



REVISION OF THE DIGITAL MARKETS ACT

Submission for the European Commission Call for Evidence

23 September 2025

Introduction

Our submission to this consultation is based on our research on how EU law could contribute further to promoting fairness in digital music markets for music creators in the framework of the Fair MusE project (funded by the EU's Horizon Europe Programme - Grant Agreement 101095088). One of the tenets of our research is that while the Copyright in the Digital Single Market Directive (Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ L 130/92, hereinafter DSM Directive) is key in enhancing fairness for music creators – particularly Title IV chapters 2 and 3 – other sources of digital regulation, like the Digital Markets Act (DMA), could play an important role in materializing the effectiveness of the provisions of the DSM Directive.

The digital music sector is of major significance for the EU economy. According to statistics from Impala (<https://impalamusic.org/stats-2/>), “Europe generates nearly a third of total recorded music revenues worldwide and represents the second largest region in the world for recorded music revenues, growing by 8.3% in 2024”. Furthermore, “Streaming revenue in Europe as a whole grew by 10.9% to reach \$5.1bn, representing 63.9% of the total European recorded music market”. This includes paid subscription streaming services, and ad-based audio and video streaming services.

Some of the technology companies providing streaming services are also designated gatekeepers under the DMA, including Alphabet, Meta, ByteDance, and Amazon. Recorded music is made available daily through some of the core platform services (CPSs) specified in Article 2(2) DMA, namely online social networking services and video-sharing platform services. We therefore believe that the DMA is a very relevant regulatory tool for digital music markets, and that music industry stakeholders that could benefit from the DMA should be made aware of this.

One of the key research outcomes of the Fair MusE project has been its D2.3 Study on the Roles of Competition Law and Platform Regulation Across Online Music Platforms. The study focused on the importance of Articles 18-23 of the DSM Directive, which address transparency, fair remuneration, and dispute resolution, for music authors and performers who use online platforms to reach and expand their audience and capitalize on the exploitation of their music. The fragmented transposition and the lack of robust enforcement mechanisms of these rules have limited their effectiveness, underscoring the need to support those rights from other legal and regulatory instruments.

The DMA was, admittedly, not specifically tailored to the music sector. In fact, its behavioral obligations are largely directed towards, and protective of, other types of business users, most notably app developers or advertisers. Nevertheless, music authors and performers as well as record labels, music publishers, collective management organizations (CMOs) and independent management entities (IMEs) deal with gatekeepers and use CPSs on a daily basis in their capacity as business or end users (or as their representatives) promoting and distributing their works. In this sense, the current revision of the DMA and its strategic enforcement can



offer a unique opportunity in rebalancing the relationship between music rightholders and platforms and in reinforcing the rights granted by the DSM Directive, most importantly access to data and fairer licensing and remuneration, which are key in a healthy competitive market.

Clarifications of scope

The role and impact of the DMA on the relationship between gatekeeper platforms and their users could be much enhanced if all stakeholders affected would be in the position to realize that they can actually benefit from this piece of EU legislation. Empirical evidence collected through the Fair MusE research points out that various rightholders are either not aware of any rights that the DMA may confer upon them or not certain that they enjoy legal standing to make use of them. For the DMA to play a more significant role in the dynamics of the digital music sector, the text of the Regulation could be revised or further Guidelines could be issued to make clearer the inclusion of music authors, performers and potentially other music industry players, such as CMOs, IMEs, music publishers and record labels, within its scope as business users.

As a first step, it would be beneficial to clarify that the behavioral gatekeeper obligations laid down in Articles 5 to 7 DMA simultaneously lead to the creation of corresponding, enforceable rights for business and end users. This could be achieved through the addition of a recital in the Regulation.

Secondly, we suggest that the European Commission provide further clarifications of the wording of the definition of ‘business user’ of Article 2(21) DMA. Although there is already some guidance as to which types of users are included in the category of business user, such as that contained in the decision designating TikTok (*ByteDance – Online social networking services* Case DMA.100040 Commission Decision of 05/09/2023) and the subsequent *Bytedance v Commission* judgment (Case T-1077/23 *Bytedance Ltd v European Commission* ECLI:EU:T:2024:94), ambiguity and uncertainty persist.

To that end, we propose that part of the wording from the Commission decision designating Meta as a gatekeeper (*Meta – online social networking services, number-independent interpersonal communications services, online advertising services, online intermediation services - marketplace* Cases DMA.100020, 100024, 100035 and 100044 Commission Decision of 05/09/2023, paragraph 50) referring to business users be added to the definition of business user of Article 2(21) DMA to read: “‘business user’ means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users or for the purpose of reaching and engaging with different target user bases”. This addition to the definition of business users could help to signal to music rightholders that they are covered by this definition and can enjoy the benefits that the DMA brings to business users of gatekeepers’ CPSs.

