

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress

In the Matter of)	Docket No. 16–CRB–0003–PR (2018–
)	2022)
DETERMINATION OF RATES AND)	
TERMS FOR MAKING AND)	
DISTRIBUTING PHONORECORDS)	
(PHONORECORDS III))	

WRITTEN DIRECT TESTIMONY OF WILL PAGE

(On behalf of Spotify USA Inc.)

Introduction

1. My name is Will Page. I am the Director of Economics at the Spotify group of companies (“Spotify”) and an employee of Spotify Limited (“Spotify”). I have served in this role since I joined Spotify in October 2012. I graduated with an MSc in Economics from the University of Edinburgh in 2002 and am a Fellow of the Royal Society of the Arts which characterizes itself as “an enlightenment organization committed to finding innovative practical solutions to today’s social challenges.”¹

2. Before joining Spotify, I served for six years as the Chief Economist at the PRS for Music, a non-profit collection society representing music publishers and songwriters in the U.K., where much of my published work is still accessible online.² Prior to joining PRS for Music, I was a Government Economist working for the Office of the Chief Economic Adviser and Department of Finance of the U.K. Government Economic Service at the Scottish Executive.

¹ Royal Society of the Arts, <https://www.thersa.org> (last visited Oct. 31, 2016).

² PRS for Music, www.prsformusic.com/economics (last visited Oct. 31, 2016).

3. My testimony will chiefly focus on three areas: (a) how Spotify is reducing piracy and driving the recovery in music industry revenues; (b) the competitive environment in which Spotify operates, including the changing music industry landscape and the changed ways in which the public is consuming music; and (c) how Spotify's service and innovative features like Discover Weekly and Fan Insights promote artists and increase the ease by which the public can access music. Ultimately, my testimony shows that Spotify's freemium model has helped the recent recovery in the U.S. music industry revenues in which all rightsholders are well compensated and a mechanical royalty rate structure that is sensible and aligns all parties' incentives to make this encouraging turnaround in songwriter fortunes sustainable.

Spotify Reduces Piracy and Grows the Industry Pie

Spotify's Impact on Piracy

4. Spotify was founded ten years ago with a simple goal: to beat piracy at its own game. One of the oft-cited remarks of Spotify's CEO and co-founder Daniel Ek was: "If we create the right product, better than piracy . . . people will come."³

5. The piracy debate stems back to May 1999 with the launch of Napster, the peer-to-peer file-sharing service. The takeoff of Napster caused or at least coincided with a rapid decline in recorded music revenues. According to the Recording Industry Association of America ("RIAA"), the U.S. recorded music industry saw a 47% decline in revenue between 1999 and 2009.⁴ This section will explain the two-fold effect Spotify has had on reshaping the

³ A true and correct copy of the hypebot.com article reporting this interview (available at <http://www.hypebot.com/hypebot/2011/07/spotify-daniel-ek-if-we-create-the-right-product-better-than-piracy-people-will-come-video.html>) is attached hereto as Spotify Exhibit 7.

⁴ A true and correct copy of the RIAA Publication, *Let's Play: The American Music Business*, published in 2010 (available at http://www.ifpi.org/content/library/RIAA_Brochure_Final.pdf) is attached hereto as Spotify Exhibit 8. See Spotify Exhibit 8 at 10.

music landscape since launching in 2009, both in terms of reducing piracy and growing industry revenues.

6. For a company that was founded in Sweden, it is important to offer local-contextualization to the piracy debate. Sweden is not only the home of Spotify, but also was home to many of the biggest piracy sites in the world, such as uTorrent and The Pirate Bay. In fact, Spotify was created in part by former employees of uTorrent,⁵ further illustrating how Spotify has, from the outset, invested in beating piracy at its own game with a superior, legal alternative.

7. In 2002, the Swedish music industry was worth \$287.3 million,⁶ but by 2008, it had fallen to a low of \$144.8 million in nominal terms, or nearly half.⁷

8. This trend was reflected around the world, but Sweden is especially relevant as it was not only the first adopter of Spotify, but was also the first music market to demonstrate a marked and sustained recovery in revenues. As the IFPI reports, by 2013, the Swedish music industry saw “an encouraging revival,” with revenues growing to \$194.2 million, up 34% from its low of \$144.8 million in 2008.⁸

9. The “turnaround” fortunes of Sweden have been reflected in other key northern European markets such as Norway and Denmark. Spotify managed to secure licenses in each country which enabled it to scale. Many of the independent trade bodies in those markets have

⁵ A true and correct copy of the article, *Spotify Reminded of uTorrent Past After Groovshark ‘Pirates’*, published on Nov. 12, 2014 (available at <https://torrentfreak.com/spotify-reminded-of-utorrent-past-after-branding-grooveshark-pirates-141112>) is attached hereto as Spotify Exhibit 9.

⁶ A true and correct copy of the IFPI Publication, *The Recording Industry: World Sales*, published on Apr. 4, 2003 (available at <http://www.ifpi.org/content/library/worldsales2003.pdf>) is attached hereto as Spotify Exhibit 10. See Spotify Exhibit 10 at 9.

⁷ A true and correct copy of the article, *Sweden: A Market Transformed* (available at <http://ifpi.org/sweden.php>) is attached hereto as Spotify Exhibit 11.

⁸ *Id.*

published their own research on Spotify's impact on piracy, and a short summary of their work is offered below.

10. In Sweden, the report, "Music Sweden: File Sharing & Download, 2011 Q2," showed that the number of people who pirated music fell by about a quarter in Sweden between 2009 and 2011.^{9, 10}

11. Spotify was launched in Denmark in October of 2011. In April 2013 (a year and a half later), the Danish IFPI published research finding that 48% of the users on legal streaming services had previously downloaded illegally, but 81% of them said that they had then stopped.¹¹

12. In Norway, which continues to have the highest digital revenues per capita in the world, a recent IPSOS report showed that in 2008 almost 1.2 billion songs were copied without permission. However, by 2012 that figure had plummeted to 210 million, just one fifth of its level four years earlier.¹²

⁹ A true and correct copy of the article, *Musikverige – Fildelning & Nedladdning [Music Sweden – File-sharing & Downloading]* (available at <https://www.scribd.com/doc/66658516/Musiksverige-Svenskarnas-Internet-Van-Or-Q2-20111>) is attached hereto as Spotify Exhibit 12. A certified English translation of the MediaVision article with the certification is attached hereto as Spotify Exhibit 13.

¹⁰ A true and correct copy of the article, *Music Piracy Continues to Decline Thanks to Spotify*, published on Sept. 28, 2011 (available at <https://torrentfreak.com/music-piracy-continues-to-decline-thanks-to-spotify-110928>) is attached hereto as Spotify Exhibit 14.

¹¹ A true and correct copy of the article, *Lovlige Streamingtjenester Stopper Piratkopiering [Legal Streaming Services Put a Halt to Internet Piracy]*, published on Apr. 25, 2013 (available at <http://politiken.dk/kultur/medier/ECE1953539/lovlige-streamingtjenester-stopper-piratkopiering>) is attached hereto as Spotify Exhibit 15. A certified English translation of the politiken.dk article with the certification is attached hereto as Spotify Exhibit 16.

¹² A true and correct copy of the article, *Piratkopieringen I Norge Stuper [Internet Piracy Plummeting in Norway]*, published on Jul. 15, 2013 (available at <http://www.aftenposten.no/kultur/Piratkopieringen-i-Norge-stuper-114335b.html#.UeU2Co0Q4lo>) is attached hereto as Spotify Exhibit 17. A certified English translation of the aftenposten.no article with the certification is attached hereto as Spotify Exhibit 18.

13. One of Spotify's key beliefs in its commercial strategy is that moving someone from piracy to a legal music service needs to be frictionless—otherwise, they won't come. Often a Spotify user's journey begins in our free-to-users ad-supported tier, and upgrades to a paid (or premium) subscription as he or she becomes more familiar with the enhanced paid-only features through trial promotions and/or marketing efforts. See Exhibits 13 & 14 for just a few examples of Spotify's freemium (*i.e.*, path to paid) strategy.¹³

14. This presents a “you help me today and I'll help you tomorrow” licensing proposition: as rightsholders allow Spotify to use their content, Spotify in turn helps rightsholders, by first taking users from free options that pay little to no royalties—such as piracy, or even AM/FM radio—to an ad-supported service that generates higher royalties, and then further taking these users to a paid service that generates even higher royalties (in fact, more than even a typical CD or PDD purchaser would generate).

15. After successfully reducing piracy and growing revenues for the music industry and reducing piracy in Scandinavia, Spotify conducted its own research on the impact it was having in the Netherlands in 2012.¹⁴ The vetted study was conducted with an independent company, MusicMetric, which was able to measure music files on BitTorrent. What made this market research unique was that at the time downloading copyrighted materials was considered

¹³ A true and correct copy of the Spotify Powerpoint Presentation, “Premium Upsell 2.0,” is attached hereto as Spotify Exhibit 19. A true and correct copy of the Spotify Powerpoint Presentation, “CREAM Conversion Roadmap” is attached hereto as Spotify Exhibit 20.

¹⁴ A true and correct copy of the article, *Adventures in the Netherlands*, published on Jul. 17, 2013 (available at <https://spotify.box.com/shared/static/nbktls3leeb0rcyh41sr.pdf>) is attached hereto as Spotify Exhibit 21.

fair use in the Netherlands.¹⁵ Hence the question Spotify wanted to explore was “could Spotify reduce piracy even where it wasn’t against the law?”

16. The study “Adventures in the Netherlands” was published in July 2013 and marked an important advancement in studying the impact of streaming on piracy.¹⁶ It used network measurements to look at four international artists who all released albums in the second week of November 2012. Two of those artists, [REDACTED] chose to release their albums on Spotify. The other two artists withheld their albums from Spotify.

17. The study sought to look at two issues: First, how often was an artist’s album stolen? Second, what happens if that artist simultaneously releases that album on Spotify?

18. The findings are reflected in the charts below. The two artists that engaged with Spotify, [REDACTED] sold more albums than were stolen at a rate of *four* copies per BitTorrent download. The two artists that did not engage with Spotify sold only one copy per BitTorrent download.

