

Transcript of Merck Mercuriadis UGA Keynote With Questions (11/15/22)

David Lowery: Hey everybody, hello. So we have a very special keynote conversation today with Chris Castle and Merck Mercuriadis. We have southern Greek food for lunch today in your honor. I will let him tell you more on his history, but he has had a very long and successful career in the music business. His most recent endeavor is the Hipgnosis Song Fund which has raised a little bit of money, and in the process has raised the value of every songwriter's catalog in the United States, certainly some of my friends. Hipgnosis Song Fund is a publicly traded fund that is very unique, they own songs and because his fund thrives based on whether songwriters thrive, he has been a key ally of songwriter. So please welcome Merck Mercuriadis.

Merck: First of all, thank you all for having me. I've been to Athens once before to go to the 40 Watt Club and see a band there that ended up going to the rest of the world. So you should all be very proud of REM and proud of the B52s as well because we're very proud to have them at Hipgnosis. I am an artist manager and I will always be an artist manager. I created Hipgnosis because over my years of managing artists—I started in this business when I was in my teens—I worked at Virgin Records, where David Lowery once was signed, the bands that I worked with were representative of what I called the "Post Beatles" world, bands like Simple Minds, Orchestral Maneuvers in the Dark, Peter Gabriel, the Human League, Culture Club, in the sense that these artists were self contained. They wrote their own songs, they had very strong ideas about what their album covers should look like, what their stage shows should look like, what things they believed in or what they didn't believe in whether that was politically or charitably or whatever the case might be. They had an ethos.

The job of someone like me was to believe in them and find other people to believe in them. Fast forward to my life post-Virgin Records and I'm managing people like Elton John and Guns and Roses and Beyonce and Iron Maiden and Morrissey, Jane's Addiction and Mary J. Blige, Nile Rogers, I've been very, very privileged to work with the artists I wanted to work with. They all kind of fit that bill as well. But 15 or 20 years ago songwriters started to become a part of my practice and this is why I've given you that long preamble, when you're managing songwriters on their own, which included Georgia's own The Dream and people like Diane Warren and Justin Trantor, when you start to manage people who are just songwriters, you really have an amplified view of the disparity that exists between what songwriters get paid and what everyone else gets paid. When you're managing Elton John and you're looking at the money, the money is made up of live income, it's made up of recorded music income, it's made up of publishing, it's made up of endorsement, it's made up of merchandise, a bunch of different income streams if you're doing your job properly, that all kind of lead into one person. So that discrepancy between what the songwriter gets paid and what everyone else in this business gets paid is not so noticeable in those circumstances. But when you start to look at someone like The Dream you see that he's writing these massive hit songs that are allowing artists to go out and play for \$500,000 a night, \$750,000 a night, \$1 million a night and all they're getting is their tiny little songwriter royalty, you start to go "hold on, this is rigged." This is not just wrong, it is rigged. I spent a lot of time figuring out how I was going to do something about this, because even though I'd had a nice career and had money in the bank and everything that

goes with it, the people who I thought were responsible for this could come along and swat me like a fly and my advocacy and my thoughts right then and there. Because ultimately when you look at the situation what you see is that what should be the biggest advocates for songwriters were the three (and at that time four) biggest advocates for songwriters being the major music publishers, who by the way would like to advocate but are not able to advocate because they are owned by the three (and then four) biggest record companies.

On the recorded music side, the record companies get 4/5ths of the money, an 80% gross margin and 40% net margin, and in general will own the sound recordings in perpetuity. Conversely, on the song side of the space (I call it the "song side" because I refuse to be called a "publisher" because that's a broken business) you've got 1/5th of the revenue and a fifth of the margin and quite rightly whether it's through good lawyering or good management, through negotiations or reversions, the songs end up back in the hands of the songwriters who created them. So it's not in the interest of recorded music companies to allow their publishing companies to advocate for the songwriters because they would be taking away from their recorded music margin.

I became convinced that this is what made the songwriter the lowest compensated man or woman in the equation despite the fact that they were delivering the most valuable creative component. There is no music industry, there is no business for Universal, Sony, Warner, Hipgnosis or whoever it might be if it doesn't start with the songwriter.

If you push play on Spotify or Apple it is because you like the song, if you buy the vinyl, it's because you like the song, if you go to see the band play live it's because you like the song. If you go to see the world's biggest artists play live right now, they are almost always singing someone else's song as opposed to that paradigm that I started in when people were singing their own songs. So right now, you have artists out there making seven figures a night because their fans want to hear a song that is written by someone who is not in the group and that songwriter gets a paltry songwriter's royalty as dictated by legislation at this point.

