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Equitable Remuneration

Policy Options and their Unintended Consequences

About the Author

Will Page is the author of the critically acclaimed book *Tarzan Economics*, which has been translated into five languages and is now published in paperback with its new title *Pivot*. As the former Chief Economist of Spotify and PRS for Music he pioneered Rockonomics. At PRS he published work on Radiohead's *In Rainbows* and saved BBC 6Music. At Spotify he uncovered the anatomy of a hit and articulated the global value of music copyright. A passionate communicator, Will is a regular contributor to the *Financial Times*, *Billboard* and *The Economist*. Will's first break into music was penning articles for *Straight no Chaser* magazine, and his DJ sets continue to top the global charts on MixCloud. He co-presents the Bubble Trouble podcast and is a fellow at the London School of Economics, Edinburgh Futures Institute and the Royal Society of the Arts.

Objective of this Work

This document is intended to inform and assist copyright policy makers attending the forty-third session of the WIPO Standing Committee on Copyright and Related Rights, taking place in March 2023 in Geneva.

I understand that the Committee is considering the earlier-drafted "Proposal for Analysis of Copyright Related to the Digital Environment" which generally addresses the "dissatisfaction of the artistic community" in relation to the digital environment (i.e. streaming) and, specifically, policies which are likely to result in a fairer remuneration of the use of music (such as Equitable Remuneration for the use of protected works, as a possible replacement of the exclusive right of authorisation for streaming). Clearly any move away from such exclusive right presents a serious risk to rightsholders/producers who currently enjoy the benefits of "direct licensing", but also presents a potentially-substantial benefit to performers who are complaining that the current system presents unavoidable institutional disadvantages to creators.

Whilst there have been a number of studies and other governmental debates about the relative merits of applying Equitable Remuneration as a replacement for such exclusive right, there seems to have been little investigation into the specific economics that would likely result. This document intends to address the economic benefits, disadvantages and unintended consequences.

It is hoped that the information, data and hypotheses in this document will provide the WIPO Member State governments with a rational and empirical basis for discussions on this important issue.

A Brief History of the UK Inquiry

In October 2020, the UK DCMS Select Committee began its investigation into the impact of streaming on the future of the music industry. 'We're asking whether the business models used by major streaming platforms are fair to the writers and performers,' said committee chair Julian Knight MP.

'Longer-term, we're looking at whether the economics of streaming could in future limit the range of artists and music that we're all able to enjoy today.' Six months, two hundred plus submissions, and eight oral hearings later, the Committee has published its report and now Parliament is to decide whether or not there shall be any government intervention.

The Committee focused on many aspects of the modern industry: the flow of metadata, the role of algorithms, the effect of consolidation of ownership, and perhaps most importantly, the ramifications of various economic models regarding how streaming services get 'money in' and how they allocate and distribute that 'money out'.

The inquiry made more than a dozen recommendations for the government to consider, including some which would constitute relatively radical alternatives to the status quo:

- Extend the current equitable remuneration regime to On Demand streaming
- A referral to the UK Competition and Markets Authority (CMA) to study the economic impact of recent market consolidation
- Development of a 'code of practice' for paid playlist curators
- Cooperate with the publishing sector to explore ways in which songwriters and composers can attain 'revenue parity'
- Introduce 'robust and legally enforceable obligations' UGC services, to address the 'value gap'
- Oblige labels to provide to DSPs composition metadata and 'by any means necessary' establish an industry data standard within two years
- Require publishers and CMOs to publish 'royalty chain information' to provide payment transparency.

Whilst the Committee attempted to research and highlight the benefits of each option, missing from the Report (and from much of the public discourse) is an examination of costs. As a former government economist, I recognise the value of cost benefit analysis when appraising policy options. This analysis does just that: explore the benefits and costs, as well as the intended and unintended consequences of extending Equitable Remuneration.

My objective is to help decision makers make better decisions, not to sway the outcome. Care is taken to avoid language that favours any one option over another, to allocate analysis and word count as evenly as possible. I hope to give policy makers a greater chance of coming to a decision that will prove most beneficial for the national music industries as a whole.

'My objective is to help decision-makers make better decisions, not to sway the outcome.'

Intention of ‘Equitable Remuneration’ (ER)

The logic here sounds simple: if we consider Spotify analogous to radio, then why not treat it like radio is treated in many countries, and give the artist 50% of distributable revenue? Were such ‘equitable remuneration’ implemented, the artist’s gain would be the label’s pain: not only would the labels receive less, but their ability to invest would be significantly diminished. What appears to be a simple remedy to the criticisms artists have levied against labels in fact opens up a can of worms. To better see why, let’s review the background to ER.

