ONE STEP AHEAD

AI TRENDS REPORT

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IMPALA

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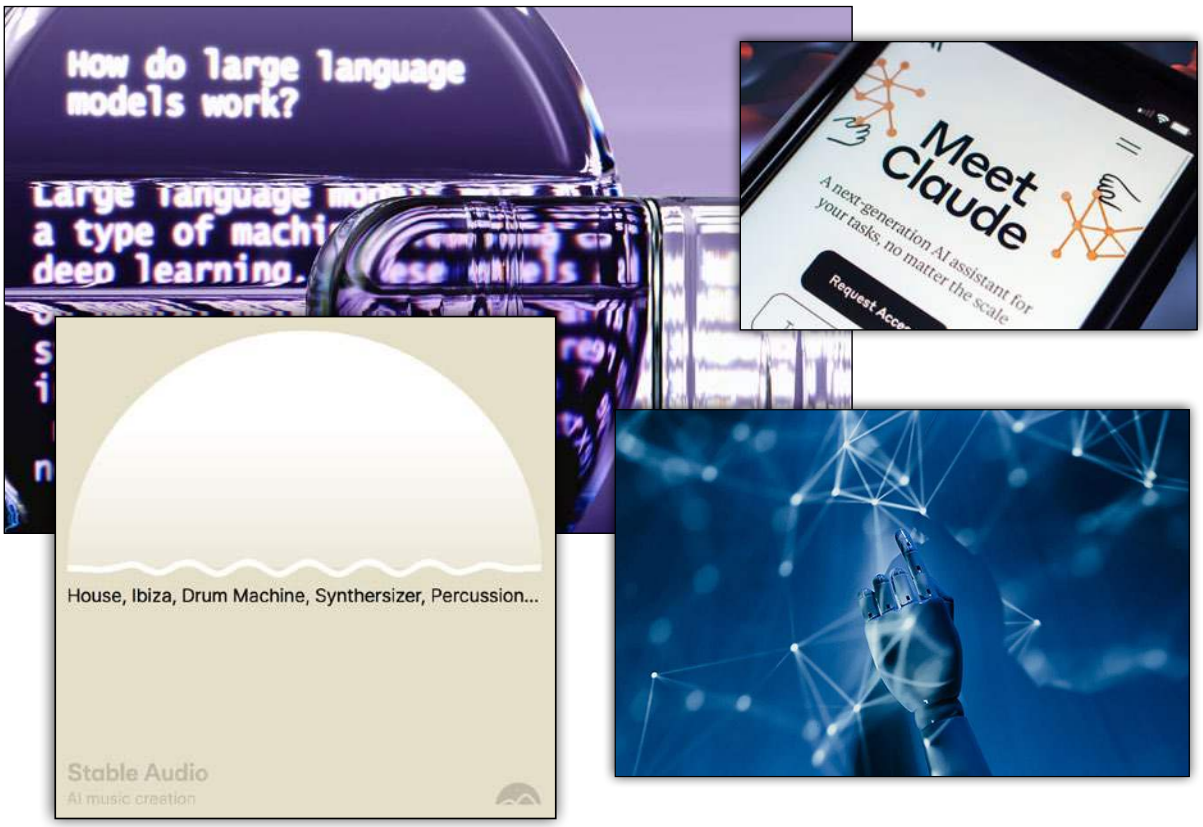
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ONE STEP AHEAD: AI TRENDS REPORT



Building on the 'AI And The Music Industry' report published earlier this year, in this trends report from One Step Ahead we present summaries of...

- The ongoing debate about the copyright obligations of AI companies, and the legal and lobbying activity that the music industry is pursuing.
- The use of generative AI to generate voice clones of artists – and how the music industry is seeking to both control and commercialise this use of AI.
- Recent surveys of independent artists about their use and perception of artificial intelligence.

ONE STEP AHEAD: AI TRENDS REPORT
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01: COPYRIGHT AND TRANSPARENCY OBLIGATIONS IN AI

As outlined in the 'AI And The Music Industry' report, there is a significant disagreement between the music industry and the tech sector over the copyright obligations of AI companies. This disagreement is now very much in the spotlight.

RECAP

To train a generative AI model so that it can generate original content, the model needs to be exposed to existing content. With models that generate music, that means exposing the model to existing recordings and songs.

The music industry is clear that if an AI model is trained using existing music, the AI company must first seek consent from whoever controls the copyright in that music. And that will likely require negotiating a licensing deal with the relevant copyright owners.