So, I wanted to do something about it. I was lucky that this coincided with Spotify starting up. I'm not Nostradamus but what I could see with streaming is that it would bring an income stream we didn't have before coming from the general population. This is because one of the great secrets of the music business prior to streaming was that the average person doesn't pay for music. If you look at the benchmark for extraordinary success, the platinum record, that is a million copies in the United States which is a country with 360 million people. That ratio of 1 in 360 tells you that the average person loves music, but they don't love it enough to put their hand in their pocket and pull out a tenner and pay for it.

What I could see with streaming is that it would bring the other 359 people to the party, not because they want a songwriter or artist to get paid or that they want me to get paid, they'll pay for it because it's like valet parking, it's more convenient. It's a more convenient way to consume music and for \$10 a month you get everything, you can consume it from whatever location you want to consume it, and it's a price that's worth paying.

So now, instead of having a construct where success is a platinum record, what defines success is having 100 million homes in the United States paying for a music streaming subscription service. You can see that success rolling into every record company in the world, but where you don't see that success rolling in is to the songwriter, who is, again, the person who is responsible for us being there in the first place. It doesn't matter what us is or where there is, if it's the music industry it all starts with a songwriter.

What I did then was in order to not get swatted like a fly, I needed to create a multi-billion-dollar platform for me to advocate from and for people to have no choice but to take me seriously about it. I've always been very careful to be very logical in what I'm saying and never say anything that someone can argue with—and obviously there's a very few people who make up that "someone"—but my message is that simple basic statement: Songwriters deserve to get paid more money and must get paid more money. That's why I'm here today, that's why I'm aligned with Chris Castle, that's why I'm aligned with Helienne Lindvall, that's why I'm aligned with Crispin Hunt and so many other people in this room. We all believe that songwriters must get paid more money.

Q&A

Chris Castle: You know the thing about a great advocate is that they make you want to stand up and salute, so thank you for being here, Merck, and I really appreciate your taking the time. The Phonorecords IV "frozen mechanicals" proceeding at the CRB demonstrated that the CRB just doesn't work for songwriters. I was also impressed with the fact that other than Abby North [North Music Group] who is here today, there were no publishers who commented or seemed to be paying attention to the frozen mechanicals issue. Why do you think that is?

Merck: Some of you may know this, but in the UK our advocacy and the advocacy of the Ivors Academy has resulted in our being able to bring the government to the table to advocate on behalf of creators. There were hearings that took place 18 months ago that ended with the UK government referring the dominance of the major recorded music companies to the UK Competition and Markets Authority. In that evidence that was given there wasn't a single publisher. The bosses of the recorded music companies all showed up and gave their evidence. You can imagine what that was—everything is business as normal! We're doing great and the songwriters are doing great, there's a high cost of developing talent and all the usual nonsense. Distribution costs a lot of money, you have no idea how expensive that person is who pushes play on Spotify on Thursday at midnight and sends the music to Africa, India, China, Australia, Canada and the United States. That's a very expensive person, etc., etc., just the typical nonsense.

But not a single head of a publishing company showed up. Just to be clear, that is not a criticism of the heads of those publishing companies, because trust me, they would love to be in the room and they would love to tell the truth. They are the ones who are signing the great songwriters today who are fueling today's great artists and everything else, so they would love

to be getting their fair share of both the ability to advocate and be recognized for their achievements and everything else. But they are owned and controlled by the [record companies].

Just to give that some context, I have two funds I have a private fund and the public fund that David mentioned. The public fund is a FTSE 250 company on the London stock market but trades all over the world. It has 493 institutional shareholders that range from the Church of England to people like Investec, Invesco and AXA and big pension funds. All of these funds have analysts, they all have sales people and everything that goes with it. So, I take a company like Investec where they are if not the biggest certainly the second biggest shareholder in Hipgnosis. There's a wealth division and an asset management division and an analyst division. The guy that runs the wealth division that is one of the biggest shareholders in Hipgnosis can't tell the analysts what to write about Hipgnosis. If the analyst thinks I'm doing a good job, he'll write good things, if the analyst thinks I'm doing a rubbish job he's going to write rubbish things. They have Chinese walls, they are regulated so that guy from wealth can't call up and say hey, don't you know we have a big shareholding in Hipgnosis, you need to be writing nice things about Hipgnosis. No, they are free to be able to do what they think is in the best interest of their constituency. Major music publishers are not free to do what is in the best interest of their constituency because they are owned and controlled by the major recorded music companies.

Chris Castle: Years ago, I was in Nashville, late night, and I was having a drink with a guy who was both a top session player and a top songwriter. He said to me, you know when I play a session I get double scale, but when I write a song, why can't I get double stat? And what he was really saying was why can't I set my own price. I set my own price for my labor here, why can't I set my own price when I write a song. One of the things I struggle with as part of our process with the latest rate setting is that the compulsory license effectively does is value every song at the same price. Not too high...but every song is treated the same. You can say that's "fair" on a certain level, but it really isn't fair because when you sell the catalog you don't value all the songs the same. I'd like to get your thoughts on that. Could you imagine a world in which songwriters could freely bargain to set their price for their songs depending on what they thought the value of the song is, their track record and so on.