Currently in a large number of countries, performers are entitled to an ER payment for use of their sound recordings only when ‘communicated to the public’ or ‘broadcasted’. In practice, for instance in the UK, each ‘broadcaster’ (or user) pays a fee to PPL (the UK’s collective management organisation (CMO) for sound recordings), which then pays the performers and the copyright owner in equal proportions. The amount payable by users to PPL is privately agreed (though it can be referred by the rights-user to the Copyright Tribunal for determination). Extending ER by statute to include interactive streaming services would engender a number of thorny questions:

1. Extent of Implementation

Would the entirety of the interactive streaming right be blanket-licensed and subject to mandatory collective management such that on-demand services need only one sound-recordings licence from the local CMO (and none from labels)? Or would on-demand services be required to distinguish between the streams it delivers on a fully-interactive 'pull' basis and those it delivers on a 'push' basis (e.g. by way of algorithms), and pay ER only on such 'push' streams? The former alternative implies that all the sound-recording rights and licensing fees currently derived from on-demand services would be subject to the collective terms. The latter suggests that performers would be entitled to an ER share on only the proportion of 'push' streams delivered by a given service.

A third option is the model adopted in Spain, wherein effectively no rights are collectively licensed and instead a 'top up' fee is levied on interactive services, which is paid solely and directly to performers' CMO. It is unclear, though, how this would be applied without any copyright owner involvement or contribution in 'sharing the bill'. Other possible models include different permutations of the above considerations.

2. Licensing Rates

If ER were extended to all streaming (i.e. to cover on-demand services – known as 'making available'– as well as radio services, which are 'broadcasters'), would the local CMO (as a monopoly licensor) be forced to adopt a government or judicially-set licence fee for all on-demand services? Conversely, if ER were extended only to 'push' streams, what licence fees would apply? Given that 'radio' rates are generally much lower than fully-interactive rates, might this significantly reduce the overall revenue collected by rightsholders from online music services? Or, if ER were applied only as a top-up, how much would this be, how would it be set and would there be a knock on effect on record companies, and other licensors, revenues?

'If ER were extended only to 'push' streams, what licence fees would apply? Given that 'radio' rates are generally much lower than fully-interactive rates, might this significantly reduce the overall revenue collected by rightholders from online music services.'

Unintended Consequences of Extending ER

Clearly, ER would affect return on investment for record labels operating within a territory (i.e. lower return will likely beget less investment). How much less? What reduction in revenues will labels see under each scenario, and how will this affect their investments going forward? To help answer these crucial questions, I've constructed a model of ER, based on UK data, that includes some hitherto overlooked variables, namely the administration costs charged by the collective body PPL, the allocation of revenues to non-featured artists and the international share of monies.

To illustrate the impact of ER in year one, the model explores three possible scenarios from the perspectives of **(a)** UK labels; **(b)** global (including UK) featured artists (the group or individual most prominently featured on a sound recording); and **(c)** international streaming services. These three scenarios can be summarised as:

(i) ER with parity revenue sharing between labels and performers on all streams, based on interactive ('on-demand') rates that labels currently receive;

(ii) ER with parity revenue sharing on push-only, 'radio-like' streams, based on typical subscription radio tariffs;

(iii) 'Top-Up' ER (which cuts solely into streaming services' margins, rather than directly into label revenues), based on the Spanish model; and

The headline outputs of these scenarios are presented in the table overleaf for 2023 by using a growth trend formula based on actual 2021 BPI data. The focus on 'net impact' is important, as policy-makers need to consider marginal costs and benefits. For example, the status quo sees featured artists receiving a royalty (assumed to be 25% for these purposes), so the relevant question is, 'How much more money would they have received under ER?' Also important to bear in mind is that these headlines focus on global featured artists, omit non-featured, 'session musician' artists, who stand to benefit for the second time round. They also estimate the UK artist share of all streams (which the BPI estimates to be ~40%).

