

Diagram 1

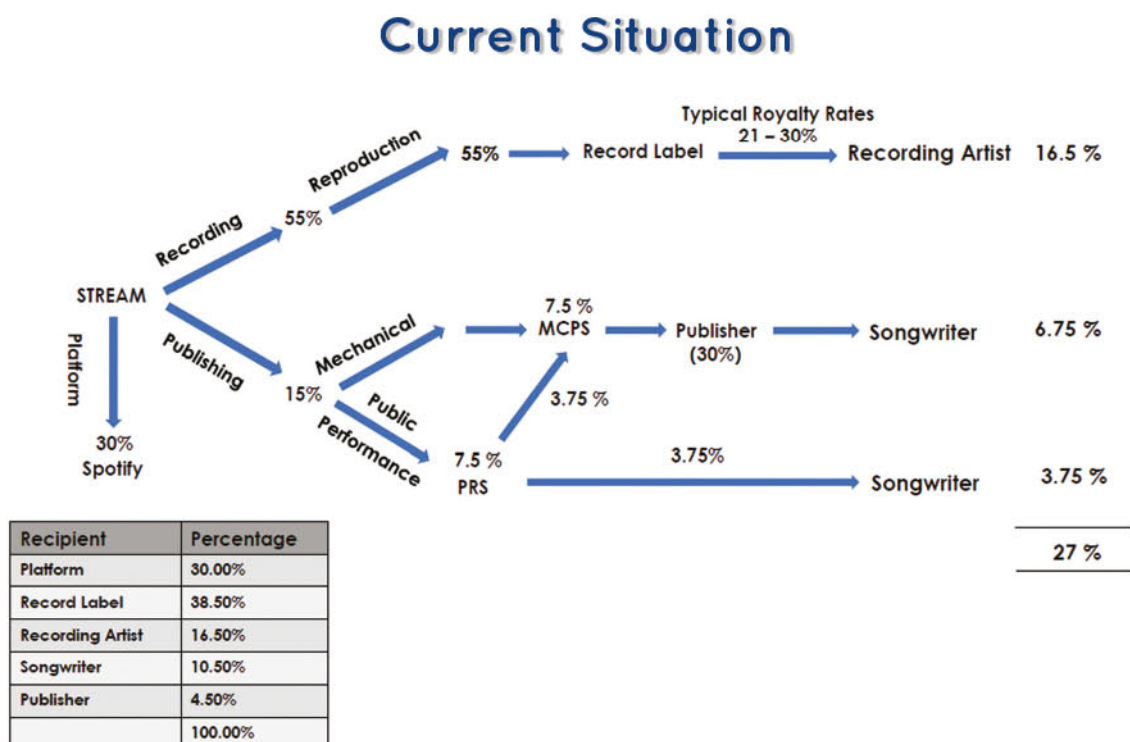
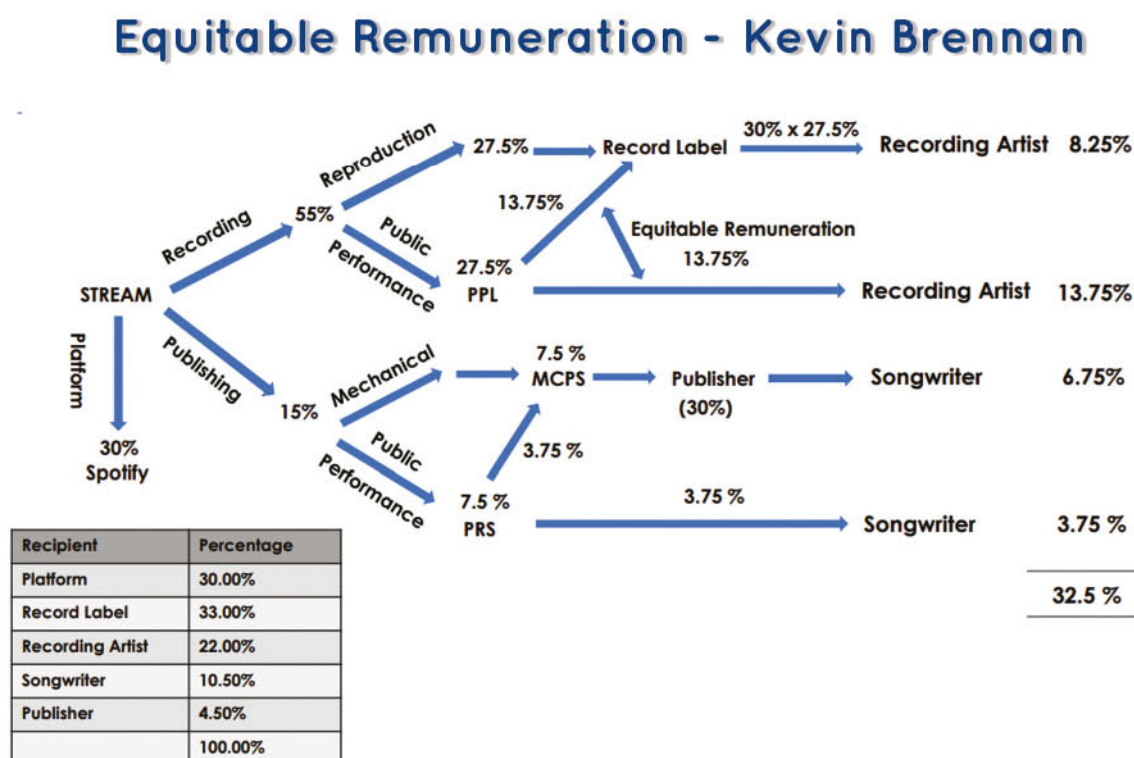