19. The Netherlands study shows that streaming is not a zero-sum game between ownership and access: if an artist is not on Spotify, this doesn’t mean a consumer will be forced to go out and purchase her albums—rather, the consumer could simply choose to steal it. To further understand the implications of the Netherlands study, it is relevant to note that this was Spotify’s first non-Scandinavian success story back in 2012, and Spotify continues to grow the overall pie there today. In the first half of 2016, the Netherlands music industry grew by 23

¹⁵ A true and correct copy of the article, *Dutch Piracy Levy Ruled Unlawful, Downloading Pirated Materials Now Illegal in the Netherlands* (available at <http://cimamusic.ca/dutch-piracy-levy-ruled-unlawful-downloading-pirated-materials-now-illegal-in-the-netherlands>) is attached hereto as Spotify Exhibit 22.

¹⁶ A true and correct copy of the press release, *Adventures in the Netherlands: New Spotify Study Sees Encouraging Downwards Trend in Music Piracy in the Netherlands*, published on Jul. 17, 2013 (available at <https://press.spotify.com/us/2013/07/17/adventures-in-netherlands>) is attached hereto as Spotify Exhibit 23.

percent year-over-year, making it the best performing market in the world.¹⁷ Streaming revenues (driven by Spotify, with a vast majority of the market share) were almost entirely responsible for the increase: while physical sales grew (with vinyl playing a part), this was almost completely offset by a decline in PDD sales.¹⁸

Chart 7. [REDACTED]
Netherlands 2012. Sources: Spotify, GfK and Musicmetric

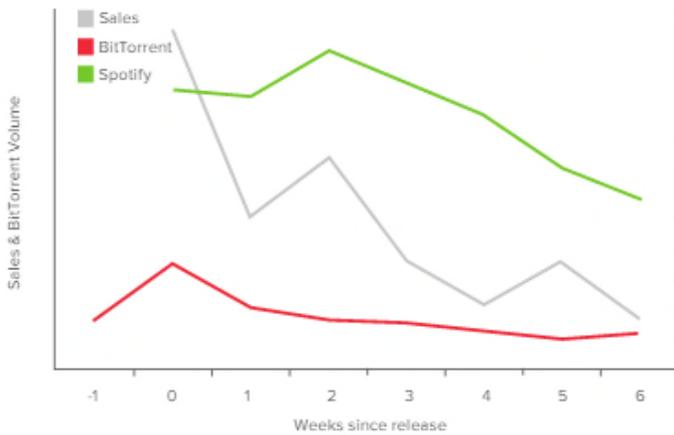
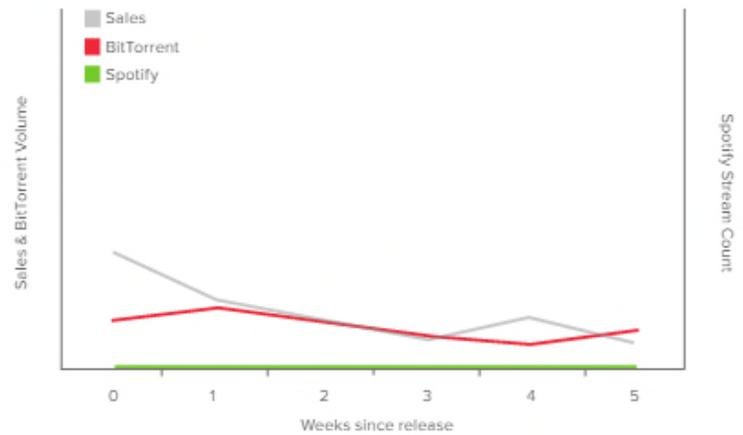


Chart 8. [REDACTED]
Netherlands 2012. Sources: Spotify, GfK and Musicmetric



¹⁷ A true and correct copy of the article, *Netherlands Mid-Year Figures Reveal 23.2% Growth*, published on Sept. 15, 2016 (available at <http://musically.com/2016/09/15/netherlands-mid-year-figures-reveal-23-2-growth>) is attached hereto as Spotify Exhibit 24.

¹⁸ See *id.* (“Music download sales fell by 13.2% to €4.5m, and . . . physical sales grew 2.4% to €27.8m”). In effect, these cancel out.

Chart 9 [REDACTED]
Netherlands 2012. Sources: Spotify, GfK and Musicmetric

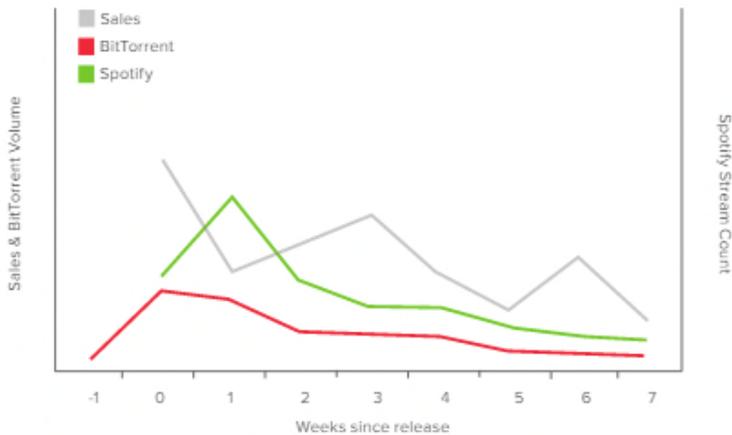
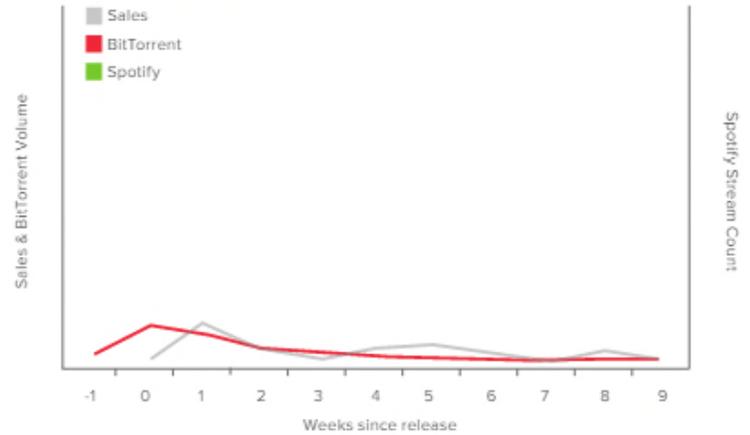


Chart 10 [REDACTED]
Netherlands 2012. Sources: Spotify, GfK and Musicmetric



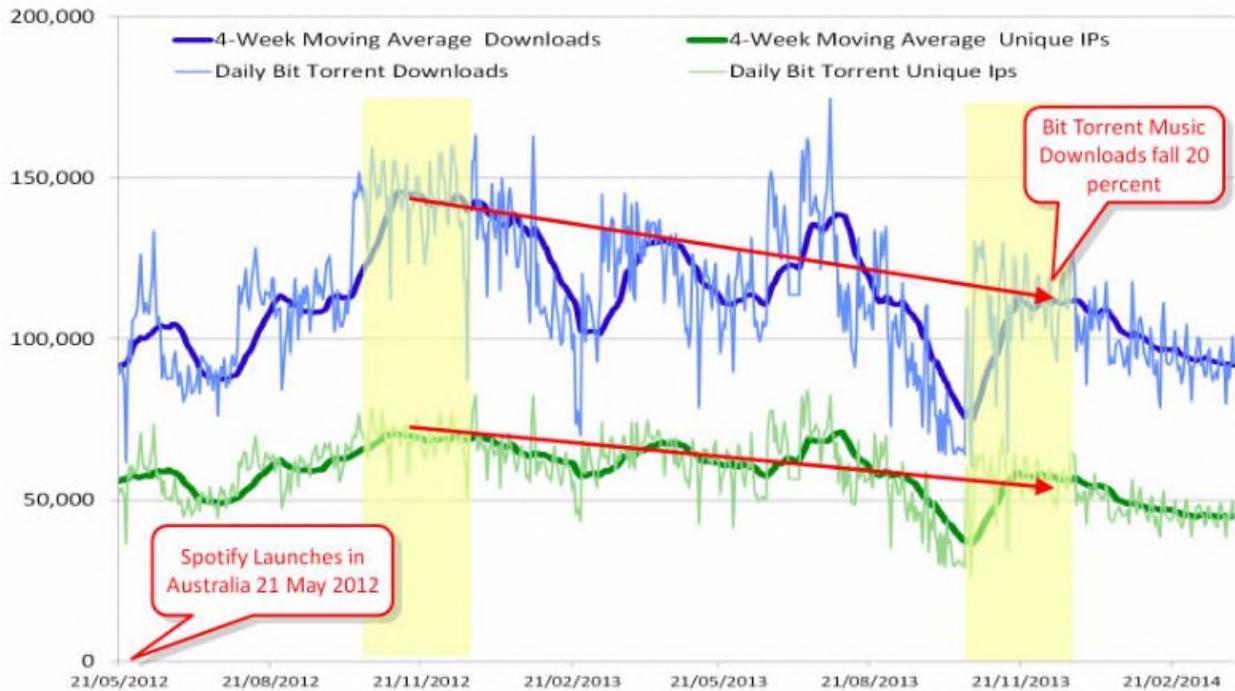
20. In 2014, Spotify conducted research on the Australian music market. Spotify had launched in 2012 at what was deemed a fair price of AUD 11.99.¹⁹

21. The study was never published, but the key chart was released in a Torrent Freak article and is presented below.²⁰

22. The chart shows population (IP addresses in green) and volume (BitTorrent files in blue) over time. The Christmas release periods for 2012 and 2013 are highlighted. These periods of time are important as comparison periods—the strongest music releases tend to concentrate around Christmas, with peaks in sales, streaming, and piracy occurring at that time. What you can see is that BitTorrent music piracy fell by over 20 percent between the two periods, and continued to decline thereafter.

¹⁹ By comparison, with iTunes, you could at the time get most new albums for AUD 16.99 with many on sale for AUD 9.99. A true and correct copy of the article, *Cheap Downloads? That's Music to Our Ears*, published on Sept. 16, 2014 (available at <https://torrentfreak.com/spotify-music-piracy-down-australia-140910>) is attached hereto as Spotify Exhibit 25.

