

Equity Stakes

– It's how you share that makes it fair –

Stating the obvious is fine, but we want to move forwards

Across the opening six weeks of 2016 various artists representatives, in various countries, have been contacted by major labels offering confirmation that income from the sale of equity stakes in licensed music services will be shared with the relevant artists. Whilst this is most welcome, the managers involved have expressed concerns over the vague use by labels of terminology such as “profits”, “surplus”, “net proceeds realised”, and even the variously defined buzz word “breakage”. *At a time when transparency is at the forefront of creators concerns these unclear, unfocused distractions do not serve to progress discussions concerning artist's entitlements or labels duties of care and trust.*

We have now seen further public statements from Warner and Sony on the matter, which provide no new reassurance. It was always going to be impossible for labels not to share the value of equity stakes in licensee companies with the artists. The artists whose licensing arrangements are the basis on which the equity was originally obtained. A wave of legal and PR challenges will obviously flood across the labels if they don't share. So Warner and Sony's recent remarks do not signify any significant changes in practice since 2014 IMMF statements on the issue.

IMMF, July 2014: "... [Rights holders] need to ensure that every single exploitation of the creator's content is accounted for. Not all of these arrangements are precisely based only on rights for licensed music content [...]" <http://immf.com/wp-content/uploads/IMMF-Statement-EN1.pdf>

IMMF, Sept 2014: "Why do the music rights holders strike deals with services where the value is not attributable to the music?" http://immf.com/wp-content/uploads/IMMF_StatementII_EN.pdf

It's how you share that makes it fair

The problem Merlin, Universal, Sony, and Warner have is not *if* they will share this money with artists, but *how* they or their labels will share it. Despite Sony and Warner's recent comments and others past comments, this big question remains. We are waiting for the first label group to comprehensively say how it will develop an appropriately defined mechanism, which is fair to all concerned for sharing this money with artists. There should be a right for a creator to understand the methodology behind any payment from its “partners”, and a right for that payment to be fair. As such those labels who have made these generous offers should be in a position to define and calculate what they mean, not only for artists but also for their own corporate shareholders. In the spirit of this new openness, and to share, in good faith, IMMF asks that the labels provide detail to their generosity.

The equity issue is a great way into that wider debate. It seems obvious that this equity issue can not possibly be resolved by conversations in New York between a few lawyers. The major label groups may not be US owned, but a lot of their decision making and corporate entities are US based, while Merlin is

in Amsterdam, Spotify is in Sweden, and we can think of other streaming services in Berlin and Paris that may be relevant to the debate about licensor-part-ownership-of-licensees. The affected artists *and the legal jurisdictions of their contracts* are of course located all around the world. This issue is easily focused on Sweden and the US, but it is an international issue covering artist and label contracts. Our member organisations (artists and their representatives) have been discussing the sharing of the value of labels equity stakes with artists for a few years and will do so again this week, in Sweden where experienced European managers, all of whom have represented both US and European signed artists, have it on their agenda. Following several on and offline discussions, all MMFs, including those in the US and Sweden, swiftly concluded that this difficult task requires wide engagement; discussions including artists and independent legal and accounting expertise to define fairness and terms. An imposed sharing solution incorporating a distinct or selective lack of transparency is not going to give the labels the exit they seek.

We have yet to hear anything to celebrate. Celebrations would occur if:

- The relevant label groups avoided small print style phrases and requested independently guided deliberations.
- A sharing methodology was discussed (without private and confidential financial details being revealed).

Try this at home...

To make a start, details like the price at which the shares are sold, the number of shares sold, and the income and royalty terms written into each artist's contract with the label are not required. Instead, the first step is to decide on a mechanism for how each artist is valued within a labels catalogue. A weighting for each artist. The money that comes in will be spread across the catalogue. What weight has each artist in a catalogue? The mechanism for calculating that is something which can be agreed upon before the shares are sold.

A few things to consider when creating your own weighting mechanism:

- Would you include only artists who were contracted to the label on the day the label first received the equity shares?
- Would you include a weighting for all artists who were contracted to the label at any point during the holding of the equity?
- What about weighting those artists whose contracted periods concluded before the deal expired?
- Would total streams per artist, streamed whilst the shares were held be relevant?
- Would artists with no streams (who had yet to release recordings, etc.) be given any value?
- What other factors would you consider?

There are many, other concepts to explore before anyone would feel confident in proposing a fair system. It's actually quite a tricky task, the labels have our sympathy on that.

A problem shared

We don't feel as artists and artist representatives that we have the entirety of experience to create the perfect weighting system on our own, but then again neither would the labels, without first holding a wide debate with artists and their representatives, and also seeking expert external advice. Merlin and the Worldwide Independent Network (WIN) have made some progressive and encouraging moves towards tackling the problem of sharing money and have been known when looking for fair solutions, to source expert external advice. Independent labels (those who are, and are not Merlin members) are often looking to balance power and create a more open market. We urge all label groups involved to participate in a community debate to frame guidelines for a fair template for sharing money across a catalogue. A widely accepted template would be used as a basis for future opportunities like equity sales, but also for other scenarios, and would save labels a lot of PR and legal anxiety, reducing tensions between artists and their labels.

We don't envy the labels having to consider such a complicated issue, but we do know that the labels owners, the artists, and policy makers like the European Commission and US Copyright Office, who have expressed concern for creators' rights, will appreciate an inclusive debate on sharing best practice before any further extraordinary value hits the labels bank accounts.

Let's use industry events and special meetings to open a public discussion, because it is time to share the value. Creators and their representatives have to get involved to achieve a fair and transparent solution.

Volker May
IMMF Chair