Merck: I think that there's a first step that comes before that, and that first step is for songwriters to have a place at the negotiating table in the first place. I don't think that in the first instance it's about whether Dan Huff or whoever it might be can get more for their work than someone else. Look, if you are Nile Rogers and you're going to produce a record, you will get more points and a bigger fee than the kid that's just coming through. He might be as talented as Nile but he hasn't got the track record of success. So, there's a very, very good argument that says that's where we end up eventually.

But what I'm interested in the first instance, and this is going to take some time to get there, but it's very important, I'm interested in bringing songwriters together as a collective voice with only one goal in mind: No negotiation should ever take place again that determines how a

songwriter is paid where the representation at the table isn't from the songwriters themselves. There are a number of organizations out there including the NMPA that will point and say they have songwriters on their board.

That is all well and good and I encourage it. But that is a songwriter who is expressing their personal views and experiences. What I want is an organization, you might call it a guild or a union that has songwriters that are representing the consensus views of their constituency taking into consideration whether you are Ryan Tedder at one end of the equation or you're the new kid who just arrived in LA from Texas or wherever it is you might have come from to try to become the next Ryan Tedder. That's vitally important.

Chris indicated he's got a question about CRB coming up and I will dive into it straight away. It will surprise you, but I think my comments will make sense. I am a supporter of the Phonorecords IV settlement for one reason only which is that it will provide stability for a five-year period at the highest rates paid in the US for the streaming economy. In that five-year period our job is to revolutionize how songwriters are paid to take it out of government legislation and put it into a free market. And that free market starts off with the songwriters sitting at the table representing the views of their constituency and making sure that songwriters are not getting paid 15.1 or 15.2 percent or whatever it is, but something that is significantly higher than that, something that is fair and equitable relative to the role that the songwriter plays.

Because let's face it—this is insulting. If I sat down and explained to my decent Greek working class parents that this is how songwriters get paid, they'd be shocked. If you went to your bank manager and explained how songwriters get paid, they'd be shocked. Doctors, lawyers, everyone who has some understanding of the economics of the world or what drives an industry and what creates value for an industry would be shocked by how songwriters are paid. So, the goal is getting out of CRB in the next five years and getting into a free market where songwriters are in control.

I look to the screenwriters guild [the Writers Guild of America] for a lot of answers and examples of how the world can be different in an industry that understands who is providing value for them. The screenwriters walk into the movie companies every few years and demand more money for their writers. I wouldn't say they're polite about it but their points are well made which is it's really great you've got Denzel Washington, Reese Witherspoon and all these wonderful movie stars but if you don't have my script, there's no movie to make. And you're not going to get my script until you pay all my people properly. And they scream and shout and call each other names and threaten to bring production to a standstill but at the end of the day they figure out how to pay screenwriters more money and everyone lives happily ever after.

That's never happened in the music business. No one has ever walked into Lucian Grange and said guess what, Rhianna's not getting these songs until you pay my people properly. I love Rhianna to death but you have to pay my people properly. I don't think there ever needs to be a disruptive event, I hope there never needs to be a disruptive event because people are smart

enough to understand that without the songwriter you've got nothing, but if you are really forced into accepting the paradigm shift that is necessary here, if that's what has to happen, that's what has to happen.

Chris Castle: The other thing that happens in the movie business is that the actors are the first people who will tell you they support the writers on a strike.

Merck: And by the way that would happen in the music business, too, Rhianna would be the first person to stand up and say, "Pay those people." Taylor Swift would be the first person to stand up and say, "Pay those people." Beyonce would be the first person, Justin Bieber would be the first person, Harry Styles would be the first person. I have tremendous faith in the artist community, but we all have to get on the same page. Ultimately, we have a legal community that makes deals every day that has allowed some of these paradigms to exist so that's part of the shift that has to take place as well so they need to take a position about what works for songwriters and doesn't work for songwriters and stick to that position.

Chris Castle: Sticking to it is not always the easiest thing. I remember negotiating with an actor during a Writer's Guild strike and the first question that came up was "How are you making this movie if the writers are on strike?" And then I got, "This is a union household, I'm hanging up now." Seriously, there's more support for this idea than one might think.

Merck: I think there's tremendous support for it. It's like anything else in life. The people who work in recorded music companies are not bad people, in fact they are great people and they love music as much as we do. They go to work every day and they do their jobs but the basic fact is that they are working in a paradigm that has existed more than 50 or 70 years or more. And up until people like us showed up and started saying things about it, David [Lowery] is certainly a pioneer in all of this, no one ever thought, hold on—is this right or is it wrong. The truth is they are only just beginning to think about whether it is right or wrong at the moment.

