this effect is unclear, it is more useful to think of the advent of the digital delivery of music in authorized and unauthorized forms as the underlying cause of disruption to the traditional physical product-based business of the recording industry. The turbulence caused by 'disruptive innovations' is not merely a matter of money; rather, it generates deeper political ramifications. Simon Frith argues convincingly that throughout the history of popular music, technological developments have redistributed power within the music industries and musical production. Frith states that:

Technological change has also been the basic source of resistance to the corporate control of popular music. Examine the history of inventions in the recording industry and you find those that catch on are the ones that lead, at least in the short term, to the decentralization of music making and listening.<sup>33</sup>

The potential of these technologies to ‘decentralize’ as Frith describes is reflected in the concept of ‘disintermediation’, where arguments focus on the democratizing potential of internet technologies. In theory, digital technologies allow creator and consumer to bypass the rights companies that traditionally act as mediators or ‘middle-men’.<sup>34</sup> More recent studies have questioned the extent to which digitization has corrected traditional imbalances between corporate bargaining power and the individuals who create and consume popular music.<sup>35</sup> While modes of delivery may have changed in the digital age the ‘dominance of oligopolies of vertically integrated corporations, based on systems of copyright ownership and exploitation, are likely to remain intact’.<sup>36</sup> The growth of Spotify appears to be another step in the corporatization of the ‘celestial jukebox’.

### **Business Models: the ‘celestial jukebox’**

The Spotify business model is facilitated by the existence of the ‘celestial jukebox’.<sup>37</sup> The ‘celestial jukebox’ is not a tangible entity; instead, it is a network of compressed music files stored globally on servers and hard drives, conceptually occupying a non-material position in cyberspace. The early period of the internet and web-based distribution of music was uncontrolled and unregulated by either law or markets. The intensifying battle being fought between the iTunes and Spotify and others for control of the ‘celestial jukebox’ suggests corporate influence is gradually being exerted on music in the digital environment.

This transition has attracted the attention of scholars. Patrick Burkhardt describes the process, suggesting that ‘the transformation of the music industry into a service industry, or a disposable goods industry, is well under way’.<sup>38</sup> *The Intangibility of Music in the Internet Age* by Maria Styvén deals with the shift from recorded music product to recorded music service and is one of the most useful texts on this topic. Styvén queries whether music streaming services can rightly be considered a ‘like for like’ replacement of physical or even MP3 predecessors due to the potential difficulty in generating revenue from services characterized by their ‘extreme intangibility’.<sup>39</sup> Tom McCourt echoes these arguments and says of the shift from tangible products to intangible services, “the result is that ‘value’ is not an inherent character of the product, but the manner in which it reaches the consumer” (Mccourt 2005: 250). Michael Einhorn’s *Music Licensing in the Digital Age*, explores the possibility of streaming ultimately usurping both tangible and intangible music products as the dominant method of distributing and consuming recorded music in the digital age. “...Interactive streaming may offer subscribers access to entire catalogues in a manner that could displace needs for permanent ownership” (Einhorn 2002: 165).

Whether Spotify can mount a successful challenge to physical or digital ownership models is one of several questions that can be acknowledged here but will only be answered

in the fullness of time. Instead, the focus will now turn to the adequacy of the three concepts identified here when applied to this streaming service.

## **Discussion**

### *Spotify's contribution to the 'basket of rights'*

Every time Spotify allows a user to stream a song or a piece of music, a fee must be paid to the composer (or their publisher) and the owner of the recording, traditionally a record company. In the UK the payment to the composer is made by way of a standard minimum fee paid to the collecting society, the PRS for Music. The payment to the holder of the right relating to the recording is not negotiated by a collecting society and is instead negotiated individually with the 'Big 3' music companies, Merlin, the independent label network, and various approved music aggregator companies.

### *Free Music*

The fees required to achieve legitimate use of copyright protected compositions and recordings are financed in two ways: by subscriptions paid by users for the enhanced premium services and by revenues generated by advertising that punctuates the music streamed by non-premium users. It is these 'free' services that have attracted most attention in the mainstream and trade press. Providing music that is free to the consumer whilst generating revenue for the rights holder may seem to be akin to a kind of alchemy, but in reality the music is not free at all: it is paid for by advertising revenues rather than by the user.

