

Terms and Conditions for Payments from Online Music Streaming Platforms^{1, 2}

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ABSTRACT

The problem we speak about is very important within the whole musical industry. In fact, payments from online platforms are to be one of the most important sources of revenues for artists. We should care about this issue because it could provoke discouragement of artists but also because, with the emergence of DIY (Do It Yourself) artists and the difference of money they earn, this situation could finish with the end of Major Labels.

Our problem is that payment terms and conditions are not equally dispatched between online platforms, Major Labels and Artists when we speak about benefits created by the online music market.

I have chosen to base my analysis on 3 particular contract frameworks to see, thanks to different tools, which framework could be the more efficient to provide more equity.

We easily see that the two frameworks from the CSI Documents are the most efficient to solve (not perfectly) our issue. From these two solutions, we should retain the Cost plus Fee one, because it is more flexible and precise than the other one.

Our answer could provide more equity, but also more flexibility in payments and terms, and a real adaptation to the music industry could save Major Labels by regulating the market better, and providing more equity.

Key words: Music Streaming, Payments, Online Platforms, Youtube, Royalties, Spotify, Labels

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INTRODUCTION

Among passion, the most important motivation for artists is to earn money. The fact is that the music industry has been radically changing during the past decade. Indeed, with the emergence of a highly connected world, big musical labels had to find a new way to attract people towards buying music while they now can have it for free thanks to illegal file sharing. In fact, the sources of benefits were drastically cut by the end of the material disk: benefits for disks sales passed from 12.8 billion dollars to 5.4 billion dollars between 1999 and 2008³ and Labels were not able to find radically new ways of making money. Due to this situation, a new actor came into play with the Apple iTunes Store in 2004: the downloading and streaming web platforms. The system they created was rules free because completely new. Labels and digital actors went into struggle to control this fastgrowing market, overcoming since 2015 the physical one⁴.

If we go out this general vision and look more into details, we can see that even if web platforms are all losing money (174 million dollars for Youtube, 250 million dollars for Pandora between June 2016 and June 2017⁵ ³), artists with label contracts payments are not as important as we can imagine in this area.

Nowadays, web platforms must pay advances to Major Labels to exploit their music catalogs. Major Labels next verse royalties to the Artist, based on the contract clause(s) related to this topic. The fact is that Major Labels retribute only a few parts of it (17 \$ per 1000 plays on free platforms for example).

Payments are formally formulated and decided within the artist's contracts and must be documented to prevent stakeholders' issues or misunderstandings. It is a mandatory to use element and must be agreed by all parts. Different payment frameworks are usually available, and I have decided to base my reflection in five different forms: AIA, CSI and Consensus Doc.

I will provide answers to the next questions:

- 1) What are the differences between the different Payment forms useful to improve artists' retribution?
- 2) Which one would be the most efficient to enable artists' royalties to be higher?

³ Ben Kilmer (2010). The Evolution Of The Music Industry The Effect Of Technology And Law On Strategic Management And Sustainability. SlideShare. Retrieved from <https://www.slideshare.net/BenKilmer/the-evolution-of-the-music-industry-theeffect-of-technology-and-law-on-strategic-management-and-sustainability-kilmer-2010>

⁴ IFPI (2016) GMR 2016. IFPI.org. Retrieved from <http://www.ifpi.org/downloads/GMR2016.pdf>

⁵ Daniel Sanchez (2017). What Streaming Music Services Pay (Updated for 2017). Digitalmusicnews.com. Retrieved from <https://www.digitalmusicnews.com/2017/07/24/what-streaming-music-servicespay-updated-for-2017/>

- 3) What are the potential risks, among artists' benefits, not to use the relevant change orders form?

METHODOLOGY

Here, the equity in the repartition of the benefits seems to be the most important issue to solve. However, it is also necessary to have a clear statement of the payment conditions, clauses and rates for all stakeholders to give more credibility and among all transparency to the whole industry. It could help to attract new potential customers and to help increase benefits and market shares within the entertainment industry. It could also be interesting to improve regulation and obligations for all parts concerned by the contract, to provide excesses and potential power struggles. So, based on these areas, what is the most efficient framework to use to enable progress?

We will first make a statement of the different payment conditions and terms that we can find in the different frameworks quoted during the introduction.

