

**“I Have a Bad Feeling About This”<sup>1</sup>**  
**(or, Music Streaming & Copyright: Where Are We Now?)**

*By: Mario Marini*

Welcome back to part four, the final installation, of my yearlong series discussing select aspects of music streaming. If you missed part one, a brief look into the importance of the new mechanical royalty rate agreement, Phonorecords IV, you could catch up [here](#); for part two, a discussion on the future of streaming rate models, see [here](#); and for part three, a brief review of the Copyright Office’s upcoming rule to close a termination loophole, see [here](#). Today, I’d like to consider where all of this leaves us and what the future might hold. I think it’s safe to say that change happens rapidly these days, whether we want it, are ready for it, or not, and the music industry is not immune from that premise. So, let’s tie it all together and, as a point of personal privilege, I’ll share my own thoughts.

I don’t think it’s controversial to say that the Internet isn’t going anywhere. The rise of the Internet of Things (IoT) pretty much guarantees it.<sup>2</sup> While the music industry might be encouraged by increasing vinyl sales,<sup>3</sup> roughly 50% of people consume music through streaming.<sup>4</sup> And though vinyl sales continue to rise, only half of vinyl purchasers have a vinyl record player!<sup>5</sup> The music industry must accept that, absent some major change, physical record sales aren’t ever going to dominate again. Once it does, it can stop playing catchup and act like the indispensable provider it can be.

In that same vein, what is the next technology? How will people consume music twenty years from now? Ten? Five? Probably safe to say streaming will be with us for a while, but the generative nature of the Internet likely won’t sit still for long. There will be a next, a new, a something we have yet to imagine. The music industry would be well-served to plan for that next. Instead of being reactionary, be involved. Stop seeing technology as the enemy and work with it. Adapt. Plan. A team within the industry could be actively researching what is coming and taking a seat at the table from the beginning. Maybe this is the Metaverse? The industry seems to be trying to do just this for the new frontier.<sup>6</sup> And with the Metaverse comes everyone’s favorite, the NFT.

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<sup>1</sup> <https://youtu.be/3ogIuFclGE8>

<sup>2</sup> See Cecelia Perez, *Top Growth Opportunities for IoT in 2023*, FROST & SULLIVAN (March 14, 2023), <https://www.frost.com/frost-perspectives/the-top-growth-opportunities-for-iot-in-2023/>.

<sup>3</sup> Keith Caulfield, *U.S. Vinyl Album Sales Rise for 17th Straight Year — But Growth Is Slowing*, BILLBOARD (Jan. 11, 2023), <https://www.billboard.com/pro/vinyl-album-sales-rise-growth-slowing/>.

<sup>4</sup> Matija Ferjan, *30+ Official Listening to Music Statistics (2023)*, HEADPHONES ADDICT (Feb. 13, 2023), <https://headphonesaddict.com/listening-to-music-statistics/>.

<sup>5</sup> Caulfield, *supra* note 3.

<sup>6</sup> Jenny Ta, *3 Ways the Music Industry is Infiltrating the Metaverse*, ROLLING STONE (Dec. 26, 2022), <https://www.rollingstone.com/culture-council/articles/3-ways-the-music-industry-is-infiltrating-metaverse-1234652664/>.

Music is slowly engaging in this market and at least testing the waters.<sup>7</sup> Artists are selling NFTs as records, special access, tickets, and even essential as a crowdsourcing mechanism.<sup>8</sup> The music industry is no stranger to marketing. If our world is moving toward NFTs, which seems likely given the ever-increasing influence of the Metaverse, the music industry should figure out a way to capitalize on this market and leverage its collective catalog in this new space.

Lastly, Phonorecords IV will only last so long. 2027, to be exact.<sup>9</sup> Given that Phonorecords III was intended to cover 2018-2022 and wasn't finalized until July 2022, it would be unwise to rest on the success of Phonorecords IV's timeline. 2027 is coming. It would be a mistake for involved parties to not at least be in the beginning stages of negotiating that next deal. Surely those at the table will want to see what the next few years bring, but negotiating the next deal can't wait. At the very least, set a framework. I hope the power players are in the room now thinking about how to make Phonorecords V look like Phonorecords IV instead of III. Part of this will inevitably involve how labels and artists are paid for streams. Should the formula change? Do we just stick with what we have now? Change may be hard, and the math might be different, but that doesn't mean what has been done should continue to be done. Streaming has changed since its inception and the way compensation is paid for streams must be reconsidered.

So why do I have a bad feeling about this? I don't know how much appetite the industry has for the coming years. The music industry has changed. The music industry continues to change. Neither of those is a shocking revelation. For artists to get their fair deal and the industry to survive and thrive, the old model must transform into [insert newest thing here]. I think the industry is trying. There are signals it is. But it should not accept and rest on small advancements. The Internet isn't slowing down. Neither can the music industry. Maybe my feeling isn't so much "bad" as it is "anxious."

Thanks for sticking with me through these articles on the music industry and music streaming. I hope they have been insightful or at least piqued your curiosity about issues facing the industry. For all the challenges that exist, I am confident music will always be here. Will it look different? Maybe. Will we consume it differently? Almost certainly. But music is culture and culture is humanity. It makes us human. It tells our story. *It is* worth the fight. Until we meet again, keep listening.

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<sup>7</sup> Talia Smith-Muller, *Music NFTs: What You Need to Know as a Musician and Fan*, BERKLEE ONLINE <https://online.berklee.edu/takenote/music-nfts-what-you-need-to-know-as-a-musician-and-fan/> (last visited April 7, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> 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/>.