The viability of such a model has been questioned on the grounds that the ad-supported model is fatally flawed, speculating that an exponential growth in users would result in an exponential growth in fees to rights holders that could not be matched by a similar increase in the advertising revenues required to finance the increased use. The long-term sustainability of ad-funded model remains the site of significant contention as Spotify continues to grow.<sup>40</sup>

### *Subscription Services*

The viability of subscription service model is less contentious, assuming, of course, that the difficulty of attracting a broad enough subscriber base can be overcome. Currently, at least, the disparity between the number of 'free' users and premium subscribers suggests that there

is considerably more interest in the free service than in the Premium one. In effect, Spotify Premium is in competition with its own ad-supported service and, so far, the 'free' service is winning the battle. The attraction of a share of subscription revenues is obvious because record companies and PRS would no longer be dependent on the number of streams achieved to generate revenue. Instead, reaping rewards based on the attractive subscription revenues that in 2009 at nearly £120 per year (£9.99 x 12 months) far exceeds what the average consumer spends on music in a year.<sup>41</sup>

While the potential benefits of a subscription service are evident, the level of reward currently paid to record labels and artists is unclear. Spotify is unequivocal in its commitment to rewarding the creators of the content that is central to its service, stating that 'Spotify is now generating serious revenues for rights holders ... making sure artists get a fair deal'.<sup>42</sup> Regardless of this assertion, Spotify is frequently attacked on the grounds that there is little or no transparency in the 'opaque' deals. Patrick Rackow of BASCA<sup>43</sup> says of Spotify's dealings with composers in particular: 'It's not an open system and if it's not an open system [then] there's no way of saying whether or not it's a fair system'.<sup>44</sup> Rackow succinctly describes why that lack of transparency is the main impediment facing any individual wishing to assess the fairness, or otherwise, of Spotify's dealings with composers and performers. The levels of payment offered by Spotify, particularly to creators, and the ramifications of this are certainly areas in need of further research.

#### *Spotify: disruption or solution?*

Music streaming has a particularly complex relationship with the notion of 'disruptive innovation'. Streaming and Spotify can in some respects be considered disruptive innovations that challenge the traditions of ownership in the recording industry business model. Conversely, Spotify has been heralded as the antidote to music industries' most recent and pervasive disruptive innovation, the internet.

As alluded to earlier, the advent of the internet has brought new challenges to the recording industry, principally involving a technology-induced loss of control of the distribution and delivery of recorded music. While no direct correlation has been demonstrated between illegal downloading and the downturn experienced by the recording industry, it does seem reasonable to assert that there has been an overall change in consumer behaviour as digital distribution and consumption channels develop. BPI (British Phonographic Industry) figures support this, indicating that in the period between 2000 and 2011, the sale of albums dropped by 15.7%

while the growth of single track sales has grown by 219% in the same period.<sup>45</sup> Of the 113 million albums sold in the UK in 2011, 86 million were physical products, illustrating that, although the overall sale of albums has declined, the physical album is still a highly valuable product to the UK recording industry. In the singles market, however, the move to digital is far more pronounced: 176 million sales were digital downloads compared with 1 million physical singles.

These statistics reveal two trends relevant to this article. First, they reflect the ‘unbundling’ of the album in favour of sale of single tracks,<sup>46</sup> indicating that there is a consumer appetite for the facility to cherry-pick specific songs. This is a process that could significantly damage overall revenues of the recording industry, an industry that has been constructed on selling albums or bundles of tracks. Second, the BPI figures suggest increasing consumer acceptance of authorized digital means of consuming recorded music. These trends suggest that consumption of recorded music is not in decline. Rather, it seems that it is the method of consumption that is changing significantly.

Historically, rights companies such as record companies have sought non-market solutions in the form of new legislation to protect their interests against perceived market threats and to gain commercial advantage rather than engaging with new technologies.<sup>47</sup> Spotify has been presented as a somewhat belated market-based solution to the perceived problem of illegal downloading. Paul Brown of Spotify is quite explicit in his claims that his service is one such market-based solution, stating that ‘Spotify is in the early stages of its journey but is taking people from piracy, is growing revenues and is an independent company delivering significant revenues back to the industry’.<sup>48</sup> It is not only Spotify that subscribes to the notion that the service offers a significant legal alternative to illegal downloading. Rob Wells of Universal Music states: ‘What I do know about Spotify is that 80 per cent of the user base of the free service have come in from file-sharing services’.<sup>49</sup> Recent research presented by Will Page, Director of Economics at Spotify, supports Wells’s assertion that the service can combat piracy.<sup>50</sup> Focusing on The Netherlands and Italy, Page concludes that Spotify can significantly reduce music piracy without compromising legitimate digital sales. The source of this research can hardly be considered genuinely impartial, but that is not to say it is without merit. If these findings are indeed accurate for the countries in question, it remains unclear whether the findings hold true for other larger markets such as the UK market that is the focus of this article.