Gatekeeper obligations

Our observations regarding gatekeeper obligations under Article 6 DMA all stem from the work in the framework of the Fair MusE project (funded by the EU’s Horizon Europe Programme - Grant Agreement 101095088) and are motivated by possible synergies that we see between the enforcement of the DMA and the rights for music authors enshrined in Articles 18 to 21 of the Copyright in the Digital Single Market Directive (DSM Directive).



Article 6(10) DMA.

This provision shows significant potential towards enhancing music authors' and performers' right to transparency and access to data on the exploitation of their works, enshrined in Article 19 DSM Directive. Article 19 DSM Directive establishes by default the provision of information to authors, performers and their representatives, about any form of exploitation of their work by licensees. Article 6(10) DMA allows any rightholder that is a business user to have continuous access to real-time data originating from the business user or their end users interacting with products or services of the business user.

However, the current wording of the provision limits the scope of the obligation to data "provided or generated" by the business user and interacting end users, thus limiting the access to information only on consumption of - and audience interactions with - sound recordings that the music creators/business users themselves upload onto the gatekeeper platform.

Fair MusE suggests revising the wording of the provision from "provided or generated" to provided, generated or created" so as to include content created by the business user but being provided to the platform by *another* user. This would allow music creators to obtain more information about the exploitation of their works via selected core platform services under the DMA.

Article 6(12) DMA, first paragraph.

This provision, which mandates access on fair, reasonable and non-discriminatory (FRAND) terms, targets app stores, online search engines and social networks. Out of these, social networking is the most relevant CPS for music creators seeking to use gatekeeper platforms to reach their audience and monetise their works. Empirical evidence gathered in the course of the Fair MusE research shows that licensing with platforms, user-generated content (UGC) ones in particular, presents significant challenges for authors and performers due to a pronounced imbalance of power in contractual relationships. Systemic advantages enjoyed by UGC platforms, such as the frequent imposition of standard terms of service that grant them extensive rights to exploit copyright-protected content or the lack of transparency as regards revenues from advertising linked to music content, may hinder fair compensation and limit the agency of music creators in securing equitable remuneration for their works.

Article 6(12) DMA could hold significant potential for the improvement of the position of authors and performers vis-a-vis social media platforms, enhancing the terms under which they access and use them and, ultimately, improving their licensing and remuneration opportunities in the platform economy.

However, it remains ambiguous how exactly FRAND principles would apply to access to social networks and the benchmarks provided by Recital 62, paragraph 2 DMA as a yardstick to assess fairness of access terms refer explicitly only to app stores and not to the other two CPSs covered.

It is, therefore, seen as important to clarify in the preamble of the Regulation, the way that FRAND access principles apply to social networking platforms by giving benchmark tests equivalent to those concerning access to app stores in Recital 62 DMA.

What is more, we propose that Article 6(12) DMA be interpreted and enforced in a way that enables music rightholders to resist bundled licensing terms and to request access to platforms in exchange for remuneration that more accurately reflects the value their music generates for the platform.



In connection to the above, and for this provision to reach its full potential for playing a meaningful role in the digital music sector, we propose that video-sharing is also included among the CPSs covered, so that music rights-holders could also benefit from FRAND access to this critical service for music exploitation and visibility.

Article 6(12) second paragraph.

As regards the provision of an alternative dispute settlement mechanism, we suggest that Recital 62 should further clarify that, in order to guarantee impartiality and independence, such mechanisms must be external to the gatekeeper and that the obligation cannot be satisfied by the provision of internal gatekeeper complaint structures and dispute settlement processes.

Moreover, such mechanisms should be subject to certification or accreditation by the Commission or competent national authorities, and should allow for collective representation by organizations of business users to ensure effective and fair outcomes. Gatekeepers should also report in a transparent manner on the use and results of such mechanisms to enable the monitoring of systemic practices. This would align the requirements for alternative dispute resolution (ADR) under DMA with the requirements for ADR under the DSA, thus creating more uniformity in the provision of ADR mechanisms for (business) users in the EU.

Furthermore, we are proposing the expansion of the obligation for provision of an alternative dispute settlement mechanism beyond the obligation to offer access on FRAND terms, to other obligations that could benefit music authors and performers. In that sense, ADR could become a requirement for gatekeepers also in relation to access to a CPS beyond those currently covered in Article 6(12) and in relation to other DMA obligations, such as access to data under Article 6(10) DMA. This could possibly be achieved by transforming the second paragraph of Article 6 (12) DMA into a new and separate section (e.g. Article 6 (14) DMA).

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