As with any paradigm you have to break it, and I've had people over the last five years tell me I'm crazy if I believe that I'm going to change it but I see change happening every day because of what we've been saying and doing. And I see record companies saying things from their own perspective that would never have been said if we and others like us hadn't set a tone. It's only a small handful of us, but this is a pretty harsh example but sixty years ago if you were a homosexual in the UK you'd get hung. That doesn't happen anymore because people realized that was wrong and that human beings have a right to do what they think is best for them or what God gave them. We don't do that anymore. So don't tell me that we can't change. If we can change that thinking we can change any thinking, particularly when it is logical and there's nothing more logical than songwriters deserve to get paid more money.

Chris Castle: Another thing that came to mind when you bring up the Writers Guild is the Writer's Guild credit arbitration. One of the things we're going to talk about today and one of the things that drives me absolutely nuts about our business is the credits, meaning the lack thereof and the disregard [for the rights of others]. The idea that I'm able to put out a track

and not care who wrote it because the song has to give way to the recording. That is not the way it works with the Writer's Guild. Having been through a credit arbitration with the Writer's Guild I have a lot of faith in the credit arbitration process.

Merck: That brings up a lot of issues in the sense that one of the things we have a real issue with on behalf of the songwriting community is data. It doesn't matter who you are, whether you are Taylor Swift or Nick Cave, when your song goes up on Spotify there is an ISRC [International Standard Recording Code] embedded in the metadata and it gets paid every time it is played. It may not get paid enough but the track will get paid. The ISWC, which is the corresponding code for songwriters, and does not go into Spotify or Apple or any other streaming service. It would be such a simple thing if it did, because what happens right now and this is going to give you the answer as to why the ISWC code doesn't go into the metadata, is because at the end of the month Spotify is going to send the performing rights societies a list of everything someone pushed play and that performing rights society is going to take that list of songs, which is a very laborious thing, and it's going to match that list to everything in their database and they send Spotify a bill for their share of that song consumption. On average something more than 30% to 40% ends up in black box because people haven't been able to match the songs, there's human error that takes place every step of the way. And of course, black box gets shared by market share so the beneficiaries of black box, you know who they are, love that system so they are not encouraging anyone to ensure that ISWC codes are embedded in metadata. Yet if you ask them to release the record without the producer contract, they would tell you you're crazy because at that moment in time they have real liability yet they won't wait. Their argument as to why they are not fighting for ISWC codes to go up is that it would slow the process down. It is more important to put music up than to ensure that songwriters get paid. This is the foolishness that we're dealing with. As someone who is careful not to say things people can use against me, it's just nonsense. There isn't anything anyone could stand up here and say about why ISWC codes are not included in the metadata at the time of the recording going up from the get-go that could change my mind or that would be logical to anyone in this room. And this is a very, very important step toward getting any of this right. Right now, even if you're a songwriter getting paid your paltry songwriting royalty as legislated you're still missing out on masses of income even in that low level context because 30 to 40% of people's money is going missing because it's not being matched properly.

Chris Castle: And there's no real downside in it.

Merck: Unless you're a songwriter.

Chris Castle: Unless you're a songwriter, yes.

Merck: Then there's a hell of a lot of downside.

Chris Castle: There's an Austin songwriter named Guy Forsyth...

Merck: Great songwriter.

Chris Castle: Yes, a great songwriter, who has a lyric “Americans are freedom loving people and nothing says freedom like getting away with it.”

Merck: You have to have a sense of humor about all of this, but it is a very, very difficult situation. The only way we’re going to do anything about it is by bringing people together with one goal in mind only which is to get songwriters paid more money. There are a lot of other issues out there which could be exactly what you were talking about which is the second part of the free market where the Nile Rogers of this world get paid more money than everyone else which would be justified in itself but first and foremost, we have to all be focused on songwriters in general being paid more money as a baseline for how songwriters are paid. The market can then go wherever. There are a lot of people out there who are songwriter advocates and I applaud their intentions but I actually spend a lot of time asking them to step out of what they’re doing and to focus on this one thing only because otherwise even though these are all very legitimate things, they create noise over and above the most fundamental aspect which is that songwriters need to get paid more money. The record business thrives on that noise because they can sit back and say look, these people don’t know what they want. When they figure out what it is they want, come and see me and I will try to sort it out. We have to dumb everything down to one thing: Songwriters deserve to get paid more money.

Chris Castle: How do you see that happening? You suggested that given the CRB has set the rates for the next five years, that period could be a transition to another model. How do you see that happening?