²⁰ *Id.*



23. Evidence from the United States and North America supports the results from Australia and the Netherlands. For example, the Global Internet Phenomena Report states that P2P filesharing now accounts for less than 10% of total daily traffic in North America.²¹ The report also notes that “[f]ilesharing continues to disappear from many fixed access networks across the globe as Real-Time Entertainment options [like Spotify] are providing subscribers a wealth of content at reasonable prices.”²² Importantly, and intuitively, if Spotify’s freemium model is not given the licensing terms it needs to scale, its impact on piracy will be limited.

Spotify Grows the Overall Industry Pie

24. In 2009, Spotify’s original commercial proposition to rightsholders was a user growth-focused model: the company was focused on growing average revenue per user

²¹ A true and correct copy of the report, GLOBAL INTERNET PHENOMENA REPORT, published in 2013 (available at <https://www.sandvine.com/downloads/general/global-internet-phenomena/2013/2h-2013-global-internet-phenomena-report.pdf>) is attached hereto as Spotify Exhibit 26.

²² *Id.*

(“ARPU”) through its freemium model. [REDACTED]

[REDACTED] But recall the story from Sweden: there, the music industry had already lost 40% of its value (either due to fewer buyers or buyers spending less or both) before legal streaming even entered the market. What wasn’t understood then, but is appreciated now, is that the vast majority of the adult population in *all* key markets spends *zero* on music. Spotify’s core commercial proposition was to grow the business by growing the average revenue per person across the entire population, not by holding onto a shrinking minority of people buying albums or PDDs.

25. Using data from MusicWatch,²³ we can illustrate the portion of the [REDACTED] U.S. consumer market²⁴ that spends on recorded music and how much they spend. First, [REDACTED] % of this consumer market purchased a CD or a PDD in 2015.²⁵ If we add in vinyl and paid subscriptions to interactive and non-interactive services, the number is [REDACTED] %.²⁶

26. **Spotify versus other free services.** First, consider the [REDACTED] % of the consumer market that did not spend anything on recorded music. These people could be free streamers, pirates, or, more likely, people who have disengaged from paid recorded music completely and settle for listening to terrestrial radio; many may not actively listen to music at all. The value to rightsholders of a pirate or someone who simply does not listen to music is zero. The value to rightsholders of a radio listener is much less than an ad-supported user of Spotify. While radio stations pay songwriters and publishers via regulated rates set with the PROs, they

²³ A true and correct copy of the MusicWatch Powerpoint Presentation, “Annual Music Study 2015, Report to Spotify Ltd., June 2016,” is attached hereto as Spotify Exhibit 27.

²⁴ Defined as the US internet population 13+. *See id.* at 2.

²⁵ *Id.* at 55.

²⁶ *Id.*

do not pay mechanical royalties, nor do they pay record labels. AM/FM pays to each of the two main the PROs around 1.7% of gross revenue in the U.S.²⁷—a far cry from the █% Spotify pays to the PROs, the █% Spotify pays in mechanical royalties, and the █% Spotify gives back to *all music industry rightsholders*.²⁸ So whether it's shifting consumption to Spotify from piracy, or from AM/FM, focusing on the ██████████ who spend zero benefits not only songwriters and publishers, but all stakeholders.

27. **Spotify versus other paid services.** Not only does Spotify monetize better than AM/FM and piracy, Spotify also monetizes better than CDs and PDDs. According to MusicWatch, the 2015 blended average (CD/PDD) spend per buyer was █/year.²⁹ Compare this “top line” result with Spotify which had an average revenue per user (“ARPU”) of around █/year for paid members in 2015 (this includes discounts; the undiscounted price is \$120/year).

28. What's more, Spotify is also beating CDs and PDDs on the “bottom line.” █ per CD/PDD buyer per year equates to approximately █ albums per buyer per year, resulting in █ per buyer per year in mechanical royalties to publishers and songwriters.³⁰ Compare this with Spotify, which in 2015 paid around ██████ per paid member per year to publishers and songwriters (mechanical plus public performance royalties), and around █ per person when ad-supported users are averaged in. In other words, even if Spotify cannibalized CD and PDD

²⁷ A true and correct copy of the article, *Federal Court Approves Radio Industry Settlement with ASCAP*, published on Jan. 27, 2012 (available at <http://www.radiomlc.org/pages/4795848.php>) is attached hereto as Spotify Exhibit 28. A true and correct copy of the article, *Federal Court Approves Radio Industry Settlement with BMI*, published on Aug. 18, 2012 (available at <http://www.radiomlc.org/pages/6282052.php>) is attached hereto as Spotify Exhibit 23.

²⁸ See also *Glenn Peoples: Pandora has its Mind on Your Money and Your Money on its Mind*, published on Jun. 30, 2016 (available at <http://rainnews.com/glenn-peoples-pandora-has-its-mind-on-your-money-and-your-money-on-its-mind>) (“Pandora’s current publishing royalty is 67 percent larger than radio’s publishing royalty per listen.”). A true and correct copy of the article is attached hereto as Spotify Exhibit 30.

²⁹ Spotify Exhibit 27 at 51, 59.

³⁰ U.S. figures. See Spotify Exhibit 31 for details.

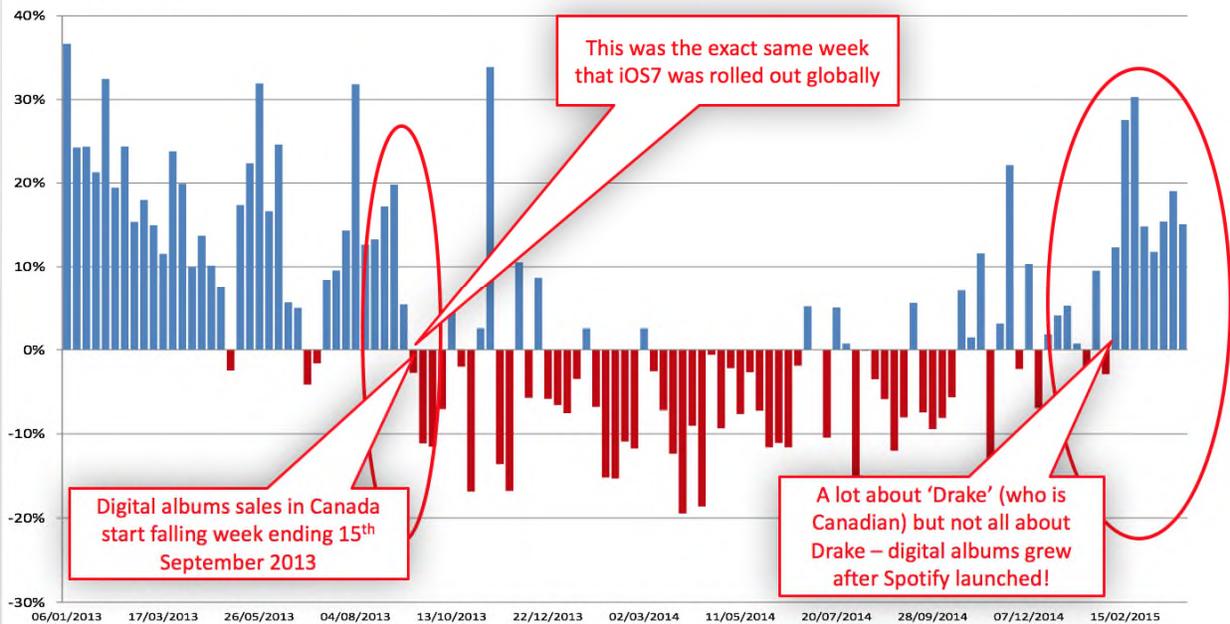
buying at 100%, publishers and songwriters would *still* be better off for each and every new user Spotify signs up. [REDACTED]

29. Nevertheless, cannibalization is still the most common argument made against streaming services, and is frequently used to impose a cost structure that is meant in some way to compensate rightsholders for the decline in album or download sales. But what if the ownership model had been on the decline *before* streaming was even introduced? A Canadian case study shows that this was actually the case. The study illustrates that in 2013, iTunes sales went into decline in a country which had no streaming.

30. In Canada, just like in the U.S. and U.K., downloads of tracks and digital albums went into decline in September 2013. Unlike the U.S. and U.K., however, the usual suspects blamed for this were not present, as there was no Spotify, no streaming, no Pandora, and no iTunes Radio. Streaming cannot be blamed for a decline in sales in a market where it did not exist. One of the most important lessons from Canada is that iTunes went into decline without any of the usual suspects (Spotify, streaming, Pandora, iTunes Radio) to take the blame, raising the question of who or what is to be blamed, worldwide, for the decline in digital ownership.

Canada Digital Album Sales, Week vs. Same Week Prior Year: 2012 to 2015 Q1

Source: Nielsen SoundScan



31. Finally, in a twist to the tale of Canada, shortly after Spotify finally did launch there towards the end of 2014, digital album sales *actually grew*. The likely explanation for this growth is the release of *If You're Reading This It's Too Late* by Canadian R&B/hip-hop superstar Drake, but Canadian digital album sales grew even if you removed Drake's album sales.³¹ Canada grew its total revenues 8.3% last year, making it one of the best performing established markets in the world.³²

32. Spotify's business model has grown the industry pie in the U.S. as well. As will be discussed by Professor Leslie Marx, Recording Industry Association of America ("RIAA") data for the U.S. music industry shows the decline in revenue started shortly after the advent of

³¹ A true and correct copy of the report, 2015 NIELSEN MUSIC CANADA REPORT, published in 2016 (available at <http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2016-reports/2015-year-end-canada-music-report.pdf>) is attached hereto as Spotify Exhibit 32. Compare Spotify Exhibit 32 at 7 (digital album sales from 10.9M units in 2014 to 11.2M units in 2015), *with id.* at 10 (If You're Reading This It's Too Late album sales of 121,000).

³² See Spotify Exhibit 1.

Napster, the illegal peer-to-peer file sharing service, in 1999. However, industry revenue *stopped* decreasing with the rise of on-demand streaming, starting in 2010.

33. In September 2016, Billboard reported that “What labels hoped would happen seems to be happening.”³³ The article reported that the U.S. music industry experienced an 8.1 percent growth in overall revenue during the first half of the year, with the RIAA stating that the overall market is estimated to be worth \$3.43 billion, up from \$3.17 billion in the first half of 2015.³⁴ This is the fastest uptick in growth since 1998—the year before Napster was introduced.