The scenarios show a range of outcomes for four stakeholders: Global Featured Artists, Record Labels, Streaming Services and finally UK-only Featured Artists. Globally, Featured Artists stand to benefit in all but one of the scenarios. If a 'blanket application' of ER were to be applied across all streams at the same revenue share rates that streaming services currently pay labels, Featured Artists would see 36% more money than the status quo (whilst Non-Featured Artists would receive additional recurring payments from On Demand streaming for the first time). However, if ER were to be extended to push-streams only (presumably at the highest PPL UK 22.5% tariff), Featured Artists would actually be worse off by 11% – ultimately receiving a bigger share of a much smaller pool. Streaming services are affected in two scenarios: if ER were applied to that same scenario of push-streams only (at the presumed 22.5% rate), they would benefit from a 16% reduction in payments to rightsholders; whereas the Spanish 'Top Up' model would see a 5% increase in services' payments to rightsholders. For labels, there is a downside to all but one of the scenarios, with the haircut in their revenues ranging from -21% to -41%.

Finally, it is important to remember that UK-based Featured Artists currently compete for a constant 40% of all streams delivered in the UK. Much of the oral argumentation and written evidence to date has expressed a desire to look after the interests of British artists yet (if ER were to adhere to the international (non-)reciprocal network, the majority of the money (around 60%) distributed by PPL to artists under any of the models listed below would leave the UK. Based on the Spanish Top-Up scenario, the only working example to date, the net pay rise of UK artists would be £13.8m in 2023 – with much of the remainder destined for US artists and performers.

'If ER were to be extended to push-streams only (presumably at the typical 22.5% tariff), Featured Artists would actually be worse off by 11% – ultimately receiving a bigger share of a much smaller pool.'

First Year Impact of ER Scenarios: Are Artists, Labels and Streaming Services Better/(Worse) Off?

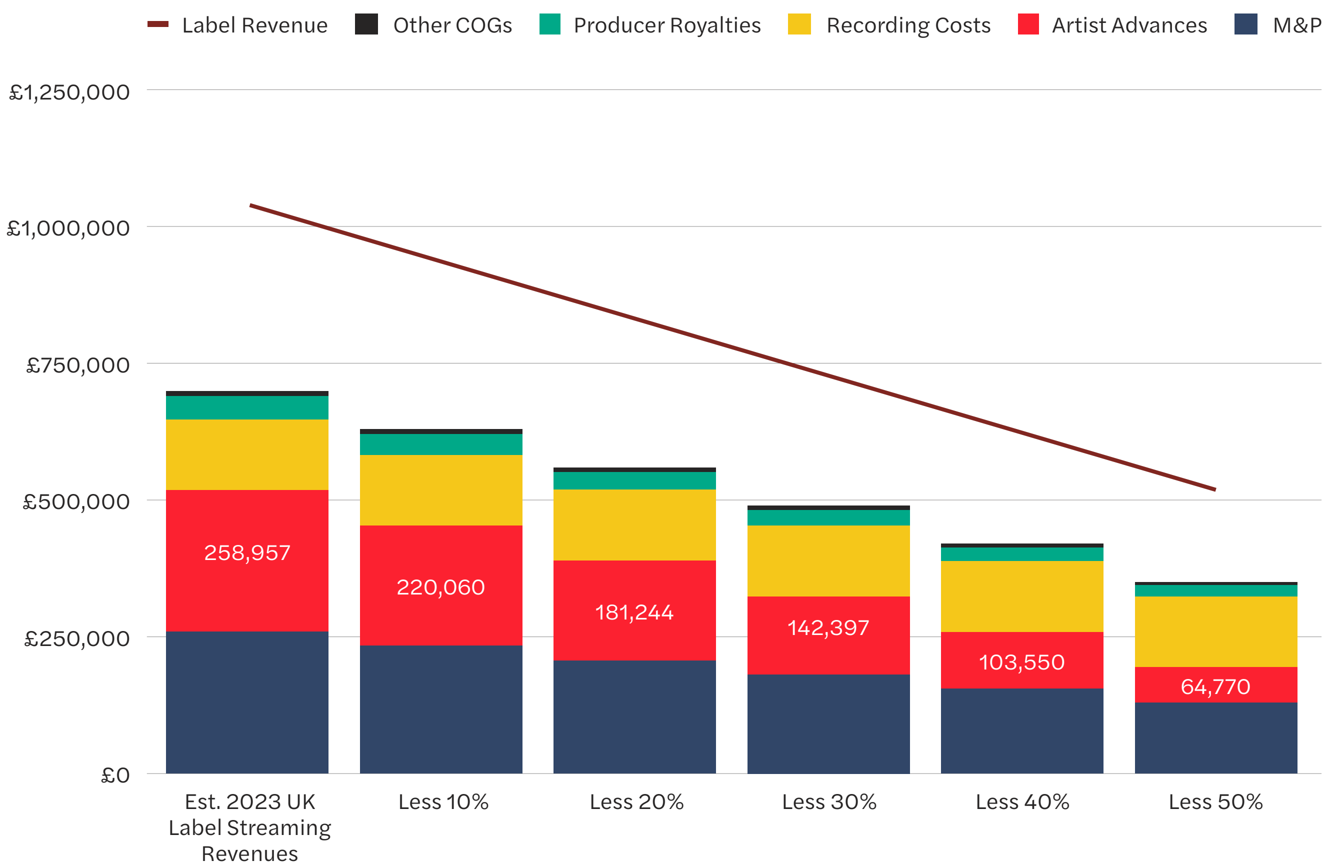
UK BPI Label Trade Revenue Forecast for 2023 (£000's)	ER across all streams with Effective Revenue Share at O/D Rate (52%)	ER on Push-Only streams at Subscription Radio Rate (22.5%)	Spanish Top Up at 2.4% of Gross Revenue (Including Non-Featured Artists)
Net Impact on Global Featured Artists (paid w/o regard to recoupment)	£92,271	-£29,716	£34,461
	36%	-11%	13%
Impact on UK Record Label Net Revenues	-£319,915	-£160,865	£0
	-41%	-21%	0%
Net Impact on UK Streaming Services payments to rights holders	£0	£163,222	-£49,799
	0%	16%	-5%
Net Impact on UK Featured Artists	£36,909	-£11,886	£13,784
	36%	-11%	13%