- The **AIA Document** states that bonus or overhead payments depend on the project outcome, and that before each Application of Payments a Schedule of Values is delivered to the Architect (in our case it should be the Artist) by the Contractor (here the Major Label) and must be accepted by the Architect to authorize the payment, otherwise a new Schedule is necessary. This document is based on the most recent data to prove its accuracy. Once it is agreed, the Architect can, within the seven days:
 - Give to the owner a Certificate of Payments for the right sum
 - Give to the owner a certificate of payments for the sum he estims relevant, and he explains the reason of his correction
- The **CSI Documents** provides diferent types of payment, each one accorded to different situations. Two of them could be relevant to resolve the issues that we spoke about. The first one is the Unit Price, an Agreed Rate multiplied by the quantity of work needed. We can adapt it and change the quantity of work needed with the number of views on online platforms to have a potential improvement. The second one is the Cost plus a Fee, the actual cost of the work plus a fee (can be a percentage or a fix amount). It could also help to improve the situation that we spoke about. In both cases a Payment Bond is provided to ensure that payments will be made on time with the right amount.
- Within the **Concensus Doc**, the Schedule of Values System is also the base of the framework. Here the Constructor (in our case the Label) should have to provide to the Owner (the online Platforms) a Schedule of Values updated and divided by project phases. Each month the Constructor shall make a payment application adapted to the

latest data and the completion of the project at this step. The owner can reject a payment application if he judges that he is subjected to loss or damages.

According to previous observations, the following attributes will be useful to assess which method is the most appreciable to use in our situation:

- **Equity:** Asses wether each framework is really equal for all stakeholders involved (Major Labels, Online Platforms and Artists)
- **Clear Statement:** Asses wether or not each framework provide a clear statement of the payment terms and conditions
- **Transparency:** Asses the level of transparency brought by e ach method
- **Level of Regulation:** Asses the Regulation level brought by each method
- **Level of Obligation:** Asses the obligations provided by the diferent frameworks and wether they are efficient or not in our case

MATRIX Analysis				
Attributes	AIA Documents	CSI Documents Unit Price	CSI Documents Cost plus a Fee	Concensus Documents
Equity	4	2,5	3,5	4
Clear Statement	2,5	4	3	2,5
Transparency	3	3	3	2,5
Level of Regulation	2	2,5	3	2
Level of Obligation	2	2,5	2,5	2
	13,5	14,5	15	13

This Matrix Analyzis cuts in the middle our initial scope. The two options from the CSI Documents seem to be the most efficient to resolve most efficiently the issues revealed during the past problem statement. In order to find the most appropriate framework, it could be interesting to include risks in the analyzis.

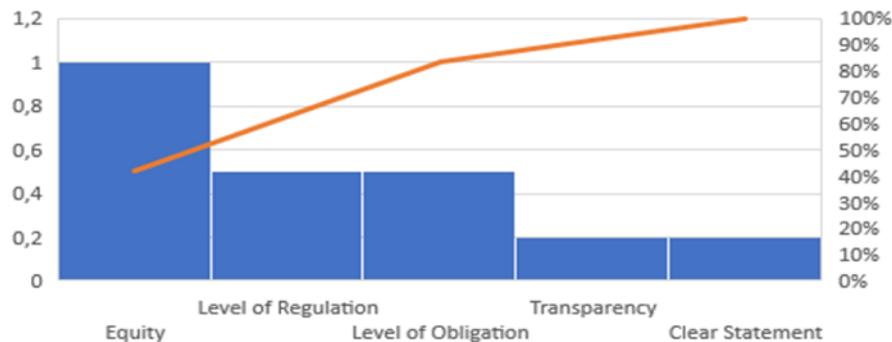
FINDINGS

MATRIX Analysis		
Attributes	CSI Documents- Unit Price	CSI Documents - Cost plus a Fee
Equity	1	0,3
Clear Statement	0,2	0,2
Transparency	0,2	0,2
Level of Regulation	0,5	0,2
Level of Obligation	0,5	0,5
	2,4	1,4