Merck: From my personal perspective, it starts with bringing this group of songwriters together that I’ve been courting over the last two or three years and the wider constituency to have a real guild. You and I have discussed what that takes in terms of antitrust exemptions and all kinds of different things that we’re going to be following through on. But we have to have that guild in the first instance. There’s no one in the world that knows better how much money there is in this business and how to share it than the major record companies. They have to be part of this solution. The DSPs, even though they’ve saved the music industry, they’ve been made to be the villains of the piece because they are squeezed by the major recorded music companies as well. You have one negotiation that takes place between the major recorded music company and the DSP which is under NDA so no songwriter has any information about why they are being paid what they are being paid. We talk about this quite often, right now we are at the University of Georgia. If you work for this institution when you get your paycheck you will have a stub attached to it, a statement, and that statement will say this is what your gross pay is, this is what your deductions are, and this is your net pay that we are depositing into your bank account. If you take the net amount, add the deductions and it equals the gross amount then you know you are in pretty good shape. If it doesn’t do that, you have some questions to ask but if it does do that, then you know you are in good shape. The songwriter gets nothing. The songwriter gets a statement every six months that has billions of transactions on it but they have no idea whether they are being paid properly or not. I managed a

songwriter, she won't mind my saying this, Diane Warren. Diane is very successful, has her own infrastructure but she receives a statement from her publisher that is as tall as she is. She's lucky that she has these four or five people in her office because she can afford it who go through that statement, which takes them about six months, and they find hundreds of thousands of dollars [that Diane is owed] every six-month period without fail. The average songwriter can't do any of that. They don't even know where to begin. There are no business managers who are scrolling through songwriter statements because songwriters can't afford to pay those fees. So, you basically get your statement every three to six months, hopefully you're getting a check, and you accept it for what it is, but you have no clue. And you have no idea what kind of a deal Universal, Warner or Sony have made with the DSPs, you have no idea whether you are being paid per the agreement or not. There have been a couple of whistleblowers who have come out of the woodwork over the last six to 12 months when our advocacy went into a different stratosphere at the Digital, Culture Media & Sport Committee who will tell you that there are clauses in recorded music agreements with the DSPs that force the DSP to raise the rate that's being paid for recorded music if the DSP ever dares to raise the rate that's being paid for songwriters which means that you are in an impossible situation.

Chris Castle: Which is the idea.

Merck: Nobody came up with that clause for good, other than their own good, and they certainly weren't thinking about the fact that songwriters are at the core of our business and we need to make sure that they are treated fairly and equitably

Chris Castle: What's interesting about your particular situation is that you have managed to get everybody pulling in the same direction at your company. You've got investors whose return is dependent on the songwriters doing well and the songwriters would like to do well, so everybody seems to be on track.

Merck: I'm not sure how I did it, but it was all by design in the sense that all of my investors whether it's on the public side or the private side, sit in the shoes of the songwriter when we buy a catalog. That is the one thing, going back to your question about what happened, is that we've created a structure where what's in the best interest of the songwriter is in the best interest of the shareholder and vice versa. I don't think any other company can say that. The part that is not quite so obvious on the surface yet because the button hasn't really been pushed on it is that we now have 493 shareholders (as I said before) on the one hand and one huge behemoth private equity company on the other hand, all of whom have three things in common which is that they like to make money, they are on the side of the songwriter making money, and they have a tremendous amount of political clout that will be brought to bear on what is in their best interest.

Chris Castle: And on that note why don't we take some questions. Do we have questions for Merck? Start with Crispin Hunt.

Merck: Hand that man a microphone and make him sing a Longpigs song!

Crispin Hunt: Thanks Merck, it's always inspiring to hear you talk and advocate on behalf of songwriters. My plan as a songwriter, artist, record producer and a session musician, is that what the music industry needs to see to it that the people who are making the music should make at least as much as the people who sell it. I'm worried about the kind of dividing and ruling. I think it's important to point out that in the publishing sector, perhaps because it's been contained, has been allowed to progress, so that songwriters get their rights back after 15 years, a modern publishing deal gives 80¢ of the dollar to the songwriter. The Music Managers Forum tell me that 80% of artists are songwriters, too. So, for me, an increase in the value of the song would create a redistribution of wealth away from the people who sell music and back into the pockets of the people who make music.

Merck: Just to comment on one thing you said there Crispin is that one thing that is not always immediately obvious to everyone is that there is this massive paradigm shift. Forty years ago, the power was the artist's brand. You could be an artist like U2, my career started at the same time as U2, I knew them and loved them from the get-go. U2 had this incredible run from 1981 until 1998 when they released an album called "Pop" where everything was as good as or bigger than the last thing. In 1998 they experienced something that every artist who has had real success experiences which is apathy. Apathy amongst yourselves, apathy with your record company, apathy with your managers. Everyone makes money and they get to the point when even the audience is perhaps a little bit tired of them. If you go back and listen to Pop now, it is a really good record but at the time it didn't do very well. That didn't stop U2 from going out and playing 70 stadiums around the world or selling a million t-shirts because the brand and the band were always going to be more important than any particular record.