While the question ‘does Spotify take people away from piracy?’ is a valid one, any conclusions should not be distilled into a convenient binary of ‘legal versus illegal’. As Page acknowledges, illegal sites, while operating outside the law, are themselves functioning businesses that compete in an ongoing battle for market share with authorized platforms.<sup>51</sup> In reality, the battle for control of digital music distribution and music service provision has

never been simply a battle between the legal and the illegal.<sup>52</sup> Rather, it is a battle between new technologies and business models to establish legitimacy and control of the 'celestial jukebox'.

### **The battle for control of the 'celestial jukebox'**

Writing in 1994, Paul Goldstein described the 'celestial jukebox' as '... a technology-packed satellite orbiting thousands of miles above the Earth, awaiting a subscriber's order – like a nickel in the old jukebox, and the punch of a button'.<sup>53</sup> Writing some ten years later, Burkhardt and McCourt's assessment of the development of the 'jukebox' took the view that it was almost complete: '...the technical and legal design of the celestial jukebox nears completion.'<sup>54</sup> In 2013, it seems as though this process has progressed still further as the transition of the business involved in the provision of recorded music is currently undergoing a shift from one concerned with tangible objects to one that produces and sells intangible services. The 'celestial jukebox', like a non-celestial jukebox, requires the user to pay to hear music, and some of this payment goes to the rights holders of that music, including the composer. In this sense the 'celestial jukebox' shows that the digital delivery of music is gradually being harnessed by corporate agencies after an initial period of instability, a period that in many ways conforms to the cyclical process of 'disruptive innovation' seen through the history of popular music.

#### *Ownership or access?*

Intangibility is a relative term and this can be seen in the fundamental difference between the two primary ways of accessing the 'celestial jukebox'. Download services offer a massive variety of music available 24 hours a day anywhere with an Internet connection and subsequently allow the user unlimited personal use of the files they have downloaded. The downloaded MP3 file, although abstract and intangible, does retain many of the characteristics of a product. Each album, or more commonly a single track, attracts a one-off fee that is divided up between, retailer, record company, performer and writer. Upon paying this fee, the consumer owns the copy of the track (subject to various legal caveats relating to how they use it) and stores it on their hard drive, mobile device or burns it on to a CD. In this sense MP3 files are not entirely dissimilar to a physical product, and thus iTunes, Napster and the other digital retailers are not so different from traditional record stores. Even illegal downloading retains the notion of

ownership, albeit unauthorized.

Interactive streaming, on the other hand, can be seen as the most extreme manifestation of intangibility.<sup>55</sup> By removing the download aspect of music consumption, the interactive streaming model deviates from the proprietary nature of download services; instead, moving towards a rental model where files are not downloaded or stored, all that is downloaded is the application that allows, theoretically at least, unlimited access to what Spotify's marketing describes as 'all the music, all the time'. Andersson illustrates the potential shortcomings of music ownership compared with access models:

... the ephemeral nature of the digital data; your hard disk will ultimately crash, your mobile phone will ultimately be replaced, and your computer inevitably begins to fail after a longer period of use... streaming services like Spotify are believed to make the need for stationary data redundant.<sup>56</sup>

Non-ownership based music services are not a new phenomenon in the delivery of recorded music; radio has been used as a music service since the early twentieth century. There are striking similarities between the ad-funded service of Spotify and commercial radio, where advertising revenue is also used to pay rights holders. In the UK there are also the BBC radio stations that are funded by licence fee payers and this could be likened to a subscription service as the listener is paying for the use of music without having to also listen to adverts in between tracks. The fundamental difference between the two services is the interactive nature of streaming. Although listeners are attracted to radio stations by the promise of genre-specific listening (such as Classic FM or Smooth Radio), the listener chooses the station on the understanding they will hear a certain type of music but will have little or no influence over the specific musical works they will hear. This type of passive, genre or age-group specific service offered by radio is diametrically opposed to the 'all music, all the time' model of Spotify.

