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Rethinking Royalties: Spotify's New Streaming Threshold

Bing Image Creator prompted with "a Spotify-shaped pie being divided in a gothic noir style"

Edited by CREATe Knowledge Exchange Officer Arthur Ehlinger

Spotify, the leading music streaming service, is on the brink of implementing significant alterations to its royalty payment structure. The change is aimed at addressing 3 key areas: the earnings of low-streaming acts, the categorisation of non-music tracks, and the issue of fraud by distributors and labels.

Of the proposed regulations, our focus today narrows down on one change: the introduction of a minimum 1,000 streams within the preceding 12 months to be eligible for royalties. Spotify's stance on this change is clear: the platform asserts that it will not increase its revenue; instead, it will redistribute the existing music royalty pool more effectively, which remains unchanged in its total value. Notably, Spotify indicates that

99.5% of all streams on its service are of tracks that already surpass this 1,000-stream benchmark annually, consequently standing to gain more.

In this post, CREATe researchers explore what this new policy might mean for the ecosystem of music creation and distribution.

Joost Poort (CREATe Fellow) - Associate Professor and Co-director Institute for Information Law - University of Amsterdam

"People and companies respond to economic incentives. This is why tax systems need to be revised every now and then, and the same goes for Spotify's royally payout rules. The 0,5% percent of total royalties which is allegedly affected by this is still a handsome pot of money of around $40 million per year. Is it fair to deprive a group of rightsholders from this? The normative answer here is an obvious 'no': small, indie artists deserve our sympathy and access to the very long tail of around a hundred million tracks is what makes Spotify so attractive to consumers.

But there is also an efficiency argument here. Allegedly, the cut-off would affect tracks with a less than 5 $cent payout per month. Here, we find many tracks for which the processing costs of the payout exceed the actual payout by far. As these transaction costs ultimately come out of the budget available for rightsholders, one could reframe the earlier question as: is it fair to seek a balance between penny-payouts and their transaction costs, to the benefit of rightsholders at large? I believe here, the answer should be 'yes'."

Amy Thomas - Lecturer in Intellectual Property and Information Law

"On the face of it, the intention to increase the overall royalty pool available for legitimate creators is admirable. However, it is unclear how this arbitrary minimal threshold will help Spotify to achieve this purpose. In the same vein, given the very small amount of money that these tracks would have generated *without* the new policy, it is not immediately obvious that the reduction to nil will have a disproportionate effect on revenue generation for smaller artists. But likewise, nor is it clear how these small amounts are constituting such a drain on Spotify's revenues as to justify a wholesale removal of them.

What I think is the more concerning issue raised by this is the fact that the arbitrary line *can* be drawn in the first instance. As a significant gatekeeper for creators looking to enter the music market, the contractual terms set by Spotify are both influential and an exercise in taking freedom of contract to its natural conclusion. This may be an opportune time to revisit discussions concerning unwaivable equitable remuneration rights for creators, and notably the 'gap' in copyright law which does not extend this right to on-demand streaming services."

Kenny Barr - Research Associate

"As several commentators have observed, this amendment to the Spotify royalty system potentially constructs a new compartment of the so-called 'black box' where 'disregarded' royalties are distributed to sound recording rightsholders on a pro rata basis. In the winner-takes-all market of music streaming, it follows that superstar artists and major rightsholders stand to gain most. Critics have characterised changes mooted by Spotify as an opportunistic landgrab by powerful incumbents at the expense of music creators and micro-producers operating in the 'long tail' of demand. There are, however, clear parallels with the model Spotify is proposing and Deezer's recently announced 'artist-centric' initiative with Universal Music Group. This indicates Spotify is not alone in seeking to recalibrate the music streaming royalty system. "

Arthur Ehlinger – PhD Candidate & Knowledge Exchange Officer

"Spotify's new policy might just be the tip of the iceberg, signalling the onset of a broader discussion about how cultural industries should navigate the challenges posed by the attention economy. With an overwhelming abundance of content vying for a finite amount of consumer attention, the harsh reality is that not all content can be monetarily successful. This issue becomes particularly pronounced in the context of music streaming where the royalties intended for smaller artists often gets lost in the system, failing to benefit anyone. Therefore, isn't it better that they contribute to someone's earnings? Nevertheless, it is crucial to scrutinise and debate these decisions carefully. Today, it's 1,000 streams; what stops it from becoming 10,000 or even 100,000 in the future? Allowing a private entity to unilaterally set these benchmarks could be akin to opening Pandora's box."

Martin Kretschmer - Professor of Intellectual Property Law

"There is strong evidence that the winner-takes-all dynamics of cultural markets are accelerating in the age of digital platforms and AI. We see this in the labour market surveys we have conducted since 2006 and in the evidence available from streaming service data (60% of music streams were of music recorded by the top 0.4% of artists; over 400% increase in artists earning more than $10m pa in Spotify royalties 2017-22).