However, many AI companies argue that they do not need to seek consent in this context. This argument relies on copyright exceptions that exist in at least some copyright systems, most likely exceptions relating to text and data mining. In the context of US law, this argument is based on the argument that training AI constitutes 'fair use'.

LITIGATION

There are now a number of lawsuits working their way through the courts that will test these arguments, especially in the US. To date, these cases have generally been filed by the owners of literary or artistic works rather than music, though there is a lyrics case.

Universal Music Publishing, Concord and ABKCO have collectively sued AI company Anthropic for copyright infringement. In a lawsuit filed with the US courts in October, they claim that the tech firm has exploited, without licence, lyrics owned by the music publishers when training its AI chatbot Claude, and is therefore liable for copyright infringement. Anthropic, which is backed by Amazon, will almost certainly present a fair use defence.

In November, the publishers also requested a preliminary injunction ordering Anthropic "to implement effective guardrails that prevent its current AI models from generating output that disseminates, in full or in part, the lyrics to compositions owned or controlled by the publishers", and to ensure that it does not use unlicensed lyrics to train future models.

US COPYRIGHT OFFICE REVIEW

The US Copyright Office is undertaking a consultation on AI and copyright and in November published the thousands of submissions it has received. These very much set out this debate – with AI companies presenting the fair use defence and copyright owners disputing it.

Stability AI: *"We believe that training AI models is an acceptable, transformative and socially beneficial use of existing content that is protected by the fair use doctrine and furthers the objectives of copyright law, including to 'promote the progress of science and useful arts'".*

OpenAI: *"[We believe] that the training of AI models qualifies as a fair use, falling squarely in line with established precedents recognising that the use of copyrighted materials by technology innovators in transformative ways is entirely consistent with copyright law".*

Google: *"The doctrine of fair use provides that copying for a new and different purpose is permitted without authorisation where – as with training AI systems – the secondary use is transformative and does not substitute for the copyrighted work".*

The Recording Industry Association Of America and the American Association Of Independent Music in a joint submission: *"Consent of the copyright owner is required for any and all reproductions and other exclusive uses of copyrighted works, whether the use is for non-commercial or research purposes or for avowedly commercial, for-profit purposes. The only exception is where the AI developer can meet its burden to establish that the reproductions and other uses are fair use under the particular circumstances".*

"Although we recognise that fair use involves a fact-specific, case-by-case analysis, the unauthorised reproduction of copyrighted works by AI developers to develop models that produce AI-generated works that actually or potentially compete with the inputted works comes as close as a use can come to being presumptively not fair use".

ED NEWTON REX'S RESIGNATION STATEMENT

Following the publication of the submissions to the US Copyright Office's review, the VP Of Audio at Stability AI, Ed Newton Rex, resigned over his employer's position on fair use.

Newton Rex is a UK musician and entrepreneur who previously founded music AI start-up Jukedeck, which was acquired by TikTok. He oversaw the development of Stability's music AI product Stable Audio, which launched in September, trained with licensed music.

In a statement explaining his decision to resign he wrote: *"Companies worth billions of dollars are, without permission, training generative AI models on creators' works, which are then being used to create new content that in many cases can compete with the original works. I don't see how this can be acceptable in a society that has set up the economics of the creative arts such that creators rely on copyright".*

"One of the factors affecting whether the act of copying is fair use, according to Congress, is 'the effect of the use upon the potential market for or value of the copyrighted work'. Today's generative AI models can

clearly be used to create works that compete with the copyrighted works they are trained on. So I don't see how using copyrighted works to train generative AI models of this nature can be considered fair use".

SACEM OPT-OUT

In European copyright law, there is actually an exception for text and data mining that was introduced in the 2019 copyright directive, which could possibly be relied upon by AI companies. However, rightsholders can also opt out of this exception.

Article four of the directive says: "Member States shall provide for an exception or limitation [to copyright] for reproductions and extractions of lawfully accessible works and other subject matter for the purposes of text and data mining".

It then adds: "The exception or limitation shall apply on condition that the use of works … has not been expressly reserved by their rightholders in an appropriate manner, such as machine-readable means in the case of content made publicly available online".

In October, French song rights collecting society SACEM issued a statement confirming it had exercised this opt-out for its repertoire.