What happens in year two?

‘Economics argues that any net-reduction in revenues in period one will affect investment decisions in period two.’

Economics argues that any net-reduction in revenues in period one will affect investment decisions in period two. To explore how ER would affect investment, a simplistic model is offered below. It projects UK-label streaming revenues for 2023 so we can consider how, under various declining revenue scenarios, a label’s investment in variable costs would change. The model is designed to ‘think like a CFO’ and allow all other cost lines to adjust in order to hold operating margin constant at 15%. Some costs, like recording costs, remain fixed. Other significant costs, like marketing, are held at a constant ratio of sales. However, payments to artists are treated as a variable that adjusts to hold operating margin constant at that 15% level. So, in 2023, streaming revenues are estimated to reach just over £1bn, and artists’ royalty payments start as 25% of these revenues and decline as revenues fall to hold operating margin constant at 15%. The overarching point of this model is to show how ER might help artists today, but hurt investment in artists tomorrow.

Impact of ‘ER’ On M&P, Advances, Recording Costs, Producer Fees and Other COGs (£000’s)



A model that asks us to 'think like a CFO' by fixing operating margins at 15% may be controversial (companies can adapt to a shock in many different ways) but is decidedly realistic (they still need to justify investment to their board). What's more, a CFO in one country reports to a group CFO who is responsible for all countries. Modelling outcomes in isolation misses a bigger point: record labels (and streaming services) are global so they may reallocate investment in the UK to more profitable overseas markets and what's more music competes with other industries that may offer more favourable opportunities for direct investment.

This could result in a further negative spillover effect. Making other countries a more favourable investment target for record labels would put downward pressure on local artists' share of streams. For instance, if the 40% UK artist share assumed in the model were to taper off, more of the money that ER produces would be sent to overseas artists, a trend that could become self-reinforcing. Under such a scenario, ER could hurt British record labels today, and hinder British recording artists tomorrow.

> **'Making other countries a more favourable investment target for record labels would put downward pressure on British artists' share of UK streams'**

The aforementioned can of worms doesn't end there; the changeover from the status quo to ER would entail several 'switching costs' for streaming services, labels and artists:

1. Administration Costs

Any re-routing via a CMO of the current directly-licensed fees would create new and significant administration costs. If this rerouting were partial (scenarios two and three), these costs could be duplicative as the CMO would need to invest in administration capabilities as well.

2. International Aspects

A fundamental change to national collection and/or distribution methods could be disruptive internationally as licences mechanisms diverge, create new layers of auditing requirements and increased territoriality as 'ER' presents a notional threat to (or from) other large markets.

3. Artist Contracts

If artists were able to directly receive a portion of revenues from on-demand streaming, the long-standing structure of advances and royalties would be disrupted and may have to change fundamentally. Legacy contracts would also require revisiting to avoid 'double-dipping' by artists (and managers) arising from ongoing advance structures that do not synchronise with an expanded ER regime.