Spotify's marketing is quite categorical in its claims that the access they offer to recorded music is unlimited in terms of choice:

Any track you like, any time you like. Just search for it in Spotify, then play it. Any artist, any album, any genre - all available instantly. With Spotify, there are no limits to the amount of music you could listen to. Just help yourself to whatever you want, whenever you want it.<sup>57</sup>

These claims of access to 'all the music' must be tempered by the fact that authorized access is dependent on the co-operation of rights holders. As Andersson observes, 'the only limitation, aside from the inquisitiveness of the listener, is the breadth of its catalogue of collected songs available, as it is limited by copyright restrictions that are both temporal and regional'.<sup>58</sup> Indeed, there are still a number of notable non-participants in Spotify, such as ACDC, The Beatles and

Led Zeppelin, though these 'holdouts' are diminishing in number. Rather than literally enabling access to 'all music', these services are involved in creating the illusion of limitless access and in this respect Spotify cannot compete with the range of choice offered by unauthorized P2P sources that operate beyond the scope of copyright.

#### *A hybrid service*

Spotify and similar streaming platforms represent something of a hybrid mode of consuming music that combines the service elements of radio with the 'à la carte' qualities of legal and illegal downloading presented with almost identical functionality to the dominant iTunes platform. Replacing permanent ownership is the stated aim of the Spotify project, and convincing users that the value lies in having access to music without necessarily owning it is the fundamental challenge facing the company. That said, Spotify attempts to achieve these objectives by operating in a way that existing consumers of digital music are likely to be familiar with. By creating a platform that resembles so closely, in appearance and functionality, the ownership model of iTunes, the transition from ownership to service model should not be particularly disruptive to the habits of music listeners.<sup>59</sup>

It is somewhat premature to predict the demise of the MP3 format in the way that earlier formats such as vinyl and cassette declined, but that is exactly what Daniel Ek of Spotify suggests is imminent. Ek can hardly be described as an impartial commentator, but his argument is certainly an interesting one:

Music needs to be like water. It needs to be ubiquitous. We need to understand that this is not about MP3 files anymore; the MP3 file has become the URL and through that unique identifier I can send you something and you'll be able to know what it is and listen to it.<sup>60</sup>

The accuracy of Ek's prediction can only be tested over time, but Spotify and other streaming services represent the most extreme manifestation of the shift of recorded popular music from product to service. The argument here is that Spotify offers 24/7 access to the 'celestial jukebox' by combining the service qualities of radio with the 'à la carte' qualities of ownership of physical and digital products. In doing so, Spotify challenges the proprietorial traditions of the recording industry by presenting an access-based service that negates the need for ownership of records, CDs or even MP3 files. Spotify and a growing number of similar platforms are at the vanguard of this transition.

## Where to now?

To bring this article to a close, it is important to identify key unanswered questions and areas ripe for further research that have emerged from the discussion here. Central to all of these are the ramifications of the emergence and continued expansion of Spotify for the copyright regime and key music industries stakeholders: creators, record companies and consumers.

Until now, music streaming services have developed and grown without any alteration to the existing copyright regime,<sup>61</sup> yet the level of reward offered by Spotify to creators (composers/artists/performers) has been the source of considerable condemnation. Therefore it is vital to penetrate the 'opaque' deals struck between Spotify and corporate rights holders in order to assess the fairness and sustainability of these deals for creators.

Creators are, however, traditionally dependent on record companies to realize their artistic vision. Although characterized to a large extent as rights companies, record companies are far more than simply rights investors. Record companies perform a vital role in spotting and developing talent as well as acting as tastemakers and gatekeepers for consumers, particularly those independent labels whose main business remains the sale of recorded music products. As the provision of recorded music increasingly becomes a service industry, what function will record companies have in the intangible age of the 'celestial jukebox'?

The market will ultimately decide the future of the Spotify service and, more generally, music streaming as a viable, long-term proposition. At present, the sale of physical and digital products still dominates the market in terms of users and revenues generated. That said, streaming services are growing rapidly in terms of user engagement, catalogue and revenue generated. In theory, music streaming means the listener need no longer consume; rather, they simply access, which leads to the logical question: do music 'fans' need to 'own' music? The final, and perhaps most significant, question underpinning all of the discussion here is: what does the proliferation of music streaming services mean for the musical creators whose work is the fundamental and indispensable component of these services?

## Conclusion

Using Spotify as an example, this article has sought to identify key theoretical tools from the existing canon of academic literature that may be utilized in the study of music-streaming, namely the 'basket of rights', 'disruptive innovation' and the 'celestial jukebox'. The discussion found Spotify to be simultaneously heralded as a solution to the disruptive force of illegal downloading and a disruptive innovation that threatens to catastrophically devalue the 'basket of rights'. This apparent contradiction is indicative of highly subjective and politicized rhetoric

that pits 'legal' versus 'illegal' modes of delivery. These polarized characterizations present an unhelpful, and indeed false, dichotomy.