That era is gone now. We are no longer in the era of the artist; we are in the era of the songwriter. The point that I wanted to make is that there has not been a Billboard Top 100 album of the year, one of the 100 best selling albums of the year in Billboard as determined by SoundScan in the Billboard end of year charts, since 2014 (Bob Dylan's last album but one) that didn't have an outside songwriter on it. So, every album in the last eight years in the 100 best-selling albums of the year has an outside songwriter on it. It doesn't matter if it's Coldplay (and Crispin goes back to the beginnings of that band) and you couldn't have contemplated that Coldplay would have outside songwriters on their records, you couldn't have contemplated that U2 would have outside songwriters on their records, but that is it now. We have been in the paradigm of the songwriter since, I would say, 2007 or 2008. We are 15 years into that paradigm and that paradigm is going to continue for a long, long time to come, maybe forever. This is a business that now more reflects the era of Sinatra and Tony Bennett than it reflects the era of Pink Floyd or Led Zeppelin or U2 or Cracker or whoever is your favorite. That puts an even bigger onus on songwriters being paid because as I said at the beginning of the discussion, right now you can go see Harry Styles who I'm sure is making \$750,000 a night if not \$1 million a night, and you are there because he's a great performer and he's a great artist and a lot of people believe in him as they should because he conducts himself admirably, but you are there listening to songs that he's a contributor to not songs that he's responsible for. And those other people that are in that mix whether it's Kid Harpoon, or Amy Allen, or Tobias Jesso, Jr., or whoever it might be, they're not seeing anything except maybe some increased consumption

on Spotify or Apple as the result of the tour. All of this has to change.

Crispin Hunt: The narrative at the moment is grow the pie, the DSPs should charge more for streaming, it's been \$9.99 since 2009 and they're just beginning to. But because this conversation is going on and the world is taking note of this conversation, do you think there is an argument that Apple just put up their streaming service from \$10 to \$11 should that new extra dollar, seeing as how the major labels make \$23 million a day from streaming, should that extra dollar, that extra 10%, go to songwriters, and is there a conversation we could have with the industry whereby they'd do something out of the goodness of their hearts.

Merck: On a personal level I don't think that makes sense, I think it makes sense for songwriters to get more out of every dollar not just the last dollar. I understand what you're saying, is that a way to address the imbalance. No one will see it that way. Chris asked what we should be doing in the next five years. The answer is that I don't have the answer to all the questions. This is going to require people who are far smarter than I am to get to that place, but what I know is this: Anyone who sets their mind to achieving this will help achieve it. And that's all that matters, that we are all saying and doing the right things. There will be a "young whippersnapper" out there who comes up with ideas that are very very helpful along the way because you need people like me, you need lawyers, you need business people. As I say, the one thing I want to be clear on is that the recorded music companies have to be part of the solution. Which is something I've always hoped, that as much as I might be a thorn in their side, that people would understand that what I'm doing is coaxing a discussion that has to take place. No one is going to stand up and say, "songwriters are being paid poorly, let me give away 20% of my business". You have to bring them to the party on this.

Chris Castle: This is a major persuasion job. Helienne Lindvall question?

Helienne Lindvall: Thank you for speaking Merck, I'm sitting here nodding a lot with everything you're saying. It is the era of the songwriter and the era of the song; we can see that more than anything in streaming. The service that has music everywhere but is a complete conundrum especially for songwriters is TikTok. There is not one video on TikTok that doesn't have music and yet they have decided this weird kind of payment system that is not per stream but is per "creation." Who decided that and who decided that would be a good idea? Certainly not the people who created the music. And I think more and more these kinds of services, right now it's TikTok and who knows what is coming after that, but it's like the music industry is ten steps behind letting something like this grow to the size it is right now. What is your view on TikTok and how the payments work? Streaming is almost transparent by comparison.

Merck: One of the things that's really exciting about our business today and that is the complete opposite of where it was even as little as five years ago is that the consumption of music is largely paid for. The fact that the payments are anemic or structurally wrong are issues that need to be addressed but we are actually being paid. As little as five years ago almost all consumption of music was not being paid for. Even when you go to massive emerging markets now like India, China, Africa, etc., where previously culturally people would go to the local

bodega to buy the bootleg CD or bootleg cassette before that and pay a dollar or two and we'd never see any of that money, the songwriters would never see it, the artists would never see it, the recorded music business would never see it. Now all those continents and countries are buying into streaming services. You'd expect that Good Times by Chic would be getting played in Senegal, but you wouldn't expect that "Don't Stop Believing" by Journey would be getting played in Senegal, but yet we are getting money in Senegal on "Don't Stop Believing". So that's the first part of my response.