4. Service Hardships

If a 'Spanish Model' were applied without copyright owner involvement, on-demand services, many of which have yet to produce positive cash flow, would face a sudden and significant additional cost of business – making it an unfavourable market for new investment.

5. Licensing Dynamics

Any new collectively managed ER right could be subject to determination by rate setting setting bodies such as Copyright Tribunals, rather than free negotiations, adding to commercial uncertainty.

6. More Mouths to Feed

The music industry is indeed making more money thanks to streaming, but there are far more mouths to feed. Since Spotify launched in 2009, the number of British songwriters has increased by 146 per cent to 160,000 and the ranks of UK recording artists have ballooned 196 per cent to 139,000. This supply side explosion should be celebrated, not commiserated, but it will dilute the impact of any policy intervention on individual creators.

7. DIY Artist Services

DIY services like Distrokid have flourished in this new market, capturing one dollar in every ten that a streaming service distributes. For a fixed fee, artists will typically own 100% of their intellectual property and see 100% of their revenues. The introduction of ER could distort their proposition by introducing a new layer of administration costs.

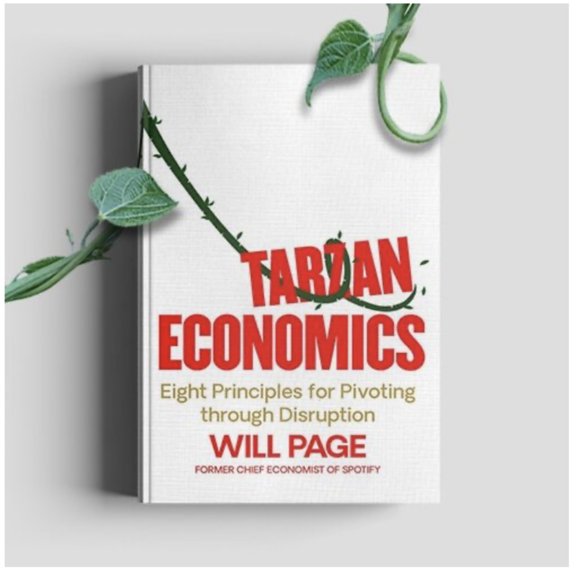
'On-demand services, many of which have yet to produce positive cash flow, would face a sudden and significant additional cost of business – making it an unfavourable market for new investment.'

One lesson I learned as a government economist, and which I hope to impart here, is how to strive for evidence-based policy making, and avoid the temptation of policy-based evidence making.

Even the best-laid plans of any policy decision bring unintended consequences, though we can do our best to anticipate them. Music matters to policy makers at home, not just because of the relative importance of the local music industries, but also because music ‘got there first’: it was the first to suffer and first to recover from the digital disruption that so many other professions are now experiencing.

But for instance, in the case the UK, it also matters abroad. The British music industry excels at exporting: we’re one of only three net-exporters of music (the others being the US and Sweden). For every one stream at home, British acts are achieving four overseas, and 80% of British artists are seeing the majority of their income come from abroad. This suggests that an evidence-based domestic policy decision should not limit this export success story to a footnote. Likewise, other countries seeking to conduct a similar inquiry would do well to understand how culture is traded in this new world where playlists are truly without borders. ❐

Other works by Will Page



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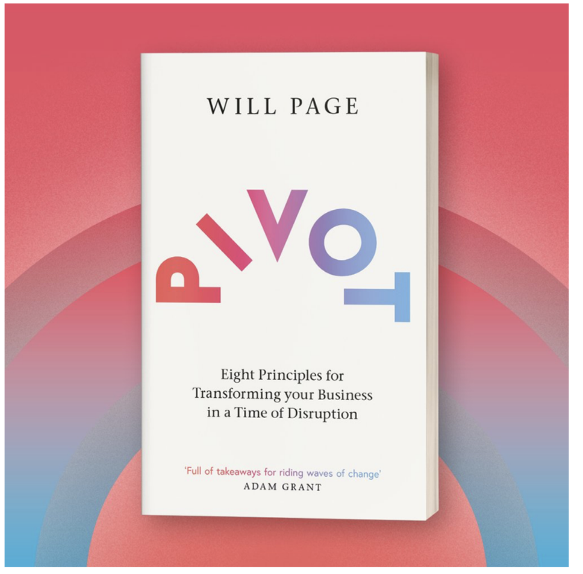

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