The argument here asserts that by combining the service characteristics of radio with the 'à la carte' functionality of downloads, Spotify creates a hybrid service that should not be thought of as an antidote to illegal downloading nor indeed a threat to the 'basket of rights'. Rather, Spotify is engaged in a contest with all forms of digital delivery, authorized and unauthorized, as corporate operators steadily exert increasing control over the digital realm. Having identified a number of key threads ripe for future research, the challenge now is to construct an appropriate methodological framework to set about addressing these as yet unanswered questions.

## Endnotes

1. Brown 2010; Barnett 2010.
2. Ingham 2013.
3. Hooper 2012, p. 37.
4. BPI 2013.
5. Spotify 2013. The service may be accessed from [www.spotify.com](http://www.spotify.com).
6. Deezer (France) WiMP (Norway) Juke (Germany), Blinkbox (UK) are examples of streaming services that offer variations on the streaming model in a number of territories.
7. Wikstrom 2009, p. 175.
8. Andrews 2012.
9. Ek 2012.
10. Mills 2013.
11. For example, see Ahmed & Mostrous 2009; Page 2009; Lindvall 2009; Brown 2010; Forde 2011; Page 2013.
12. Frith and Marshall 2004, p. 211.
13. Wallis 2004, p.103; Frith 2004, p. 117.
14. Big 3' music companies: Sony Music Entertainment, Universal Music Group and Warner Music Group.
15. Macmillan 2002, p. 113.
16. Macmillan 2002, p. 113.
17. Wallis 2004, p. 103.
18. Wallis 2006; Caves 2000; Peacock and Weir 1975.
19. Kretschmer 2002, p.141.
20. PRS for Music, the UK collecting society previously and still commonly known as 'The PRS' (The

Performing Right Society), was founded 1914. The umbrella organisation PRS for Music now includes MCPS (Mechanical Copyright Protection Society), originally founded in 1924 to collect royalties for composers and publishers when their work is mechanically reproduced. See [www.prsformusic.com](http://www.prsformusic.com).

21. Kretschmer 2002, p. 154.
22. Ehrlich 1989, p. 145.
23. MMC 1996, p. 4.
24. Wikstrom 2009; Wikstrom 2012.
25. Wikstrom 2009, p. 175.
26. Christensen and Raynor 2003.
27. Théberge 2004; Frith 2004.
28. Hesmondhalgh 2009; Connolly and Krueger 2004; Alderman 2001.
29. The BPI, formerly British Phonographic Industry, is the recording industry trade organization founded in 1973 by the major record companies and various independent labels. See [www.bpi.co.uk](http://www.bpi.co.uk).
30. Taylor 2010.
31. Oberholzer-Gee and Strumpf 2005, p. 1.
32. PwC 2008.
33. Frith 2004, p. 113.
34. Bockstedt, Kauffman and Riggins 2005; Alexander 1994.
35. Hesmondhalgh 2009; Wallis 2006.
36. Hesmondhalgh 2009, p. 58.
37. Goldstein 1994.
38. Burkhart 2005, p. 490.
39. Styvén 2007, p. 68.
40. Presencer 2013.
41. Page 2009.
42. Spotify 2012.
43. British Academy of Songwriters Composers and Authors is an organisation that seeks to 'support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing'. See [www.basca.org.uk](http://www.basca.org.uk).
44. Rackow 2010.
45. BPI 2012.
46. Altinkemer & Bandyopadhyay 2000, p. 214.
47. Klimis and Wallis 2009, p. 277.
48. Brown 2010.
49. Wells 2010.

50. Prior to taking up his post with Spotify in October 2012, Will Page was Chief Economist with PRS for Music.
51. Page 2013, p. 3.
52. Blanchette 2004, p. 25.
53. Goldstein 2004, p. 349.
54. Burkhart and McCourt, p. 349.
55. Styvén 2007, p. 68.
56. Andersson 2010.
57. Spotify 2010.
58. Andersson 2010, p. 63.
59. Andersson 2010.
60. Ek 2010.
61. One of the most significant 'non-market' interventions in the field of music streaming is the involvement of the Copyright Tribunal in a dispute between a number content users and PRS for Music (see Copyright Tribunal 2007). In spite of the ruling of the Copyright Tribunal and the huge cost to both sides (the most expensive case ever brought before the Tribunal), the rates set by the Tribunal were subsequently disregarded in the PRS Joint Online Licence in July 2009 (Shaw 2009). The standard 'per-stream' rate set by the Tribunal in 2007 of 0.22p was reduced to 0.085p, a cut of over 60%.