It said: *"By exercising this right to opt out, SACEM intends to restore the exclusive rights of creators by making data-mining operations subject to prior authorisation. Entities that use SACEM's works to feed their training databases and carry out data mining activities based on them will have to request prior authorisation from SACEM and expressly negotiate the conditions of use".*

SACEM CEO Cécile Rap-Veber added: *"Our aim is not to ban AI, or to slow down its development, but to make it more virtuous and transparent. Our members' creative works must not be used without their consent to enrich and train AI tools".*

MUSIC INDUSTRY LOBBYING

In Europe and elsewhere, the music industry continues to call on lawmakers to clarify the copyright obligations of AI companies, and to ensure that no copyright exceptions can be relied upon – or are newly introduced – so that those obligations can be circumvented.

A UK Music letter to UK prime minister Rishi Sunak in October: *"As a general principle, the use of music during the ingestion process (in the past, present and future) should always require permission from the creator and the rightsholder. Failure to ensure this basic human right will jeopardise thousands of UK jobs and threaten the fragile talent pipeline on which the music industry relies to nurture the music professionals who are the envy of the world".*

The Independent Music Publishers International Forum's ethical guidelines for generative AI in October: *"The machine learning process, including deep learning, involves many reproductions of musical and/or literary works which require the permission of the respective writers or rightsholders … No superseding social interest exists which would justify an exception to this human right of intellectual property which*

protects not only the writers' economic interest but also the expression of their creative personality".

A paper on AI published by an assortment of groups representing artists and songwriters including AEPO-ARTIS and ECSA in July: *"The introduction of exceptions, including for text and data mining, that permit AI systems to exploit copyright works and performances without authorisation or remuneration must be avoided. Some existing exceptions should be clarified, in order to provide legal certainty for creators of the underlying data and performers, as well as for AI systems wishing to benefit from such data".*

MUSIC-MAKER CONSENT

Within the music industry there is an additional element to the debate around consent and AI: where a record label, music publisher or collecting society owns the copyright in a recording or song and enters into licensing negotiations with an AI company, does it first need to get the explicit consent of the artist or songwriter?

Legally speaking, that would partly depend on what vetoes or rights to consultation are in the artist or writer's record or publishing contract, and partly on whether any rights are being exploited beyond the economic rights of the copyright owner, for example moral rights under copyright, or another performer or creator right such as personality rights. Beyond legal obligations, some might argue there is an ethical obligation to get this consent.

In September, the UK's Council Of Music Makers published a statement on AI which included: *"Where licensing deals are negotiated in respect of AI technologies, the explicit consent of individual music-makers must be secured before music is used to train AI models. Such consent cannot be inferred by rightsholders or technology companies".*

TRANSPARENCY OBLIGATIONS AND THE EU AI ACT

In addition to the copyright obligations of AI companies, the music industry and wider copyright industries also believe that there should be transparency obligations on these businesses too. There are two aspects to this. AI companies should be fully transparent about what data and content has been used to train a generative AI model. And works that are AI-generated should be clearly labelled.

The European Union AI Act is relevant here. It is not specifically focused on generative AI models, but it does include some transparency obligations for those developing artificial intelligence.

The act is currently in the 'trilogue phase', where the European Commission, European Parliament and EU Council all seek to agree on a final version of the legislation.

It's known that tech companies and some EU governments are seeking to get the current draft of the act revised to reduce some of the obligations contained in it. But the European Parliament and current Spanish presidency of the EU are keen to ensure practical transparency obligations remain.

With that in mind, in November a group of organisations representing creators, including artists and songwriters, called on European lawmakers to "put transparency back at the heart of the European Union's AI Act".

They wrote: *"We strongly feel that the datasets used by generative AI should be informed by the highest level of transparency. The AI Act should also impose strict visible and/or audible labelling obligations to all deployers of generative AI-powered technologies, warning the public about the fact that what they are watching, listening to or reading has been altered or generated by AI".*

One of the music groups to sign the statement is the European Composer & Songwriter Alliance.

Its President, Helienne Lindvall, said: *"It is crucial that the works of authors and artists are not used for training data without their knowledge and consent. This means that we need mandatory transparency requirements, without broad exception loopholes. Without a balanced AI Act that guarantees those fundamental rights, the livelihoods of all creators are in jeopardy. With no solid human-centric approach to creation, AI would simply lose its purpose – which should be to aid the progress of society".*

Although this statement was signed by groups representing individual creators, the music industry is pretty aligned on this, with record labels and music publishers in agreement with artists and songwriters regarding the transparency obligations of AI companies.