The second part of my response is that there are a lot of shenanigans going on and we know there is no transparency in these negotiations are under NDA and so on. But when we first started Hipgnosis, that year 2017 going in to 2018, YouTube had paid \$2 billion to creators, two years ago it paid \$4 billion to creators, this year it's paid \$6 billion to creators. Now that's probably about \$20 billion less than what it should be paying to creators but it's still something that is moving in the right direction. And going back to a reference point that Crispin made, I'm definitely a big believer that that balance between how hard we squeeze between the versus the \$500 million we are at today. When I was a kid, they used to put these stupid ads in the music magazines that said "Home Taping is Killing Music" which is bollocks. Basically, if you gave someone a tape of a record and they liked that record they'd go out and buy their own copy. If you gave them a copy of a record that they thought was OK, they didn't go out and buy their own copy. So, it was kind of radio play of its own, but the recorded music companies wanted you to believe that by taping something you were somehow hurting their business. Now for convenience we've got people to the tune of 587 million signed up to a paid music streaming subscription service, we want to get to those 2 billion paid subscribers because once they're on board, one of the things that's attractive to the songwriting community even at the current rate of pay, and amplifies why it's so important to get it right going forward, music has gone from being a discretionary purchase to now being a utility purchase. The mentality of the consumer is that \$10, \$11 or \$12 price point is worth paying on a monthly basis.

Right now we are in a very high interest, high inflation environment but what better value can you get to give your family sustenance than a Spotify or Apple subscription where you can listen to every artist under the sun whether obscure or famous, new or old, black, white, gay, straight, whatever it's all there. For that money you get tremendous value. You are not going to see subscriptions decline even in this very challenging environment because when you're living your best life, you're doing it to a soundtrack of great songs. But equally well when you are experiencing the sort of challenges that people have experienced over the last few years with pandemic, up against it, into high interest rates and job losses, not being able to find a work force and then creating inflation and everything else, you take comfort and you escape with great music.

I took some shareholders on the tube in London a few weeks ago at 8 am in the morning. I did it specifically because I wanted them to see all of these people who were traveling to work who all had headphones on. The common belief is that music is entertainment. I don't believe that it is, I believe that music is nutrition. I believe that these people who have their headphones on the Tube at 8 am in the morning know that there's going to be a lot of shit thrown at them

during the course of that day and they are just getting their fortitude and their sustenance to get through that day while they can. And this is in many ways what makes songwriters so important and it's also what makes music and songs investable. There is a predictability and reliability that comes with great songs and the work of great songwriters, because once these songs become part of your life, they don't go away. I've met maybe one person in my life who said, I don't like that anymore. Most of the time it's in their DNA.

Question: What do you consider a songwriter because music is a collaborative process? If I'm a producer on a track, I think I contribute to the song so should I be considered a songwriter if I have a hand in what is written? What is your definition of a songwriter?

Merck: There's a couple answers to that question. We talk about a paradigm shift, 20 years ago a producer would typically not get a songwriter credit unless they genuinely wrote that song, they'd get their producer fee and a royalty on the recording. Most of the time the producer would not get a songwriting credit. Today, the producer almost always gets a songwriting credit particularly in pop music like hip hop and R&B. The producer is always in the mix on that and I think it's fair whether you're coming at it from the point of view of creating the beat, where now you are in an environment where previously you would go in the studio with a drummer, bass player, guitarist, keyboardist and vocalist, and they would make music together. You take a band like Iron Maiden who I worked with for many years, the band contributed songs but they took individual songwriting credits. Then there are other bands where they had a collaborative songwriting credit. U2 songs are written by the four members of U2, not by Bono and Edge. A band like Journey would take songwriting credit for the songs but would share the income equally because they wanted to keep everyone on par with each other financially. So, artists can do whatever structure they want when it comes to that.

When you are in a room like the one you are describing, the general rule is that it is an equal split for everyone in that room unless they make a different agreement at the time they are in that room. So, you can't have people in the room thinking they are getting an equal split and then later someone turns around and says at a later date, I did more than you did so I should get more, or my words have more letters than your words so I should get paid more. Chris can tell you about the law, there are laws around this, but the collaborative process should never rely on the law the same way as if you go about your business on a day-to-day basis you shouldn't be relying on a contract but relying on good will and doing the best work possible. So, it's important to be communicative and it's also important for any songwriter who is in here, if there's someone in the room who is not contributing to the song, you need to be clear that they can stay in the room but they don't have anything to do with the song. Communication is vitally important for the health of good collaboration, so if you genuinely believe you are doing something more than the other people, make it known at that time. If that's a buzzkill for other people and they want to leave the room, cool. You shouldn't be worried about that if what you are doing is great.

Chris Castle: There's a reason why split discussions are some of the most difficult that people ever have, but I've always felt that is because people haven't been communicating well up to that point.