34. The record industry gets a disproportionate level of analytical attention simply because they make their data available in yearly reports, while the publishing sector has not traditionally provided the same level of detail. However, in an unprecedented study, the NMPA recently reported U.S. publishing revenues at \$2.2 billion annually.³⁵

35. An uptick in record revenues generally means an uptick in publishing revenues. Therefore, the encouraging record label headlines from the 2016 mid-year results should carry across to songwriters and publishers. This indirectly relates to what has long been the perceived

³³ A true and correct copy of the article, *Streaming Helps Drive 8.1 Percent Growth in Revenue for U.S. Recording Industry*, published on Sept. 20, 2016 (available at <http://www.billboard.com/articles/business/7517904/streaming-8-percent-growth-recording-revenue-riaa-2016-half-year>) is attached hereto as Spotify Exhibit 33; *see also* a true and correct copy of the article, *Music Labels Finally Hear the Sweet Sound of Success*, published on Oct. 20, 2016 (available at <http://www.wsj.com/articles/music-labels-finally-hear-the-sweet-sound-of-success-1476946405>) is attached hereto as Spotify Exhibit 34.

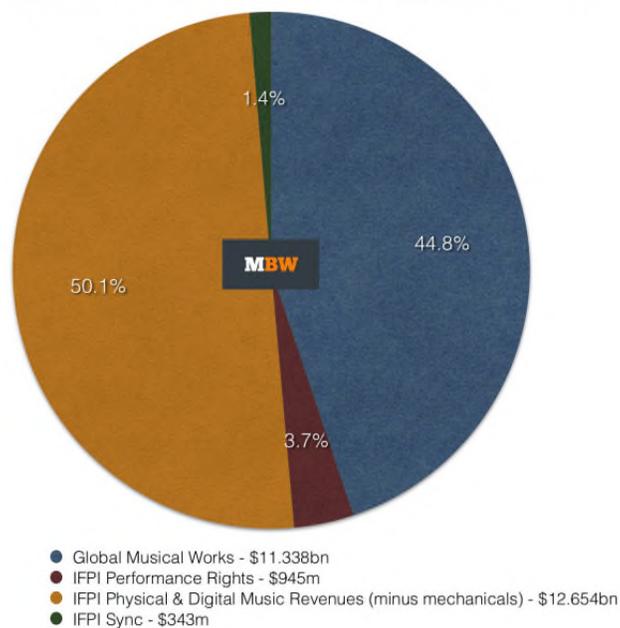
³⁴ A true and correct copy of the article, *News and Notes on 2016 Mid-Year RIAA Music Shipment and Revenue Statistics*, published in 2016 (available at http://www.riaa.com/wp-content/uploads/2016/09/RIAA_Midyear_2016Final.pdf) is attached hereto as Spotify Exhibit 35. Spotify Exhibit 35 at 1, 3.

³⁵ A true and correct copy of the article, *NMPA Puts U.S. Publishing Revenues at \$2.2 Billion Annually*, published on Jun. 11, 2014 (available at <http://www.billboard.com/biz/articles/news/publishing/6114215/nmpa-puts-us-publishing-revenues-at-22-billion-annually>) is attached hereto as Spotify Exhibit 36.

“David and Goliath” relationship between publishers and labels, or the impression that labels take the lion’s share of revenues, leaving publishers with a small fraction of the rights pool.

36. In the first study of its kind, Spotify showed the global value of music copyright, capturing all of the revenues publishers receive, many of which record labels don’t see, such as royalties from terrestrial radio (see image below).³⁶ The study concluded that the global value of music copyright was \$25 billion, with publishers receiving almost *half* of the pie. Explaining this revelation, which overturns years of misconceptions, involves understanding the diversity of revenues publishers receive and the fact that they’ve grown throughout a decade of digital disruption.

2014 total global revenue of music copyright = \$25.28bn



³⁶ A true and correct copy of the article, *\$25 Billion: The Best Number to Happen to the Global Music Business in a Very Long Time*, published on Dec. 10, 2015 (available at <http://www.musicbusinessworldwide.com/25-billion-the-best-number-to-happen-to-the-music-business>) is attached hereto as Spotify Exhibit 37.

37. Music publishers are far from the “poor cousins” of record labels. Their model has succeeded in growing when label revenues fell. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

38. The most recent collection and distribution figures from the two major performing rights organizations (PROs) underline this positive trend for music publishers. One can observe that in almost every year since Napster, despite hearing label revenue was “down,” the two largest PROs in the U.S., ASCAP and BMI, reported “record collections.”

39. In May 2016 ASCAP reported a new record for royalty collections, with revenue exceeding \$1 billion for the second year running.³⁷ New media, which Spotify contributed

³⁷ ALICE ENDERS, GLOBAL MUSIC PUBLISHING 2016 6 (Jun. 28, 2016). A true and correct copy of the Enders Analysis report is attached hereto as Spotify Exhibit 38.

³⁸ SIMON DYSON, OVUM, ASCAP COLLECTIONS TOP \$1BN FOR THE SECOND CONSECUTIVE YEAR 1 (May 9, 2016). A true and correct copy of the Ovum May 2016 report is attached hereto as Spotify Exhibit 39.

towards, recorded the biggest rise of all ASCAPs domestic income sources, with total collections increasing 36.3% to \$56.1MM from \$41.2MM in 2014.³⁹

40. BMI has seen similar fortunes, and has registered a second consecutive year of record collections and distributions.⁴⁰ Total collections increased 4.6% in the 12 months to end-June, to \$1,060MM, from \$1,013MM in the 12 months to end-June 2015. Distributions grew 6.2% to \$931MM from \$877MM.⁴¹ Digital revenue, which Spotify contributed towards, grew 50.5% to \$152MM from \$101MM.⁴²

41. Thus, Spotify's contribution to American songwriters needs to be viewed in the dual context of payments from music publishers—which have reported flat or increasing revenues every year since on-demand streaming was introduced—and payments from the PROs—of which the two main U.S. PROs have reported “record collections” including significant increases in digital collections.

42. So what does this mean for U.S. music publishers and songwriters? First, Spotify has reduced piracy, which means it has reduced the unlicensed exploitation of publishers' works. Second, Spotify grows the ARPU of the entire U.S. population through its freemium model, reaching out to the minority who buy music and monetizing the lost majority who previously did not. Third, it's working—the U.S. music industry is growing at over 8 percent. Fourth, when you look at the overall revenues of labels and publishers, publishers can be seen to be making almost as much revenue from music copyright as labels do. In fact, publishers may have adapted better to the streaming model better than labels. Finally, publishers *continue to grow* (just as they have

³⁹ *Id.* at 3.

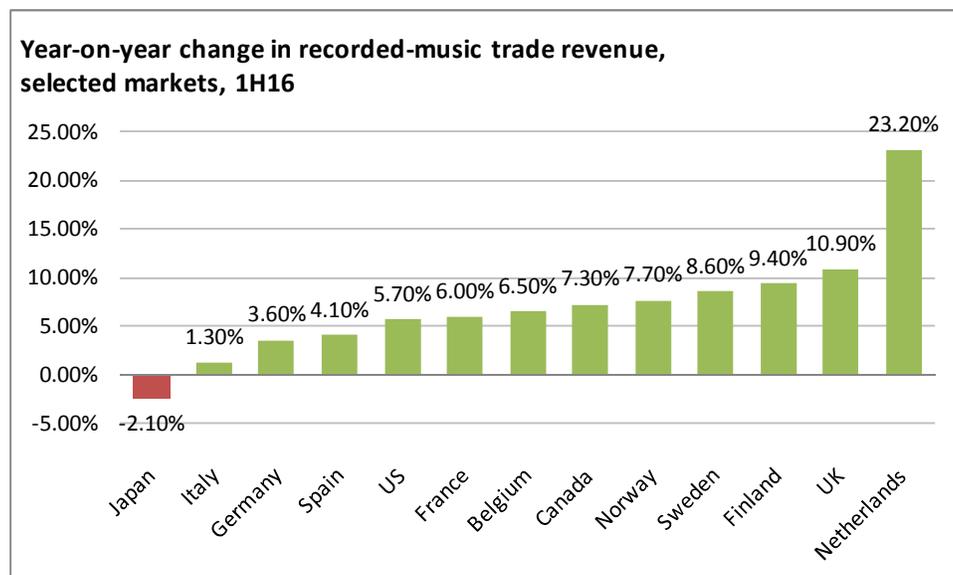
⁴⁰ SIMON DYSON, OVUM, MUSIC STATISTICS ANALYSIS: FIRST ROUND-UP FOR SEPTEMBER 7 (Sept. 13, 2016). A true and correct copy of the Ovum Sept. 7, 2016 report is attached hereto as Spotify Exhibit 40.

⁴¹ *Id.*

⁴² *Id.* at 8.

been growing for the past decade and a half while record label revenues were falling), as do PROs.

43. These points can be brought together in the following chart, which presents a global picture of the recovery in music industry revenues. These revenues have been driven by streaming in general and Spotify in particular. Of the select markets which have reported mid-year results using their own methodologies and local currencies, you can see the headline growth rate in total revenues.⁴³



44. Only one market, Japan, has reported a decline in the first half of 2016, and Spotify has only soft-launched in Japan in the second half of this year. As you read from left to right, the good news gets better. Recorded music revenues are not just growing, they are growing robustly. Indeed, to the right of the chart you can see Sweden, Norway, and the Netherlands. As already mentioned, these are our most established markets—markets we’ve not just been in for the longest, but been big in for the longest—and they are now growing at an accelerated rate.

⁴³ SIMON DYSON, OVUM, MIDYEAR TRADE RESULTS HINT AT A VERY POSITIVE YEAR FOR GLOBAL RECORDED-MUSIC SALES 2 (Sept. 26, 2016). A true and correct copy of the Ovum Sept. 26, 2016 report is attached hereto as Spotify Exhibit 41.

This bodes well for labels, artists, publishers, and songwriters as it refutes the often-held cynical view that Spotify's freemium model will reach a saturation point and flat-line. In the countries where this was most likely to happen, such as the countries with smaller overall populations, the opposite is holding true.