## Bibliography

- Ahmed and Mostrous 2009: Murad Ahmed and Alexi Mostrous, 'Music Labels Fight Pirates Through Spotify', *The Times Online*: [http://entertainment.timesonline.co.uk/tol/arts\\_and\\_entertainment/music/article5786408.ece](http://entertainment.timesonline.co.uk/tol/arts_and_entertainment/music/article5786408.ece) (accessed 10 April 2012).
- Alderman 2001: John Alderman, *Sonic Boom: Napster, MP3 and the New Pioneers of Music* (London: Fourth Estate, 2001).
- Alexander 1994: Peter J. Alexander, 'New Technology and Market Structure: Evidence From the Music Recording Industry', *Journal of Cultural Economics*, 18 (1994): 113–23.
- Altinkemer and Bandyopadhyay 2000: Kemal Altinkemer and Subhajyoti Bandyopadhyay 'Bundling and Distribution of Digitized Music over the Internet', *Journal of Organizational Computing and Electronic Commerce*, 10/3 (2000): 209–24.
- Andersson 2010: Jonas Andersson, 'The Metamorphosis of Music-Listening and the (Alleged) Obliteration of the Aura', in Nedim Hassan and Holly Tessler (eds), *Sounds of the Overground: Selected Papers from a Postgraduate Colloquium on Ubiquitous Music and Music in Everyday Life* (Turku, 2010), pp. 58–71: <http://iipc.utu.fi/overground/andersson.pdf> (accessed 9 August 2010).
- Andrews 2012: Robert Andrews, 'Spotify Sales Near \$900 Million, but Reach comes before Return', *PaidContent* (2012): <http://paidcontent.org/2012/04/13/spotifysales/>

(accessed 30 July 2013).

Barnett 2010: Emma Barnett, 'Spotify Rejects Claims that it Rips off Artists', *Telegraph* (14 April 2010): <http://www.telegraph.co.uk/technology/7590782/Spotify-rejects-claims-that-it-rips-off-artists.html> (accessed 28 July 2013).

Blanchette 2004: Kasie R. Blanchette, 'Effects of MP3 Technology on the Music Industry: an Examination of Market Structure and Apple iTunes', Honours thesis (College of the Holy Cross, 2004): [http://academics.holycross.edu/files/econ\\_accounting/blanchette\\_thesis.pdf](http://academics.holycross.edu/files/econ_accounting/blanchette_thesis.pdf)

Bockstedt, Kauffman and Riggins 2005: Jesse Bockstedt, Robert J. Kauffman and Frederick J. Riggins, 'The Move to Artist-Led Online Music Distribution: Explaining Structural Changes in the Digital Music Market', in *Proceedings of the 38<sup>th</sup> Hawaii International Conference on System Sciences* (2005).

BPI 2012: 'Music Sales Slip in 2011 but Digital Singles and Albums Grow Strongly': <http://www.bpi.co.uk/assets/files/music%20sales%20slip%20in%202011%20but%20digital%20grow%20strongly.pdf> (accessed 24 February 2012).

BPI 2013: 'Digital Music Nation': [https://www.bpi.co.uk/assets/files/BPI\\_Digital\\_Music\\_Nation\\_2013.PDF](https://www.bpi.co.uk/assets/files/BPI_Digital_Music_Nation_2013.PDF) (accessed 30 July 2013).

Brown 2010a: Jonathan Brown, 'Spotify: 1 Million Plays, £108 Return', *Independent* (14 April 2010): <http://www.independent.co.uk/arts-entertainment/music/news/spotify-1-million-plays-108-return-1944051.html> (accessed 30 July 2013).

Brown 2010b: Paul Brown, as quoted in Barnett 2010.

Burkart 2005: Patrick Burkart, 'Loose Integration in the Popular Music Industry', *Popular Music and Society*, 28/4 (2005): 489–500.

Burkart and McCourt 2004: Patrick Burkart and Tom McCourt, 'Infrastructure for the Celestial Jukebox', *Popular Music*, 23/3 (2004): 349–62.

Caves 2000: Richard E. Caves, *Creative Industries: Contracts between Art and Commerce* (London: Harvard University Press, 2000).

Christensen and Raynor 2003: Clayton M. Christensen and Michael E. Raynor, *The Innovator's Solution: Creating and Sustaining Successful Growth* (Boston: Harvard Business School Press, 2003).