Diagram 2



Streaming Article Overleaf explaining how current streaming split is allocated and how Equitable Remuneration would be applied

ACTIVE / PASSIVE MODEL

Diagram 3

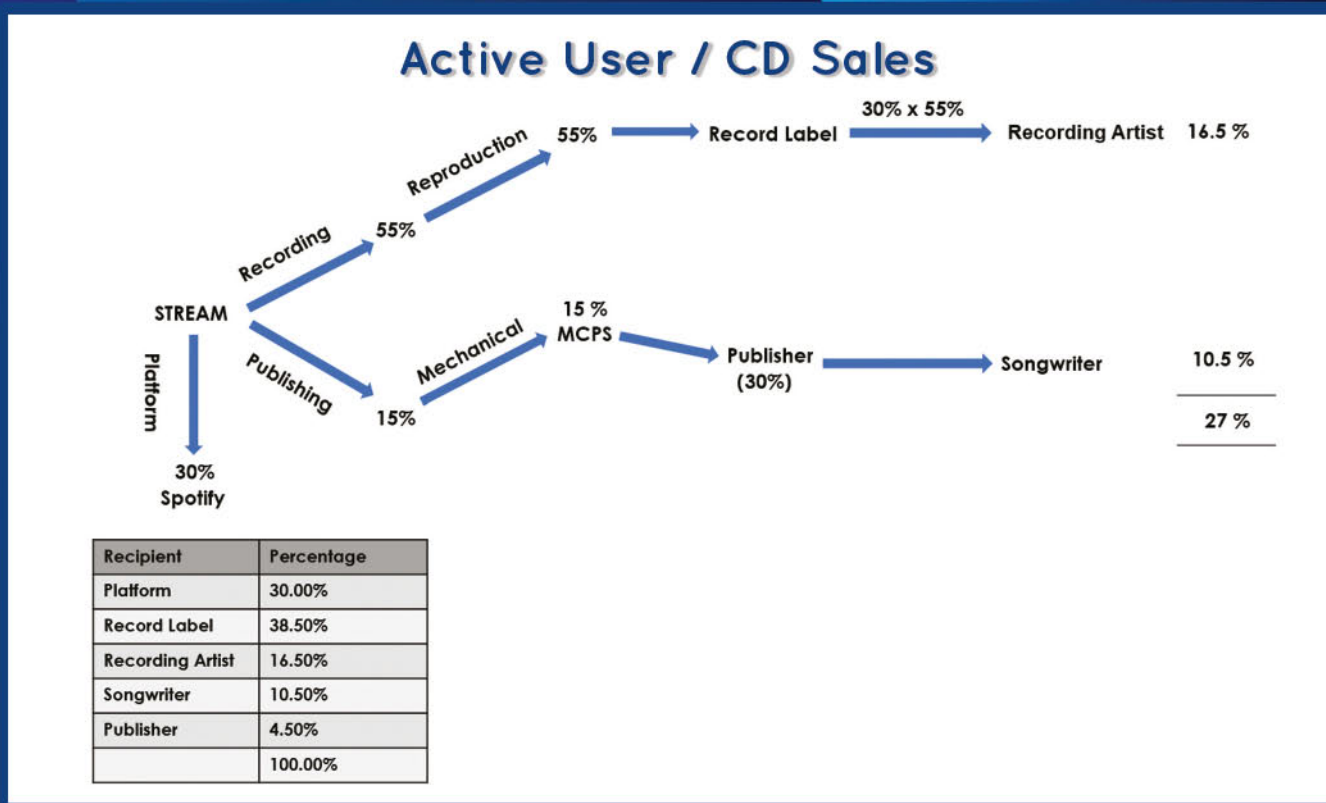
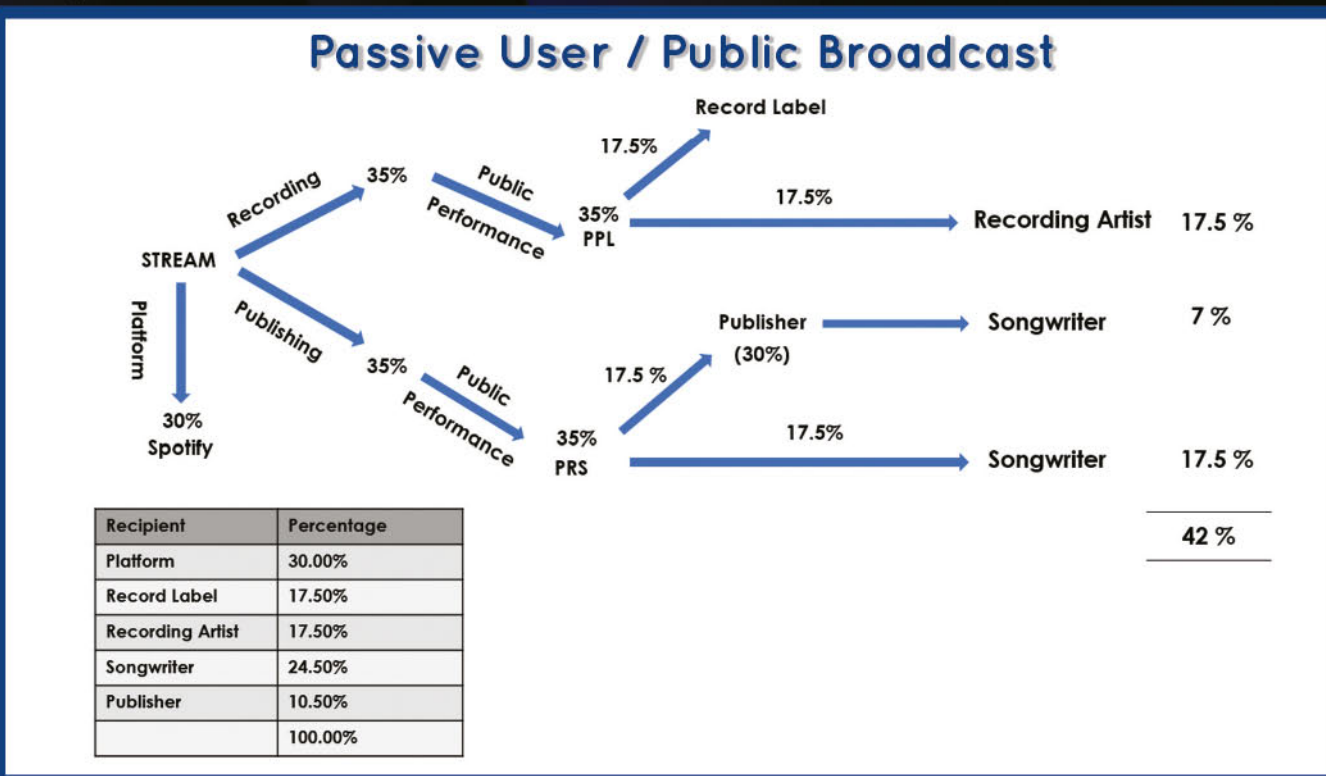


Diagram 4



FULL STREAM AHEAD

Living the stream:
Colin Young with his
Music Week Accountancy
Firm Of The Year Award



Colin Young, director of Music Week Award-winning accountancy firm CC Young, was called as an expert witness for the DCMS inquiry into streaming economics. His research, which considers the current royalties system alongside alternative models, forms part of the report's findings. Here, he talks us through it...