Richard Burgess: What you've done is amazing Merck I take my hat off to you and as you said before simplifying the message is really key. What I wonder is whether you'd consider simplifying the message so that everyone in the ecosystem could do better? I run A2IM, the American Association of Independent Music, but my background is as a studio musician, writer, producer, recording artist so I make money from all sides of the business. What concern me is that the industry in 1999 hit about \$14 billion in the US, last year I think the RIAA reported about \$15 billion so we have passed that 1999 number, but in constant currency \$14 billion in 1999 is worth about \$25 billion today. So, we are 2/3 down on that 1999 number. Seems to me that if we took your extremely simple mantra but applied it to growing the pie for everybody that everybody would be better off because you can't take that much money out of an industry and not have everybody suffer. I mean songwriters are suffering, there's no question about that and I support that, but artists are suffering too. In a winner takes all business artists who are starting out are genuinely struggling. I wonder if you would support the entire ecosystem rather than putting all the emphasis on songwriters.

Merck: The answer is that the worst paid person in the room is the songwriter. The second worse paid person in the room is the artist, and therefore of course there is a tremendous amount of advocacy that is to be done. I think that most people here, hopefully the students as well, understand how a dollar or a pound of streaming income is split. About 30% goes to the DSP, I actually think there's room for improvement but it's not the material point. If there's 27¢ or 24¢ going to the DSP, that's not the material point. Ultimately, they do good work they deserve to get paid and we want them to continue to build their constituencies for us, right, for the creators. Because they are effectively a store, they are not a rights owner, they are a store and every artist wants to have good positioning in terms of how their music is consumed and to get paid fairly and equitably. So, the question really is, where materiality comes into play, what happens to this other 70¢? Now with CRB III being effectively ratified and CRB IV effectively being the same rates, you've got about 55¢ going to recorded music and about 15¢ that's going to the songwriters, right? The songwriters have four, five, six people on the song and their publishers, they're getting micro pennies on every dollar. The artist is being shafted by the record company and they're being paid on [a license rather than a sale] so instead of a license being split 50/50 but a royalty rate so they're maybe getting 12¢ or 10¢ out of that 55¢, so 45¢ plus goes to recorded music.

Richard Burgess: To be fair, most of our independent labels pay on a 50/50 split profits deal and not a fixed royalty.

Merck: That's great for your independents but that isn't the case for most independents, look at Domino and Four Tet.

Richard Burgess: The independent sector is big and I can't speak to every contract that's done that's for sure, but what concerns me is we're focusing on the pie and splitting it but the incontrovertible fact is that the entities that have done the best out of the streaming era are the streaming services. We don't control pricing anymore. If we combined our resources and forced the streaming services to pay more whether it involves reducing their margin which is excessive, 30% is excessive, compared to Wal Mart survives on a 2% margin and they've got six billionaires in their family. They could increase their prices as well, there was a survey the other day that found that music streaming was the absolute best deal in any kind of subscription, it's just about growing the pie so we can all do better.

Merck: Where we are in complete alignment is that artists deserve to get paid more money as well. Where we are not in alignment is that it actually isn't the DSPs that have done best out of streaming it is actually the record companies that have done best out of streaming. That's my belief and I'm sticking to it.

Richard Burgess: The major labels have done well, there's no question about that.

Merck: And the independents have as well. One of the great fallacies in our business—and by the way there are many great examples, to be clear, there are many people who have run independent companies and have treated the artist in ways that was better than the rest of the industry treated the artists, but there are just as many examples of independent record companies that have just followed the paradigm of major record companies and don't treat the artist any better or give the artist any better terms than a major record company does.

Richard Burgess: That's true, I think less so today because it's a competitive market and the independents don't have the kind of up-front money to spend that the majors do. My point is that there's more money to be gained by everybody, that's all, and I really respect what you're doing.

Merck: No question. I think this is where that balance that I was referencing before is very important. On the one hand, I start with songwriters because they are at the root of everything in our business but I feel just as strongly about the artists as I do about songwriters. Someone sent me some words to approve in my office this morning and they used "the music streaming bonanza" as an expression. That's what this is, this is a music streaming bonanza. One of the things that's inherent and why we are having these discussions is that there is something systemic in the way people are consuming music. When I talk about the customer having been one in 364 and now is 1 in 3.6, that's massive systemic change. The business is going to get more sophisticated and there's going to be more money than ever before for everyone. The issue is not that.

For every student that's here, the one thing I can tell you that I couldn't tell you five years ago, if you told me five years ago that you wanted to be in the music business, I would have encouraged you because I'm in this business because I'm passionate about it, I'm passionate about music, I'm passionate about songwriters, I'm passionate about the artists and anyone

else that wants to be in the music business I welcome you. But I couldn't look you in the eye five years ago and tell you that the best days of the music industry were in front of it. Today I can tell you that not only are you making a great choice, but the best days of our business are in front of it. The only argument here is whether the money is being shared fairly and equitably and it is not being shared fairly and equitably with songwriters. As I say, the second worst paid person in the room after the songwriter is the artist so I'm all about that, too.

Chris Castle: Time to go, thank you very much Merck, we appreciate it.