Ehrlich 1989: Cyril. Ehrlich, *Harmonious Alliance: a History of the Performing Right Society* (Oxford: Oxford University Press, 1989).

Einhorn 2002: Michael Einhorn, 'Music Licensing in the Digital Age', in Ruth Towse (ed.), *Copyright in the Cultural Industries* (Cheltenham: Edward Elgar, 2002), pp. 165–75.

Ek 2010: Shane Richmond, 'Spotify "Growing Healthily and on Track for US Launch": Spotify is still on Track to Launch in the US This Year, Daniel Ek has told the Telegraph', *Telegraph*: <http://www.telegraph.co.uk/technology/news/7889670/Spotify-growing-healthily-and-on-track-for-US-launch.html>

Ek 2012: Eliot Van Buskirk, 'Daniel Ek on Spotify, Community and Music's Future' (2 February 2012): <http://www.grammy.com/news/daniel-ek-on-spotify-community-and-musics-future>

- Frith 2004: Simon Frith (ed.), *Popular Music: Critical Concepts in Media and Cultural Studies* (London: Routledge, 2004).
- Frith and Marshall 2004: Simon Frith, and Lee Marshall (eds), *Music and Copyright* (2nd edn, Edinburgh: Edinburgh University Press, 2004).
- Goldstein 1994: Paul Goldstein quoted in Patrick Burkart and Tom McCourt. 2004 'Infrastructure for the Celestial Jukebox' *Popular Music*, 23/3 (2004): 349–62.
- Hesmondhalgh 2009: David Hesmondhalgh, 'The Digitalisation of Music', in Andy C. Pratt and Paul Jeffcutt (eds), *Creativity, Innovation and the Cultural Economy* (London: Routledge, 2009), pp. 57–73.
- Hooper 2012: Richard Hooper, 'Rights and Wrongs: is Copyright Licensing Fit for Purpose for the Digital Age? The First Report of the Digital Copyright Exchange Feasibility Study', Intellectual Property Office (2012): <http://www.ipo.gov.uk/dce-report-phase1.pdf> (accessed 23 April 2012).
- Ingham 2013: Tim Ingham, 'Thom Yorke Albums Pulled from Spotify – Artists Paid “F\*ck All”, says Godrich', *Music Week* (14 July 2013): <http://www.musicweek.com/news/read/thom-yorke-albums-pulled-from-spotify-artists-paid-f-ck-all-says-godrich/055375> (accessed 30 July 2013).
- Klimis and Wallis 2009: George Michael Klimis and Roger Wallis, 'Copyright and Entrepreneurship: Catalyst or Barrier?', *Information, Communication & Society*, 12 (2009), 267–86: <http://www.tandfonline.com/doi/abs/10.1080/13691180802459989> (accessed 12 April 2012).
- Kretschmer 2002: Martin Kretschmer, 'Copyright Societies do not Administer Individual Property Rights: the Incoherence of Institutional Traditions in Germany and the UK', in Ruth Towse (ed.), *Copyright in the Cultural Industries* (Cheltenham: Edward Elgar, 2002), pp. 140–64.
- Lindvall 2009: Helienne Lindvall, 'Behind the Music: the Real Reason why the Major Labels Love Spotify', *The Guardian* (17 September 2009): <http://www.guardian.co.uk/music/musicblog/2009/aug/17/major-labels-spotify> (accessed 30 July 2013).
- Macmillan 2002: Fiona Macmillan, 'Copyright and Corporate Power', in Ruth Towse (ed.), *Copyright in the Cultural Industries* (Cheltenham: Edward Elgar, 2002), pp. 99–118.
- McCourt 2005: Tom McCourt, 'Collecting Music in the Digital Realm', *Popular Music and Society*, 28/2 (2005): 249–52.
- Mills 2012: Martin Mills, quoted in Tom Pakinkis, 'Streaming Pays “Much More Than Radio” for Some Beggars Artists', *Music Week* (1 August 2012): <http://www.musicweek.com/news/read/streaming-pays-much-more-than-radio-for-some-beggars-artists/051212>
- Monopolies and Mergers Commission 1996: Monopolies and Mergers Commission, 'Performing Rights: a Report on the Supply in the UK of the Services of Administering Performing Rights and Film Synchronisation Rights' (1996): [http://webarchive.nationalarchives.gov.uk/+http://www.competition-commission.org.uk/rep\\_pub/reports/1996/fulltext/378c1.pdf](http://webarchive.nationalarchives.gov.uk/+http://www.competition-commission.org.uk/rep_pub/reports/1996/fulltext/378c1.pdf) (accessed 24 April 2012).
- Oberholzer-Gee and Strumpf 2004: Felix Oberholzer-Gee and Koleman Strumpf, 'The Effect of File-Sharing on Record Sales: An Empirical Analysis' (March 2004): [http://www.unc.edu/~cigar/papers/FileSharing\\_March2004.pdf](http://www.unc.edu/~cigar/papers/FileSharing_March2004.pdf) (accessed 24 April 2012).