45. Quite simply, the music industry is growing, streaming is driving growth, and Spotify is driving streaming, making a significant dent into piracy and other non- or lesser-monetized sources of music listening in the process. Labels, publishers, artists, and songwriters have seen their prospects change from staring into the abyss in 2008 (note iTunes never once grew the *overall* market back then) to now reaping the benefit of this freemium model and the broader recovery it has driven in the U.S. and around the world.

The Competitive Landscape of Music

46. In this section, I will explain the competitive landscape that Spotify is a part of and needs to compete against. Spotify has attracted over 100 million monthly active users ("MAU") [REDACTED]. An illustration of the competitive landscape is important for considering where those users came from and where they might go if our ad-supported and paid products were adversely affected by the rate structure. Spotify users who previously used [REDACTED] FM radio and (as mentioned earlier) piracy know how to go back to their old sources of music. I will demonstrate that should that happen, *ceteris paribus*, publishers and songwriters would be worse off. The following table illustrates the difference between Spotify's ad-supported versus paid services, which is relevant background:



What's the difference between Spotify Free and Spotify Premium?

	Mobile Free	Desktop & Tablet Free	All devices Premium
Shuffle play any playlist or artist's catalogue	✓	✓	✓
Create your own playlists	✓	✓	✓
Play any song on-demand		✓	✓
Highest quality audio			✓
Uninterrupted listening			✓
Download music and listen offline			✓

47. Spotify faces intense competition from other providers of music audio content, including terrestrial radio, satellite radio, and other digital music services. Spotify competes with these entities for listenership and advertising dollars. [REDACTED]

[REDACTED]

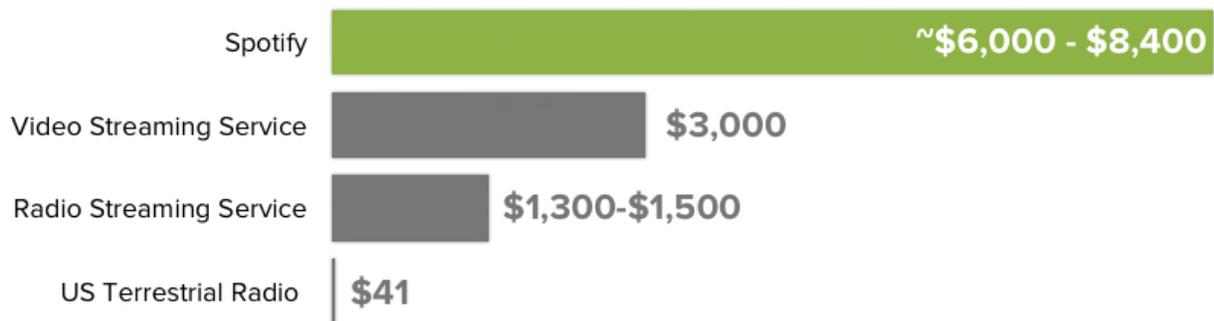
[REDACTED]

[REDACTED]

[REDACTED] 44

⁴⁴ A true and correct copy of the article, *How is Spotify Contributing to the Music Business?* (available at <https://www.spotifyartists.com/spotify-explained/#how-is-spotify-contributing-to-the-music-business>) is attached hereto as Spotify Exhibit 42.

Current Royalties Per 1 Million Listens



48. Spotify is the modern-day answer to broadcast radio, albeit with enhanced functionality (like personalized music discovery capabilities and, for some users, the ability to stream any song on demand). The line between non-interactive and interactive streaming services, or, respectively, “lean back” and “lean forward” experiences, is eroding as music streaming matures [REDACTED]

49. Spotify users in any given moment may choose to “lean back” by simply putting on a playlist (whether created by users, Spotify’s “Shows & Editorial” team, or Spotify’s algorithms). This experience is much like the experience of a [REDACTED] user or someone listening to their favorite disc jockey on terrestrial radio: the user picks a station and the songs are chosen for them.

50. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Such lean back usage maximizes the availability of works to the public by promoting lesser-known artists and increasing the variety and number of artists listened to (as further discussed below and in my colleague Jim Lucchese’s testimony), in turn creating greater returns for rightsholders.

51. **Competition with Broadcast Radio.** [REDACTED]

[REDACTED] Features like Discover Weekly and Release Radar are algorithmically-driven playlists that serve to introduce listeners to new music they may not have heard but which they will most likely enjoy, based on past listening preferences. Spotify’s “Shows & Editorial” team also creates carefully-crafted playlists that contain more than just Billboard’s Hot 100. These serve a promotional function much like traditional broadcast radio. With the introduction of podcasts for mobile devices—with which users can listen to a variety of talk content [REDACTED]

[REDACTED].

52. [REDACTED]

[REDACTED] Spotify’s ad-supported service has limited “on-demand” functionality, prohibiting users from playing songs on-demand on a mobile device, but permitting them to play shuffled playlists. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

54. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. [REDACTED]

[REDACTED]

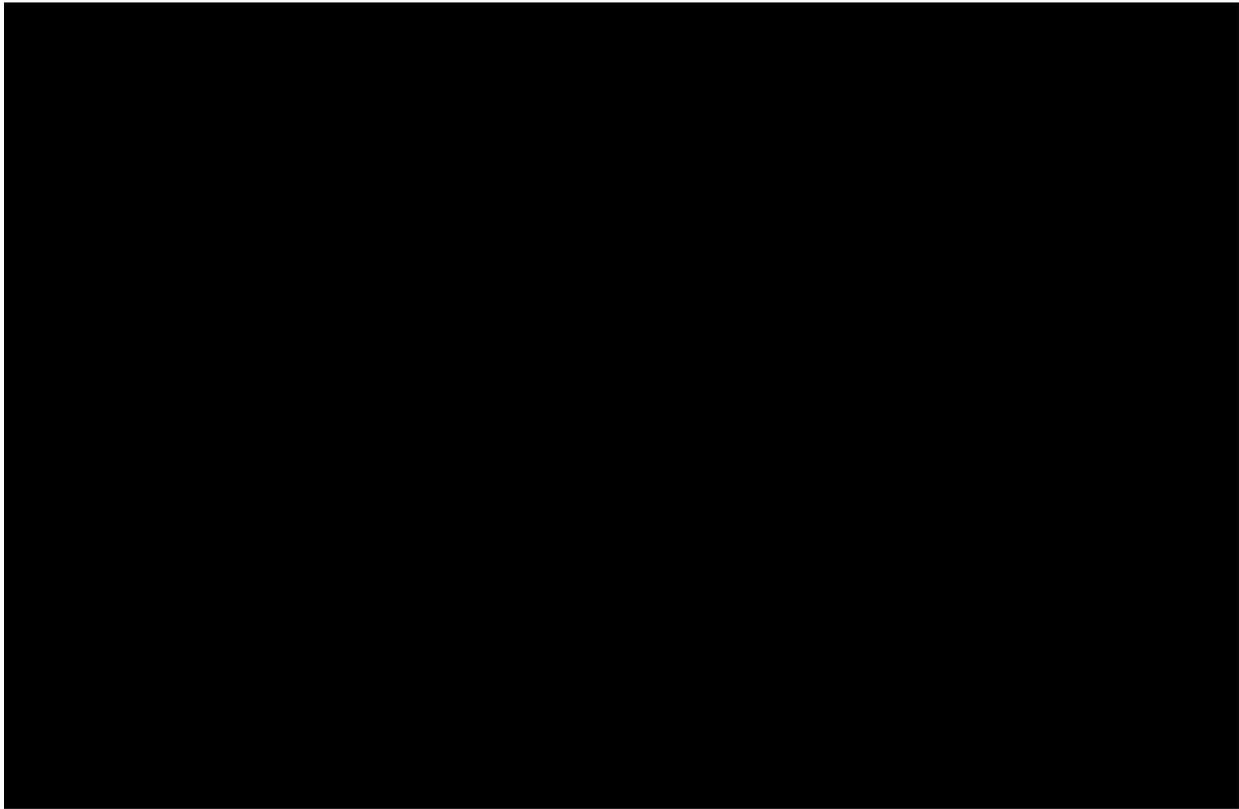
[REDACTED]

[REDACTED]

⁴⁵ A true and correct copy of the MusicWatch Powerpoint Presentation, "Spotify Spring 2015 Research Agenda: Part 1," at 46, is attached hereto as Spotify Exhibit 43.

[REDACTED]

⁴⁸ Spotify Exhibit 27 at 13.



57. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

58. [Redacted]

[Redacted]

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

60. [REDACTED]

[REDACTED] Pandora is

[REDACTED]

set to launch yet another interactive music streaming product.⁵³ [REDACTED]

[REDACTED] Billboard reported that users can pay \$3.99 per month to connect their Amazon Echo device to Music Unlimited (this price point only allows use of the service on one device). Amazon Prime members will also be able to subscribe to Music Unlimited for \$7.99 per month, or \$79.99 per year.⁵⁴ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61. **Competition for Advertising Dollars.** Spotify's free-to-users ad-supported service, as the name implies, relies on advertising for its revenue. [REDACTED]

[REDACTED]

[REDACTED] Remarkably, in 2015 AM/FM radio still boasted advertising revenue of \$17.4 billion, which has dipped only 1% since 2014.⁵⁵ To put that into context, more money is spent on advertising on AM/FM radio in the U.S. than the total IFPI stated value of the global recorded music market, which is about \$15 billion.⁵⁶ Advertisers are aware that all these services are, at the end of the day, competing for the same

⁵³ A true and correct copy of the article, *Pandora to 'Unveil' On Demand Streaming Music Service on Dec. 6th*, published in 2016 (available at <http://www.hypebot.com/hypebot/2016/10/pandora-to-unveil-on-demand-streaming-music-service-on-dec-6th.html>) is attached hereto as Spotify Exhibit 49.

⁵⁴ A true and correct copy of the article, *Amazon Launches Three-Tiered Music Unlimited Streaming Services*, published on Oct. 12, 2016 (available at <http://www.billboard.com/articles/news/7541029/amazon-music-unlimited-launch>) is attached hereto as Spotify Exhibit 50.

⁵⁵ A true and correct copy of the article, *U.S. Radio Revenue: \$17.4 Billion, Down 1% Last Year*, published on Mar. 3, 2016 (available at <http://www.radioworld.com/article/us-radio-revenue-174-billion-down-1-last-year/278280>) is attached hereto as Spotify Exhibit 51.