There is much less clarity about what to do about it, or if it is a problem at all. From a consumer perspective, all seems fine according to the Competition and Markets Authority (CMA). There is more content than ever at affordable prices. The fact that there is no supply problem however does not make for happy creators nor does it address wider societal and economic questions of diversity or platform power. We need to understand the aims and potential effects of proposed interventions much better (such as a remuneration right for authors and performers, transparency obligations, rights reversal, or data interoperability and portability)."

Magali Eben - Senior Lecturer in Competition Law

"By requiring a minimum number of streams before royalties can be paid out, music made by 'professional artists' will count more – these artists are the ones driving most platform engagement. Professor Amelia Fletcher recently signalled that there may be competition law issues here: as Spotify – likely the dominant player in the market – is in effect applying discriminatory terms to the various music creators on its platform.

Whether or not there is in fact a breach of competition law will, admittedly, depend on a variety of factors, including the benefits to consumers and the industry as a whole.

Whether competition law should care about more than this is an open question. As platforms amass more power over creators, as well as over the consumption choices of listeners, it becomes increasingly pressing to ask what their responsibility is towards the various groups using their services: should they ensure a level playing field for all creators using their platforms, regardless of the revenue they bring to the platform itself? Should they ensure a diversity of consumption for consumers, or should they refrain from directing consumption entirely? Should they play a role in ensuring a 'fair' distribution of royalties within the industry? Perhaps these questions can be answered under the new regulations on digital markets, rather than competition law."

Konstantinos Stylianou - Professor of Competition Law and Regulation

"Spotify's new plans may raise concerns under competition law as well, but only if Spotify is deemed to be a dominant player. It is commonly thought that Spotify is indeed dominant in the market for the provision of streaming services to music producers. But this may be too narrow of a market definition. It implies that Spotify only competes with other streaming services. This may be untrue. Music producers want their music to reach an audience, whether that will be through a streaming service, an on-demand platform like YouTube, the radio, or even through physical media. Sure, these modalities are not perfect substitutes for each other, but they are substitutes enough to meaningfully constrain each other. One cannot automatically assume that streaming and other avenues of listening to music are not substitutable with each other, the same way that one cannot assume that Uber only competes with Lyft and similar platforms, and not with regular taxis, public transportation, etc. If indeed Spotify does compete with YouTube, the radio, physical media, as well as other streaming services, then Spotify is not a dominant player."

Aline Iramina - Lecturer in Intellectual Property Law

"One of the main complaints of music creators in recent years, especially independent and emerging artists, has been not only the low but also the unfair remuneration they receive from music streaming services. They have criticised the unfair and unbalanced system that has mostly favoured rightsholders, particularly major labels. In this context, the EU adopted the Copyright in the Digital Single Market Directive (CDSMD), which provides for some legal solutions to empower music authors and performers and ensure a fair and proportionate remuneration. These include provisions guaranteeing the right of revocation, contract-adjustment mechanisms for creators and transparency obligations for sub-licensees and licensees or transferors (e.g. streaming services and labels).

The same provisions were proposed by the DCMS Committee in its final report on the Economics of Music Streaming Inquiry and the Government has conducted studies to analyse their adoption in the UK. If Spotify's new payment policy is indeed implemented, it could be an opportunity to start testing whether some of these new legal mechanisms are sufficient to empower creators, especially independent artists in the EU. For example, whether the new transparency obligations can require labels and Spotify to share information with performers about how they are distributing the greater royalty pool resulting from this demonetisation policy. This may encourage the UK and other countries to adopt similar provisions or show the need to explore other solutions."

Ula Furgal – Lecturer in Intellectual Property and Information Law

"It is difficult to reconcile Spotify's announcement to demonetise the tracks which do not reach a minimum of 1000 listens every year with the principle of appropriate and proportionate remuneration, introduced in the EU by the 2019 Copyright Directive. As proportionality is not assessed in reference to the revenues of other creators, but the use and the income generated by a particular work, zero hardly makes an acceptable remuneration. While the declared goal of directing 'additional' monies to 'emerging and professional artists' is commendable, it creates a situation where Spotify, a private company, has the power to decide which creators are more worthy of support. This (positive) discrimination finds no basis in copyright law."

Seeds for Future Reflection:

Spotify's impending revision to its royalty payment structure presents a complex and intricate issue that raises pertinent questions. Will it favour established artists more, or provide a much-needed boost to emerging talent? How openly Spotify will manage and report on the implementation of these changes? Will there be a need for intervention to ensure fairness and equitable treatment across the board? Nonetheless, this move may very well set a precedent for future practices in the creative industries, influencing how other digital services manage their royalty payments and interact with artists and rights holders within their enclosed ecosystems.

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