

An Important Start: Music Industry Strikes Five-Year Deal With Streamers

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As a professional musician, you will find no love lost between myself and music streaming services. In my opinion, it is wonderful that more people can experience more music more conveniently. But as digital consumption becomes the overwhelming consumer preference, it is crucial that creatives get a fair deal. Within the digital medium, on-demand streaming services are, without a doubt, the primary way people listen to music. For example, Spotify has 433 million subscribers worldwide with 188 million of those being premium (paid) subscriptions.¹ In fact, the International Federation of the Phonographic Industry (IFPI), a global organization that represents the interests of the recording industry, estimates that at the end of 2021 there were 523 million paid subscribers to music streaming services around the world.² With those numbers in mind, let's take a look at how the artists behind the music are compensated.

Royalties. When you really get to the core, royalties are how artists in most phases of the process are paid. One of the primary royalties is the mechanical streaming rate, ultimately paid to songwriters and publishers. So, how much do streaming services pay in mechanical royalties? That question is determined by a five-year contractual agreement negotiated between the recording industry and streaming services. On August 31, 2022, both sides agreed to a new deal that will control from 2023 through 2027 and pay a rate that will increase incrementally from 15.1% to 15.35% of service provider revenue over that time.³ This proceeding was known as Phonorecords IV, marking the fourth such agreement between the industries. It would be easy to be critical of the 0.25% increase over the next five years, but the stability that comes from having a deal in place has value in itself.

The proceeding known as Phonorecords III was intended to cover the period from 2018-2022. That deal was finalized in July 2022 after a drawn-out court battle. A brief review shows the industries could not agree and opted to litigate the rates for that period. In 2018, the U.S. Copyright Review Board (CRB) ruled that rates should incrementally increase from 10.5% to 15.1% over five years. In March 2019, Amazon, Google, Pandora, and Spotify (notably, *not* Apple) appealed this ruling to the U.S. Court of Appeals for the D.C. Circuit. In an opinion filed in August 2020, the court ruled that the process utilized to come up with the new numbers was flawed and remanded the proceeding back to the CRB. In January 2021, the parties began negotiating Phonorecords IV! In July 2022, the CRB ultimately reached a similar result on Phonorecords III using an altered process. For a more detailed look at the timeline, see [this recap](#) and associated links. To get to the bigger point, notice that Phonorecords III was finalized *after* Phonorecords IV was being negotiated. Phonorecords III was finalized in 2022 for the period covering 2018-2022. Because of this timing, the streaming services owed many back payments to cover the rates that were frozen during the process.

¹ Spotify, *About Spotify*, For the Record, <https://newsroom.spotify.com/company-info/> (last visited Sept. 17, 2022).

² IFPI, GLOBAL MUSIC REPORT 10 (2002).

³ NMPA, *NMPA, NSAI, and DiMA Announce Landmark Agreement for Phonorecords IV Proceeding*, Press Release (Aug. 31, 2022), <https://www.nmpa.org/nmpa-nsai-and-dima-announce-landmark-agreement-for-phonorecords-iv-proceeding/>.

Hopefully, that review has demonstrated the value of having a negotiated deal in place at the *beginning* of the period that it is set to cover rather than the end. Both sides, the music industry and the streaming service providers, now have a greater ability to predict with some certainty what will be owed and paid until 2027. As stated by the National Music Publishers' Association, the Nashville Songwriters Association International, and the Digital Media Association in a joint press release, this stability “will usher in a new era of collaboration between all parties” and “ensures that all parties ... will be motivated to work together to maximize that growth.”⁴

So as the industry looks ahead to the next five years, there are great benefits to having Phonorecords IV settled in the first year of the deal and avoiding the litigation process that plagued Phonorecords III. However, the mechanical royalty rate is only one factor in the compensation of creatives in the music industry. Watch this space for my next post in this series, where I will take a deeper dive into a formula that has the potential to change some of the other payments – the oft-mentioned royalty payment formula: user-centric.

⁴ *Id.*