⁵⁶ Spotify Exhibit 1 at 8.

listeners, who have only a finite amount of time to devote to media—whether that is lean forward or lean back listening, or, on a broader level, whether it is watching Netflix or listening to music.

62. Another way to look at these services is to group them into categories by how they pay royalty licenses. “Licensed free” services are services such as the free [REDACTED] service that pay royalties to labels and publishers. “Partial-licensed free” services are services like terrestrial radio and [REDACTED] that are free-to-users services and for which either the service is statutorily obligated to pay only labels or publishers (such as terrestrial radio not paying record labels) or there is a reliance on statutory safe harbors (such as [REDACTED] and the DMCA safe harbor). “Unlicensed free” are services such as piracy that are free and pay no one. “Licensed paid” are services like [REDACTED] and [REDACTED] where the service pays both label and publishers and users pay to use the service.

63. Spotify is in competition with the services in each of these categories. Importantly, Spotify’s freemium model offers a compelling alternative to partial-licensed free (such as terrestrial radio) and unlicensed free (piracy). It is in the interest of both rightsholders and Spotify to ensure that the dynamics of freemium continue to push consumers onto a path where their listening generates revenue on the free-to-users ad-supported tier, and, when they move down the “path to paid,” the premium (or paid) tier. Conversely, if Spotify cannot continue to offer a compelling ad-supported product [REDACTED]

[REDACTED] And those who left these alternative free music services for Spotify’s freemium proposition do know how to turn back. Listeners will always have the ability to get their music for free.

Spotify's Impact on Artists, the Public, and the Industry: Maximizing Availability to the Public and Returns to the Copyright Owner

64. One of Spotify's main missions is to maximize the utility of copyright both to rightsholders and to listeners in ways other than simply generating revenue for rightsholders and the company. Spotify does this by maximizing the amount of tracks available to a user, creating playlists and products that promote music discovery and tracks that are new to the user, and providing artists with data to help them connect with their fans and find avenues to non-streaming revenue.

65. As a streaming music service, Spotify maximizes the sheer number of tracks, albums, and artists available across sixty markets and to over 100 million users. Compare this with a physical record store. In 2005, Chris Anderson, editor-in-chief of Wired Magazine, estimated that the average Wal-Mart carried "just 4,200 CDs, for a total of about 50,000 tracks," down from 5,000 CDs (around 60,000 tracks) a year earlier.⁵⁷ By contrast, Spotify offers over 30 million tracks that can be instantly delivered to a user's laptop or mobile device.

66. Making an enormous catalog available does not always result in actual consumption of that catalogue. A study of U.K. PDD data from 2008 found that over 80 percent of the digital inventory went untouched.⁵⁸ Of the approximately 13 million tracks available on

⁵⁷ A true and correct copy of blog post, *Updated Music Data*, published on Jul. 7, 2005 (available at http://longtail.typepad.com/the_long_tail/2005/07/updated_data.html) is attached hereto as Spotify Exhibit 52. ("[T]he typical inventory of a conventional high street record store was around 4,000 CDs.").

⁵⁸ A true and correct copy of the article, *Chopping the Long Tail Down to Size*, published on Nov. 7, 2008 (available at http://www.theregister.co.uk/2008/11/07/long_tail_debunked) is attached hereto as Spotify Exhibit 53.

the digital shelf at that time, 10 million were dormant and hadn't received a single purchase.⁵⁹ Rightsholders in this "long tail" received little to no revenue.

67. Compare this number with the click-rate of Spotify tracks five years after its launch. In 2013, Spotify released public data showing that, of the over 20 million tracks then available on Spotify, 80% had been streamed at least once.⁶⁰ As a result, Spotify is not just increasing the sheer number of tracks available to the public—it's ensuring that music can actually be heard.

68. Spotify has been able to promote streams of long-tail tracks through promoting user-created playlists, through carefully curating Spotify playlists, and, more recently, through introducing algorithmic tools that connect users with artists they may have never heard of but would likely love based on past user preferences.

69. One of the algorithmic tools is Spotify's Discover Weekly, a product on the Spotify platform that algorithmically creates a new playlist each week of tracks a user may not have heard before but may like. This is done individually each week for each user based on her past listening history.

70. The popularity and promotional effect of Discover Weekly cannot be disputed. In May 2016, Spotify released data showing that of the 100 million or so monthly active users Spotify had at the time, a little under half (around 40 million) had used Discover Weekly, and, of

⁵⁹ A true and correct copy of the article, *The Long Tail of P2P* (available at <https://www.prsformusic.com/creators/news/research/Documents/The%20long%20tail%20of%20P2P%20v9.pdf>) is attached hereto as Spotify Exhibit 54. See Spotify Exhibit 54 at 8.

⁶⁰ A true and correct copy of the article, *We've Turned 5 – Here's Our Story So Far*, published on Oct. 7, 2013 (available at <https://news.spotify.com/us/2013/10/07/the-spotify-story-so-far>) is attached hereto as Spotify Exhibit 55.

that number, more than half listened to ten or more of the thirty weekly tracks suggested and saved at least one of the tracks to their favorites.⁶¹

71. One reason Spotify’s discovery products are popular may be that they reduce discovery costs, or the time and effort it would otherwise take for a listener to find a new song she would like. Users who listen to a Spotify-curated or algorithmically-driven playlist are engaging in “lean back” behavior. These users are not actively searching for and playing songs they already know, but rather are allowing Spotify to *introduce them* to what they may like, just as traditional radio disc jockeys introduce listeners to new artists. Users in this state need not actively expend energy to try and *find* artists they will like. In turn, Spotify users spend more time actually *listening* to music.

72. [REDACTED]

⁶¹ A true and correct copy of the article, *Discover Weekly Reaches Nearly 5 Billion Tracks Streamed Since Launch*, published on May 25, 2016 (available at <https://press.spotify.com/bo/2016/05/25/discover-weekly-reaches-nearly-5-billion-tracks-streamed-since-launch>) is attached hereto as Spotify Exhibit 56.

⁶² Spotify Exhibit 43 at 34.



73. Broadcast radio and, more recently, non-interactive streaming, has traditionally been thought of as “promotional,” and therefore justified in paying much lower royalties than interactive streaming, which has traditionally been thought of as substitutive of CD/PDD sales (due to the fact that listeners can engage in “lean forward” listening, where they actively search for, and play, songs).

74. However, the heavy use and promotional effect of Spotify-curated and algorithmically-driven playlists debunks that theory. Spotify’s algorithmically-driven playlists aim to promote lesser-known and streamed artists. Spotify-curated playlists, created by Spotify employees, may include songs broken down by genre, top lists that are created based on popularity (showing what is popular globally, in the U.S., or what has gone “viral”), “mood” playlists (for example: “Chill,” “Focus”), and playlists focusing on new releases (“New Music

Friday,” which includes the best new music of the week). The variety of options allows users to choose exactly what they are looking for in a “lean back” orientated way.

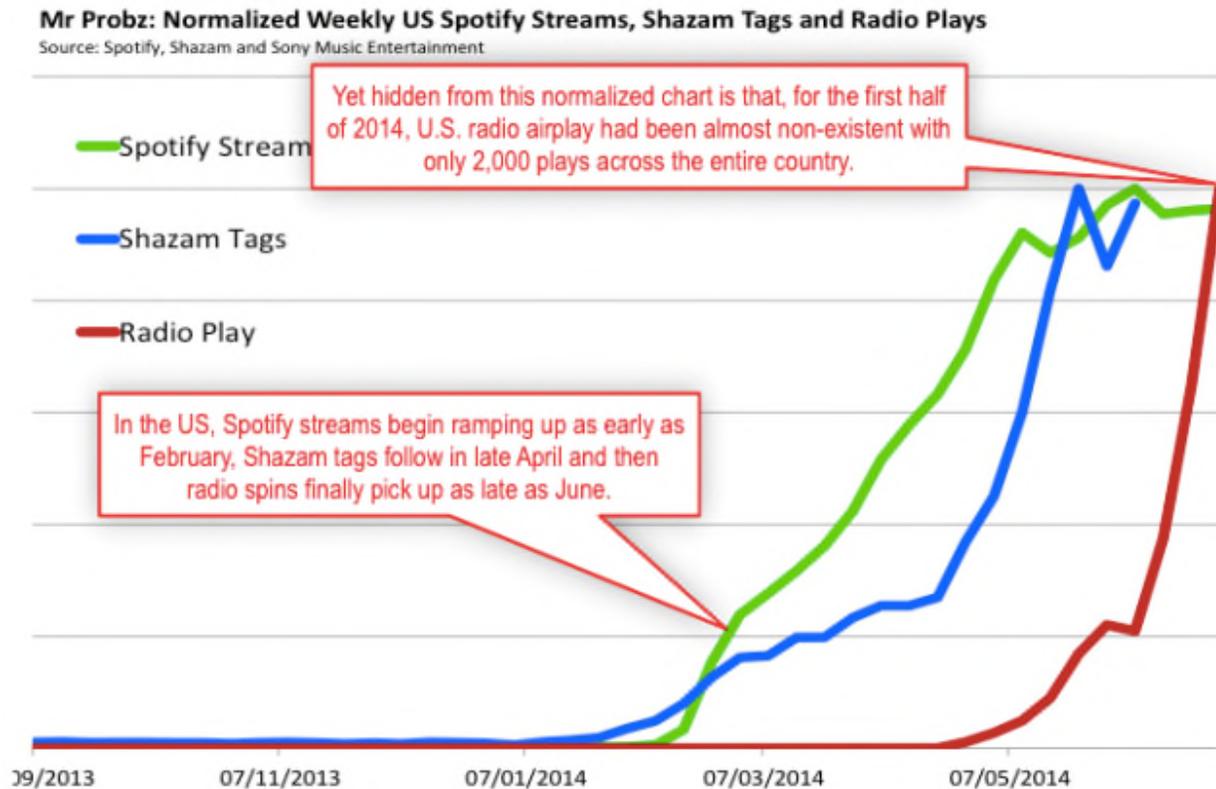
75. The use of Spotify’s curated playlists is heavy, and continues to be on the rise. Thus, not only [REDACTED], but, like broadcast radio, Spotify *promotes* artists. And, even more remarkably, Spotify does so on an international level.