Confirming that, IMPALA, stated: *"The EU should not miss the opportunity provided by the AI Act to ensure that generative AI models have meaningful transparency and record-keeping obligations".*

"Our members and the artists they work with are excited about the possibilities offered by AI as a tool to create, produce, distribute and promote music, as well as other collaborative opportunities with AI models to license our works".

But to capitalise on those opportunities, generative AI companies "should be subject to transparency and record-keeping obligations, as proposed by the European Parliament and supported by the Spanish presidency of the EU. This is a vital part of the jigsaw around negotiating the licences and authorisations foundational models need to operate".

02: VOICE CLONING

One use of generative AI in music that has garnered a lot of attention is voice cloning, ie AI tools that can generate vocals that imitate the voice of specific artists. As with most things to do with AI, the music industry sees this as both a challenge and an opportunity.

CHALLENGES

One of the first tracks featuring AI-generated voice clones to become headline news was 'Heart On My Sleeve', created by a producer called Ghostwriter who used AI to imitate the voices of Drake and The Weeknd, without the consent of either artist.

After the track went viral on TikTok and subsequently appeared on the streaming services in April, Universal Music – which is the label of both Drake and The Weekend – sought to have the recording removed from the digital platforms.

This posed questions around how labels could seek to have tracks that use AI-generated voice clones without an artist's consent removed and on what grounds. And the extent to which the digital platforms themselves should be monitoring for such tracks.

In November, YouTube announced that it was introducing a system that would allow its record label and music distributor partners to request the removal of videos containing tracks that feature unapproved vocal clones. It is also developing policies regarding such removals that will clarify when removal requests might be denied.

In October, the Recording Industry Association Of America highlighted the emergence of websites that facilitate the creation of unapproved vocal clones in a submission to the US Trade Representative about piracy. Referencing UK-based Voicify in particular, it said that the government should include websites of this kind in its annual Notorious Markets Report, which lists websites and marketplaces of concern to US intellectual property owners.

The RIAA noted that there has been *"an eruption of unauthorised AI vocal clone services that infringe not only the rights of the artists whose voices are being cloned but also the rights of those that own the sound recordings in each underlying musical track".*

OPPORTUNITIES

While unapproved vocal clones are a concern for the music industry, there is also clearly an opportunity for artists and labels in this domain where these platforms work with the music industry to develop licensed services. The scale of the opportunity is not yet clear, but a number of artists, digital platforms and start-ups are experimenting in this space.

In April, Grimes said on social media that she would be happy for people to create original tracks using

a clone of her voice if they split the royalties. The following month she partnered with a company called CreateSafe to launch a website to facilitate that process. She then announced a partnership with Believe's Tunecore to distribute and monetise tracks generated using the CreateSafe tool and featuring her vocal clone.

In July, a service called Voice-Swap was launched. Designed by DJ Fresh and Nico Pellerin, the company says it has developed an AI-powered tool "to help producers, artists and writers who don't want to use their voice on songs use AI to transform their voice to sound like one of our featured artists". Those featured artists, the company's website notes, "are partners who benefit from the use of their AI model".

In November, YouTube began piloting Dream Track, a new feature that allows creators on the platform to output short music clips for use in their videos which include AI-generated vocals that imitate specific musicians. It is initially partnering with Universal Music and Warner Music on the feature, with artists participating in the pilot including Charlie Puth, John Legend, Sia, T-Pain, Demi Lovato, Troye Sivan, Charli XCX, Alec Benjamin and Papoose.

PUBLICITY AND PERSONALITY RIGHTS

As we noted in 'AI And The Music Industry', when an AI model generates audio imitating the voice of a specific artist, the model is likely exploiting the artist's publicity or personality rights as well as the copyright in any recordings and songs used to train the model.

This is important because these rights give artists control over the use of their voice even if they do not own the copyright in their music or if it transpires that an AI company can rely on a copyright exception when training its model. Artists can use this control either to stop the cloning of their voice or to turn voice cloning into a commercial opportunity.

With this in mind, it is perhaps unsurprising that publicity and personality rights have been the subject of increased discussion in recent months.

Quite how these rights work differs from country to country. For example, the origin of these rights is somewhat different in Europe as opposed to the US. In the US, publicity rights sit in state law, and therefore differ around the country. In the UK, there is no publicity right.

Therefore, in addition to calling for clarity around the copyright obligations of AI companies, some in the music industry are also asking that lawmakers provide more clarity about how publicity or personality rights apply in terms of voice cloning, and how this rights works across borders, so an artist in one country can protect their voice in another.