- Page 2009: Will Page, 'How to Dance to ARPU, when Licencees Call the Tune', *Economic Insight*, 16 (4 November 2009): <http://www.prsformusic.com/creators/news/research/documents/economic%20insight%2016%20arpu.pdf> (accessed 5 August 2013).
- Page 2013: Will Page, 'Adventures in the Netherlands: Spotify, Piracy and the New Dutch Experience' (17 July 2013): <http://press.spotify.com/uk/2013/07/17/adventures-in-netherlands/> (accessed 1 September 2013).
- Peacock and Weir 1975: Alan T. Peacock and Ronald B. Weir, *The Composer in the Market Place* (London: Faber Music, 1975).
- Presencer 2013: Lohan Presencer, 'Streaming Sustainability' [http://www.huffingtonpost.co.uk/lohan-presencer/spotify-streaming-sustainability\\_b\\_4015442.html](http://www.huffingtonpost.co.uk/lohan-presencer/spotify-streaming-sustainability_b_4015442.html) (accessed 28th October 2013).
- PwC 2008: Pricewaterhouse Coopers 2008, 'On Media: Recorded Music – Who Benefits From Digital?': [http://files.goc.nl/files/pdf/bronnen\\_per\\_wereld/08%20film%20Who%20benefits%20from%20digital%20media.pdf](http://files.goc.nl/files/pdf/bronnen_per_wereld/08%20film%20Who%20benefits%20from%20digital%20media.pdf) (accessed 25 October 2013).
- Rackow 2010: Patrick Rackow, interview with Kenneth Barr, 23 July 2010.
- Shaw 2009: Andrew Shaw, quoted in 'PRS Launches New Rates for Music Streaming' (26 May 2009): <http://www.prsformusic.com/aboutus/press/latestpressreleases/Pages/PRSforMusicLaunchesNewRatesforMusicStreaming.aspx> (accessed 25 March 2012).
- Spotify 2010: <http://www.spotify.com/uk/about/features/> (accessed 28 July 2013).
- Spotify 2012: <http://www.spotify.com/uk/about-us/press/germany/> (accessed 24 April 2012).
- Spotify 2013: <http://press.spotify.com/uk/information/> (accessed 24 July 2013).
- Styvén 2007: Maria Styvén, 'The Intangibility of Music in the Internet Age', *Popular Music and Society*, 30/1 (2007): 53–74.
- Taylor 2010: G. Taylor, 'Never Mind the Billshock: <http://web-archive-uk.com/page/57170/2012-06-17/http://www.bpi.co.uk/blog/post/Never-Mind-The-Billshock.aspx>' (accessed 25 October 2013).
- Théberge 2004: Paul Théberge, 'Technology, Creative Practice and Copyright', in Simon Frith and Lee Marshall (eds), *Music and Copyright* (Edinburgh: Edinburgh University Press, 2004), pp. 139–56.
- Wallis 2004: Roger Wallis, 'Copyright and the Composer', in Simon Frith and Lee Marshall (eds), *Music and Copyright* (Edinburgh: Edinburgh University Press, 2004), pp. 103–22.
- Wallis 2006: Roger Wallis, 'The Changing Structure of the Music Industry: Threats to and Opportunities for Creativity', in *Music and Manipulation: On the Social Uses and Social Control of Music* (Oxford: Berghahn Books, 2006), pp. 287–311.
- Wikstrom 2009: Patrik Wikström, *The Music Industry: Music in the Cloud* (Cambridge: Polity Press, 2009).
- Wikstrom 2012: Patrik Wikström, 'A Typology of Music Distribution Models', *International Journal of Music Business Research*, 1 (April 2012), 7–20: [http://vuh-la-risprt.herts.ac.uk/portal/files/1449598/D\\_Collopy\\_IJMBR\\_Volume\\_1\\_no\\_1\\_April\\_2012.pdf#page=7](http://vuh-la-risprt.herts.ac.uk/portal/files/1449598/D_Collopy_IJMBR_Volume_1_no_1_April_2012.pdf#page=7) (accessed 30 July 2013).