76. From a copyright owner perspective, Spotify’s discovery products and promotional effects work. [REDACTED]

[REDACTED] The promotional value of Spotify-curated and algorithmically-driven playlists can be further illustrated in two simple case studies. Consider the case of the Dutch rapper Mr Probz.⁶³ His song, “Waves,” had been heavily streamed on Spotify, but mostly in Europe, where the song received strong support from club DJs. But then something remarkable happened. In early February of 2014, the song started trending in the U.S. on Spotify. The source? Almost entirely curated, “lean back” playlists, which was in stark contrast to how the song was being streamed in Europe—through “lean forward” search. Most remarkably, the song began trending on Spotify a full *four months* before radio began spinning the track. The below chart, created from internal Spotify data, shows this progression (note that “Shazam” tags show that consumers have heard the song, whether at a

⁶³ A true and correct copy of the article, *Anatomy of a Hit: How Mr Probz Came to America*, published Sept. 30, 2014 (available at <https://insights.spotify.com/us/2014/09/30/anatomy-of-a-hit-how-mr-probz-came-to-america>) is attached hereto as Spotify Exhibit 57.

party, in a store, or at a club, and are using the app Shazam to figure out what the song is and who the artist is):⁶⁴



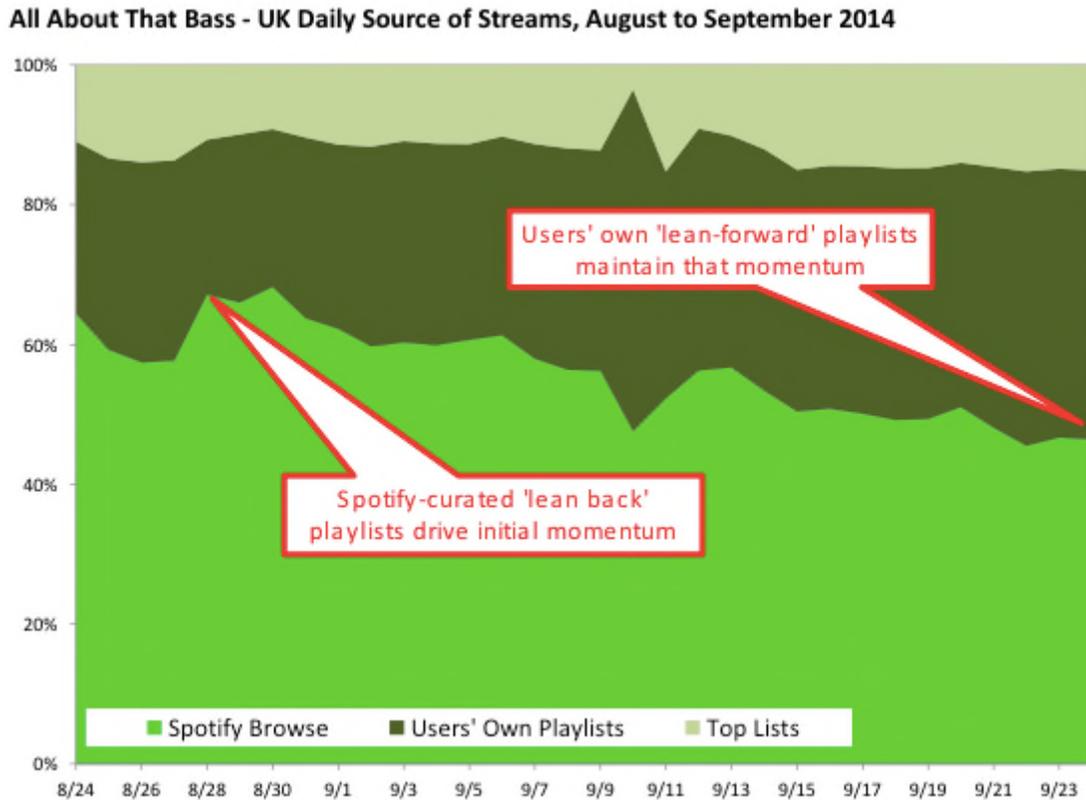
77. Thus, while conventional logic would dictate that radio spins are responsible for promoting a song that would then begin to be heavily streamed on Spotify, the story of Mr Probz illustrates that the age of interactive streaming can reverse the cycle. Spotify can *break out* an artist, and radio will follow.

78. Another case study for the artist Meghan Trainor essentially tells the story in reverse.⁶⁵ Meghan Trainor’s extremely popular track, “All About That Bass,” crossed U.S. borders onto U.K. charts based on Spotify streams. As the below chart illustrates, the track’s

⁶⁴ The dates in this chart are DD/MM/YYYY.

⁶⁵ A true and correct copy of the article, *Anatomy of a Hit: How Meghan Trainor Made the UK Chart Without Selling Downloads* (available at <https://www.spotifyartists.com/anatomy-of-a-hit-how-meghan-trainor-made-the-uk-chart-without-selling-downloads>) is attached hereto as Spotify Exhibit 58.

initial streams in the U.K. were driven entirely by Spotify-curated, “lean back” playlists (as illustrated in the light green area labeled “Spotify Browse,” where Spotify presents users with a selection of Spotify-curated playlists), before users began adding the track to their own playlists.

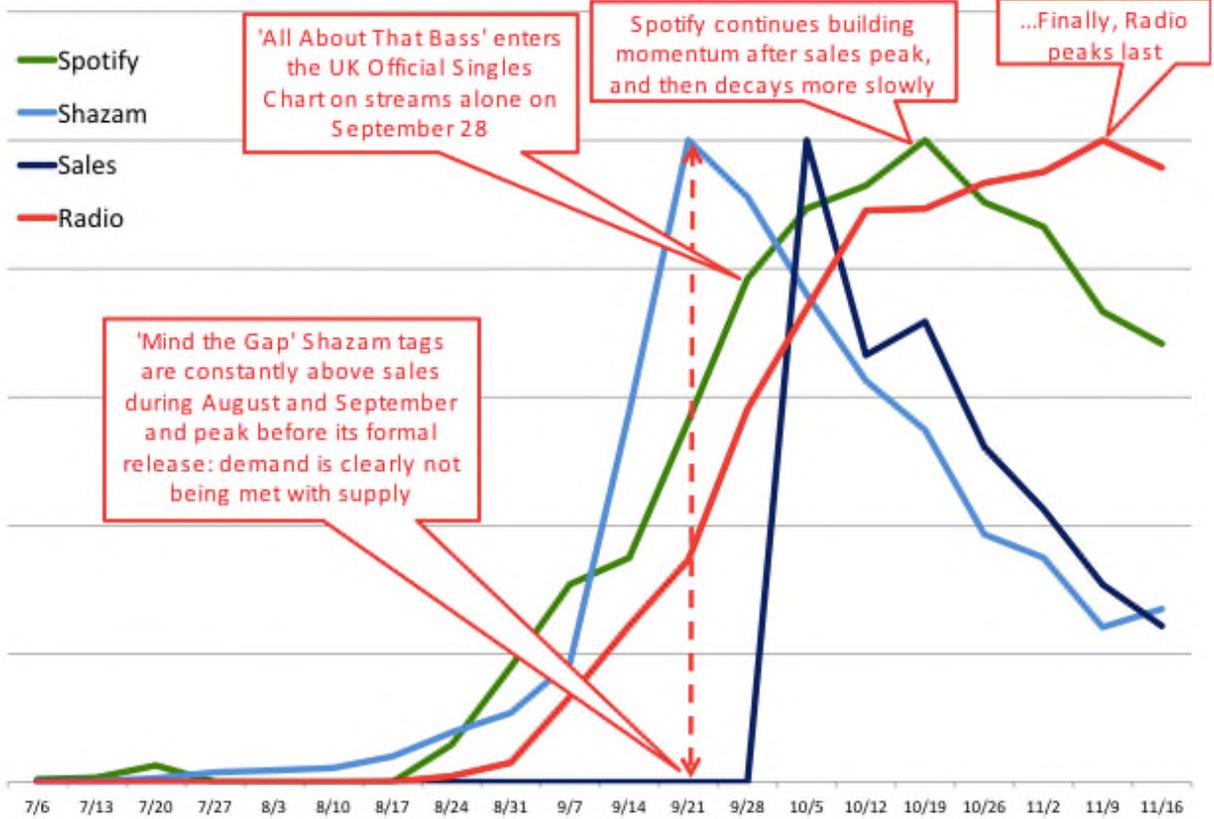


79. Critically, the track was available a full *month and a half* on Spotify before it even went on sale in the U.K. as a download. The below chart shows that the entrance of the track onto the U.K. Official Singles Chart was based on *streaming alone*, on September 28—a full week before the track was released for download (on, for example, iTunes).⁶⁶ Note that radio plays peaked well after Spotify streams peaked. Interestingly, the Meghan Trainor example also shows that Spotify provides another value proposition to rightsholders—Spotify has cross-border

⁶⁶ *Id.*; a true and correct copy of the article, *Meghan Trainor Enters Charts on Streaming Alone* (available at <http://www.bbc.co.uk/news/entertainment-arts-29404084>) is attached hereto as Spotify Exhibit 59.

promotional capabilities that bypass the traditional, country-focused approach to music promotion.