On January 31, 2020, I presented a lecture to MA students on the Global Entertainment And Music Business course at Berklee College Of Music in Valencia. The subject was music streaming: the current model, equitable remuneration and alternative models for the new digital world. During the lecture, I presented four flow diagrams [see p77 and 78]:

Diagram 1 – the state of play regarding the division of streaming spoils, between Spotify, record labels, recording artists, publishers, and songwriters.
Diagram 2 – the consequences of the introduction of equitable remuneration.
Diagram 3 & 4 – the consideration of an alternative 'active/passive' model.

Current situation – Diagram 1

"When streams were created, there was no new agency set up to collect revenue. Instead, the publishers use MCPS (physical record sales) and PRS For Music (public performance/radio play) to administer the streaming revenue.

"UK publishers view streaming as 50% physical record sale (mechanical) and 50% radio play (public performance). Labels view things differently: 100% is allocated to physical record sale. It is administered 100% as a reproduction royalty with no public performance. There is inconsistency between record label and publishing company administration of streaming revenue."

Equitable remuneration – Diagram 2

"Equitable remuneration (ER) is an alternative model proposed by #BrokenRecord. ER is a blend that combines an exclusive right with an equitable right. Applying an ER model would result in a stream being treated as part physical record sale/reproduction and part public performance for both recording and publishing revenue. Under the ER model, the recording element would replicate the publishing element under the current model.

"During the lecture, I discussed ER and its application. Its legislative origins were with the World Intellectual Property Organisation and its application is legislated in the following European Directives: Related Rights Directive; Information Society Directive; and Rental and Lending directive.

"The Related Rights Directive application is broad. It extends to 'broadcast by wireless means or for any communication to the public' and identified that ER is payable on streaming to both record label and artist.

"The Information Society Directive provides the performer the exclusive right to authorise or prohibit the use of their work where the broadcast is

made available to the public by wire or wireless means. ER applies where the consumer accesses content 'from a place and at a time chosen by them'.

"The Rental and Lending Directive stipulates that the right to receive ER by label and artist is unwaivable. I then went on to compare this to the UK Copyright, Designs and Patents Act 1988 – Section 182. It provides that the rights of the performer and the phonogram producer be consistent with those directives – with one exception, which reads 'otherwise than by its being made available to the public in the way mentioned in 182CA(1)'.

"182CA(1) states: 'by electronic transmission in such a way that members of the public have access to the recording at their place and time of choosing'. Streaming is excluded. The UK Copyright, Designs and Patents Act 1998 – Section 182 is contrary to the EU legislation."

Active/passive – Diagrams 3 & 4

"As an alternative, I considered an active/passive model. Here, I distinguish between active choices – 'Alexa, play me', click on track and choose, vs 'passive' where Spotify reverts to a playlist algorithm.

"This model identifies each stream and separates them between an active choice of the user or a passive algorithm. It differentiates between streams according to user consumption. Which streams were actively chosen? This is equivalent to going into a record store and making a choice. Which streams were selected by an algorithm, the equivalent of a radio DJ making a choice?

"For active choices (Diagram 3), Spotify would continue to account to the labels under the exclusive reproduction arrangement. The labels and artists would receive the same as currently paid. Passive is Diagram 4. For passive algorithm plays, the recording element would be administered by PPL and the publishing element by PRS.

"The arrangement for public performance applied to radio play in the UK is that earnings are split equally between recording (PPL) and publishing (PRS). The weighting currently applied is 55% recording and 15% publishing.

"Under the active/passive model, for the passive plays, the recording element of 55% and the publishing element of 15% would be amalgamated, giving a total of 70%, and then split equally – 35% to PPL and 35% to PRS. It does not try to combine an exclusive reproduction copyright with a non-exclusive public performance broadcast.

"Finally, I asked the students how their consumption of music aligned. They said that it was predominantly passive, and this was likely to continue as they enjoyed more background music, rather than making specific choices."