In Europe, in September, a group of organisations representing performers and creators – including IAO, FIM and ECSA from the music industry – referenced personality rights in the context of the transparency obligations contained in the EU AI Act.

They wrote: *"The protected works, voices and images of our members are often used without their knowledge, consent and remuneration to generate content. Some of these uses may harm their moral and personality rights and prejudice their personal and professional reputation".*

"AI cannot be permitted to develop in a manner that disregards fundamental rights, such as authors and performers rights, image, and personality rights, and it should not be employed in ways that may deceive the general public".

In the US, the music industry is now calling for a federal publicity right, so that there is consistency across the country in this domain. And some in the UK are urging their government to consider introducing a publicity right into law for the first time.

RIAA and A2IM in their submission to the US Copyright Office AI review: *"Federal legislation to protect voice and likeness is needed to create a baseline legal and economic framework where individuals are shielded from theft and harm, consumers are protected from deception and misinformation, and AI developers and services are provided with clear business certainty. Currently, there is an inconsistent patchwork of state laws".*

UK Music's AI position paper: *"A new personality right should be created to protect the personality / image of songwriters and artists".*

The major record companies have also spoken about the need for publicity and personality rights to be enhanced. At a US Congressional hearing on AI in July, Universal Music's General Counsel Jeff Harleston said "we urge you to enact a federal right of publicity statute", while on an investor call in November Warner Music CEO Robert Kyncl said it is important that "name, image, likeness and voice is afforded the same protection as copyright".

03: USE AND PERCEPTIONS OF AI IN THE MUSIC COMMUNITY

AI tools are increasingly being used in the music industry, as part of music-making process, to help generate marketing content, and more generally in the running of music companies. There have been a number of surveys of independent artists regarding use of AI.

In April, DIY distributor Ditto published the results of a survey of nearly 1300 music-makers. 59.6% of the artists who responded to that survey were already using AI as part of their creative process in some way: 11% to support their songwriting, 20.3% for music production, 30.6% for mastering, and 38% to help create artwork.

In July, DIY distributor TuneCore also published the results of a survey of nearly 1600 artists. Half of those surveyed said that they had a positive perception of AI and would be willing to offer their music for the training of AI models. And around a third said they were interested in using AI as part of their music-making process, with a similar amount reckoning AI technologies could help them with their marketing and promotion.

In November, music studio network Pirate published the results of a survey of 1000 musicians. 25% said that they had already experimented with AI tools, while 46% said they would consider it in the future. But, interestingly, only 48% said that they would admit to making use of such tools. 53% of respondents admitted that they had concerns about how employing such technology would be perceived by listeners.

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ABOUT ONE STEP AHEAD

One Step Ahead is a digital intelligence facility from IMPALA to enable independent music companies across Europe to navigate and identify trends, developments, challenges and opportunities in the digital music market. Delivered in partnership with music business consultancy CMU and with support from Merlin, One Step Ahead provides reports, tools and training to help independent music businesses of all sizes to get the most out of today's digital opportunities in Europe.