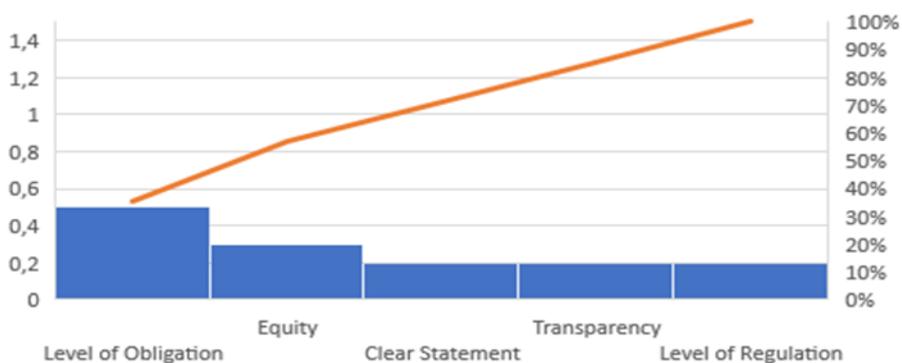
If we state that the maximal risk level is 1 and the minimum 0, we see that grades are really different. Indeed, risks are 20% more likely to occur by using the Unit Price framework than the Cost plus a Fee one. In fact, the difference is mainly made on equity: when the rate is clearly stated at the beginning of the exploitation, the artist cannot negotiate it if he has more success or recognition than expected. The Fee rate implemented with the Cost plus a Fee method can also thanks to the benefits it provides avoid inequality by cumulating both the fix amount and the Fee allowed. If we also note that the levels of Regulation and Control are not enough sophisticated to totally protect equity between all stakeholders, the Cost plus a Fee option, more flexible, seems to be the best option.

The only attribute not truly efficient could be the Level of Obligation, because the regulation provided is not enough sustainable (it does not provide a real framework where all stakeholders may be forced to defend equity). To confirm this hypothesis, we will use a Pareto Analysis:

CSI Documents - Unit Price Pareto Analyzis



CSI Documents - Cost plus a Fee Pareto Analyzis



CONCLUSIONS

We made this article to answer three particular questions quoted within the introduction.

What are the differences between the different Payment forms useful to improve artists' retribution?

The main difference, following our previous observations, is that the levels of obligation and regulation are not enough developed within the two first methods implemented. The fact is that the Schedule of value has both good and bad effects. It is an enormous help for equity, because it permits to renegotiate rates and payments at each application. But it is also dangerous for the level of obligation / regulation: because you can negotiate at each step there is a lack in terms of regulation because the amount is not agreed at the beginning of the project, and of obligation because there is no mention of obligation rules and prerequisite to provide equity and a clearly defined framework.

Which one would be the most efficient to enable artists' royalties to be higher?

According to our analysis, if we take into account risks and efficiency related to each framework, the most efficient seems to be the CSI Documents – Cost plus a Fee one. Even if it is not the perfect system (it has lacks regarding to the level of Obligation, and could be better in terms of equity. In fact, the systems using Schedule of Values appear to be more efficient to make royalties highest, but some other attributes we stated to make our analysis are not enough taken into account. For example, lack of regulation / obligation are truly present and they bring with them risks related to royalties payment, and they appear to be less efficient to deal with our main issue than frameworks from the CSI Documents. The Cost-plus Fee framework is more flexible and also more precise in terms of payments, that is why this solution seems to be the best to deal with our issue. In our particular case this model is not perfect but helpful to provide an adapted path to make payment more equal, and to defend all stakeholders' interests. We can see it as a first model (to be improved) of a new way to define payments terms and conditions between Major Labels, Artists and Online Platforms.

What are the potential risks, among artists' benefits, not to use the relevant change orders form?

The main risk is that the situation stays the same. In fact, nowadays the main issue is the enormous inequity in benefits attribution. If we stay in the same system, nothing will change in the short term because powers are too different. Even if progress in equity could be possible in the middle / Long term with the progressive regulation of this new market, it is not sure because Labels have too many power to avoid any change.

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Mathieu Sabadie is a Student and a Project Management Practitioner both in associative and in professional life. He has run events, projects and Programmes in further different sectors (Music, Arts, Logistics, Consulting). He has been Project Manager for the SKEMA Arts Week (event for 1500 participants) or Place, Beverage and Media Manager at Skip the Beat Festival (first edition of a House Music Festival in Lille for 1000 participants). He has also been a Project Manager for the three French Speaking courses of the Escola Europea de Short Sea Shipping in Barcelona and Junior Consultant for International Team Consulting, also in Barcelona. He is now working as a Freelance Consultant for various French SME and passing and MSc in Project and Programme Management / Business Development in SKEMA Business School in Lille, France and will be graduated on June of 2019. Throughout this Master he is involved in the organization of a TEDx Conference in SKEMA and has run a project in rural village development in Morocco. He is Agile PM Foundation and Green Project Management certified and currently passing the Prince 2 Foundation Certification. He also has some experiences in Recruitment, Sales, Business Development, Customer Service and Team Management. Mathieu can be contacted at mathieu.sabadie@skema.edu.