All About That Bass - UK Normalized Weekly Tags, Streams, Sales





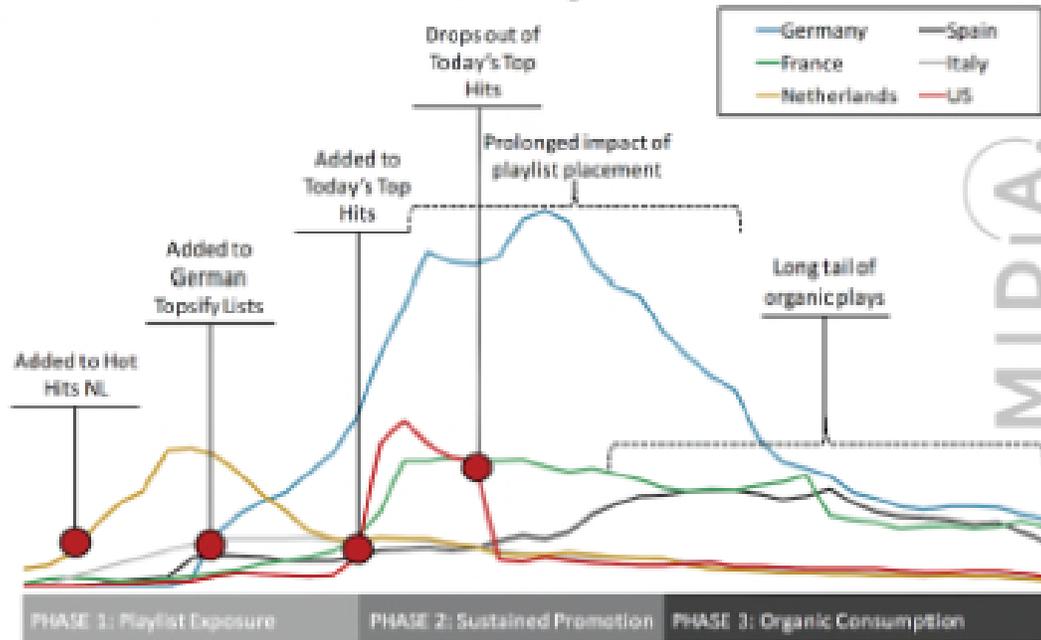
All About That Bass, in the UK

- **19 August** Spotify makes available ‘All About That Bass’ in the UK
- **28th September** With 1.17m streams, she climbed 20 places to Number 33 and makes chart history
- **29 September** iTunes and all download stores finally receive the track
- **5 October** All About That Bass goes straight to #1 when it went on sale selling over 100k copies.
- **16 December** To date, it’s done over 500,000 downloads, over 10 million audio streams

80. The Mr Probz and Meghan Trainor case studies are just two examples of what is an established fact: Spotify helps break out artists (*i.e.*, it popularizes lesser-known artists). The below chart from a respected media and technology analysis company shows yet another example of this phenomenon, in which streams of the track “Goodbye” by the artist Feder turned a local French pop artist into an international success based on playlist exposure.⁶⁷

⁶⁷ MARK MULLIGAN, MIDIA, CROSS BORDER LISTENING: BORDERLESS HITS AND CURATED PLAYLISTS 10 (June 2016). A true and correct copy of the MIDiA report is attached hereto as Spotify Exhibit 60.

Figure 5: Border Breaker: Curated Playlists Transformed Feder From Local French Success To International Success
Spotify Streams Of Feder 'Goodbye (feat. Lyse)' March 2015 To December 2015 And Key Playlisting Activity

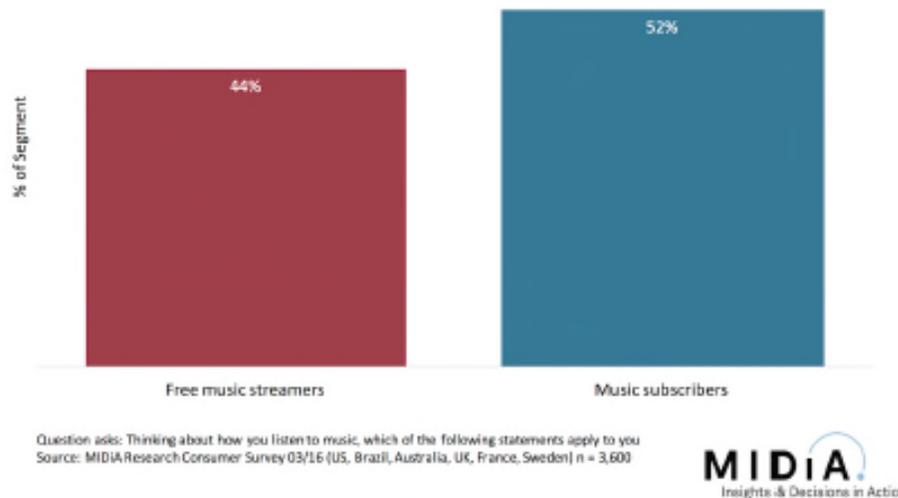


Source: Spotify

81. These data are consistent with data showing that those who subscribe to music streaming services have the most international music tastes.⁶⁸

⁶⁸ *Id.*

Figure 4: Music Subscribers Have The Most International Music Tastes
Streaming Users That Say Streaming Services Help Them Discover More International Artists, By Segment



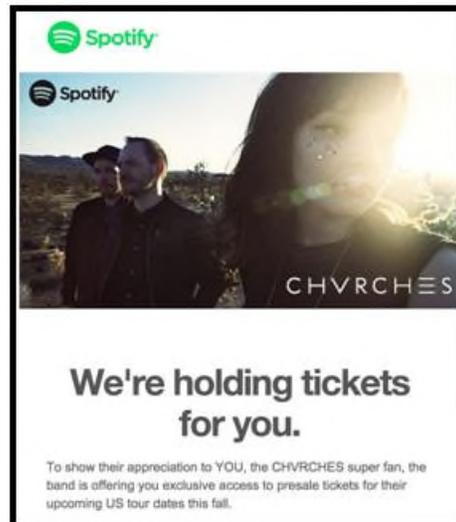
82. Spotify has also sought to increase its value proposition to artists and rightsholders by utilizing its user data and presenting it to artists in a way that allows them to connect with their fans.

83. My colleague Jim Lucchese's testimony explains in depth what products Spotify has invested in to help both artists and songwriters in the United States and around the world. One such product is Spotify Fan Insights, a new portal built by Spotify to benefit artists. This directly benefits singer-songwriters and independent producers who write their own songs, of course, and indirectly benefits other songwriters by, for example, increasing concert ticket sales. The key distinction between a Spotify feature like Fan Insights and the ownership model (CDs and PDDs) is that Spotify has a valuable trove of data on how content is actually being consumed. This provides new insights for artists and actionable evidence to help maximize returns to musical works owners. It is also free for them to use.

84. One example of Fan Insights I want to elaborate on is shown below. Top Cities ranks an artist’s most popular cities during the past thirty days. This is real-time accurate analytics on where content is actually being *consumed*, not *sold*. It is also worth noting that New York City is broken out into boroughs.

AUDIENCE			SONGS			PLAYLISTS		
Top 50 Cities by Monthly Listeners								
1	Manhattan	26.1k	26	Minneapolis	4.7k			
2	Los Angeles	22.5k	27	Barcelona	4.7k			
3	London	19.4k	28	Melbourne	4.6k			
4	Chicago	14.9k	29	San Jose	4.4k			
5	Mexico City	13.9k	30	Istanbul	4.2k			
6	Brooklyn	13.7k	31	Phoenix	4.2k			
7	San Francisco	12.3k	32	Brisbane	4.1k			
8	Houston	10.3k	33	Santiago	4k			
9	Seattle	9.9k	34	Stockholm	4k			
10	Denver	7.9k	35	Oakland	3.6k			
11	Washington	7.8k	36	Central District	3.4k			
12	Singapore	7.3k	37	Oso	3.4k			
13	Madrid	6.5k	38	Salt Lake City	3.4k			
14	Sydney	6.5k	39	Baltimore	3.3k			
15	Dallas	6.4k	40	Warsaw	3.3k			
16	Bronx	6.3k	41	Perth	3.2k			
17	Boston	6.1k	42	São Paulo	3.2k			
18	Toronto	5.9k	43	Montréal	3.2k			
19	Austin	5.7k	44	San Antonio	3.1k			
20	Atlanta	5.7k	45	Vancouver	3k			
21	Miami	5.5k	46	Amsterdam	3k			

85. Real-time insights (which are free for artists) are valuable in that you know who your fans are, how intensively they are listening, what playlists they are listening on, and where they are listening from. With this information, an artist can easily target these fans when it comes to, for example, planning and selling tickets to live concerts. The example below shows how Spotify is experimenting with this via pre-sales. Spotify can target an artist’s “hardcore” fan base and reward them with tickets before they go on sale. This allows the creator to forge a closer relationship with the consumer and enhance their returns.



86. What does all this mean for publishers and songwriters? It means more money for them. Live performances of a songwriter's works are licensed by PROs and a royalty is distributed back to the songwriter(s) whose work(s) were performed on stage. This value-add for publishers and songwriters is not insignificant and is on top of the revenue generated from streams.

Concluding Remarks

87. Spotify is indisputably changing the music landscape for the better. It does so by *reducing* piracy, in turn reversing the downward trend in music industry revenues since the advent of Napster. We are now witnessing a long-awaited “sea change” in fortune for rightsholders, or as Ed Christman from Billboard magazine recently remarked: “what labels hoped would happen seems to be happening.”⁶⁹

88. The music industry is recovering, streaming is driving the recovery, and Spotify's freemium model is driving streaming. [REDACTED]

⁶⁹ Spotify Exhibit 33.

[REDACTED]

[REDACTED]

[REDACTED] All of these services generate less royalties for publishers and songwriters than Spotify’s freemium (or “path to paid”) service. Our value proposition to music publishers and songwriters means losing these users to the existing alternatives would be a net-negative for these and other rightsholders’ welfare.

89. Finally, Spotify benefits artists and songwriters by increasing the diversity and amount of music listened to by users. Whether it’s through algorithmically-curated playlists or the social act of sharing a playlist, Spotify broadens that world, such that listeners are exposed to artists they may never have heard of and who may not get any radio play. Spotify continues to invest and innovate every day. As my colleagues Barry McCarthy and Nicholas Harteau testify, Spotify invests millions into ensuring that we are on the cutting-edge of technology every single day in order to benefit artists, songwriters, publishers, the public, and the music industry as a whole. The benefits of our model are distinct and without precedent—just as the recovery that we are now seeing across the global music industry is also distinct and without precedent.

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
The Library of Congress**

In the Matter of

**DETERMINATION OF RATES AND
TERMS FOR MAKING AND
DISTRIBUTING PHONORECORDS
(PHONORECORDS III)**

**Docket No. 16-CRB-0003-PR (2018-
2022)**

DECLARATION OF WILL PAGE

I, Will Page, declare under penalty of perjury that the statements contained in my Written Direct Testimony in the above-captioned proceeding are true and correct to the best of my knowledge, information, and belief. Executed this 21 day of October 2016 in London, United Kingdom.


Will Page