ABOUT IMPALA

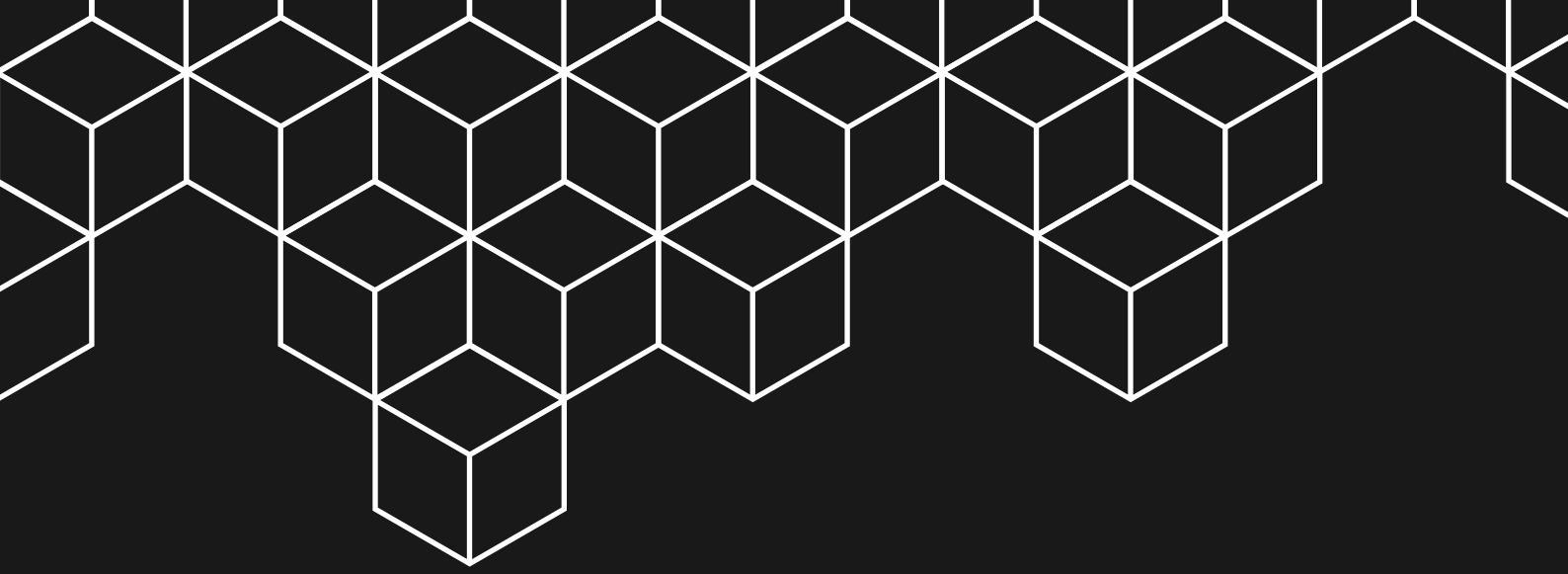
IMPALA was established in 2000 and now represents over 5000 independent music companies. 99% of Europe's music companies are small, micro and medium businesses and self-releasing artists. Known as the independents, they are world leaders in terms of innovation and discovering new music and artists – they produce more than 80% of all new releases and account for 80% of the sector's jobs. IMPALA's mission is to grow the independent music sector sustainably, return more value to artists, promote diversity and entrepreneurship, improve political access, inspire change, and increase access to finance. Read more about IMPALA's story in 20 milestones on our website. **impalamusic.org**

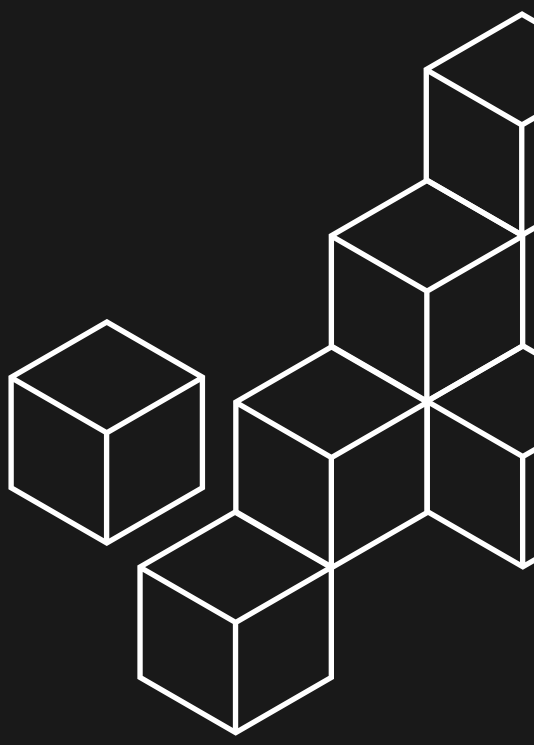
ABOUT CMU

CMU helps people navigate and understand the music business through media, training, consultancy and events. Our consultancy work sees us provide strategic support, intelligence and expertise to a wide range of clients in the UK, EU and around the world. We also regularly produce and publish research reports and white papers on the very latest trends in the music business. **completemusicupdate.com**

ABOUT MERLIN

Merlin provides independents the means to own their future. Members work directly with key digital partners, but benefit from Merlin's premium deals with over thirty digital music services around the world. Merlin's membership consists of independent labels, distributors, and other rights-holders, representing tens of thousands of labels and hundreds of thousands of artists from every country in the world, representing 15% of the global market share. As a member-led, artist-focused organisation, Merlin's mission is to deliver best in class services and work collaboratively with its digital partners to drive incremental benefits to members, while delivering value back to digital music services. **merlinnetwork.org**





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