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# Landing That “Yummy” #1 Music Chart Position: The Use of Fake Streams in Today’s Music Industry

BY [NICOLETTE BELITSIS](#)/ ON JANUARY 26, 2020



Photo by Gavin Whitner

We have entered a new decade, surely to be filled with countless changes. To understand just how much can happen in a decade, look back on 2010 and consider how many aspects of life have changed in the last ten years. One significant difference has been the way we listen to music. In 2010, for example, many people were listening to Ke\$ha’s “Tik Tok” on their iPods, likely by purchasing the song through iTunes;[\[1\]](#) in 2020, people may be listening to “Praying” by the same artist, though she has now dropped the dollar sign and the majority of her listens are likely from streaming, instead of purchases.

Indeed, streaming has indisputably taken over the music industry, altering music listening globally. In 2018, for example, a Nielsen study indicated that there had been 611 billion streams in 2018, an increase of 49% from 2017.[\[2\]](#) Whether it is Spotify, Apple Music, TIDAL, or Pandora, 80% of the music industry’s revenue now consists of streaming, according to a

2019 Recording Industry of America report, with physical music sales comprising only 9% of the total revenue.[\[3\]](#)

With this decrease in song and album purchases, we are now in a new era of measuring an artist's success: number of streams. Throughout the second half of the 2010s, Billboard began amending its charts to incorporate the change from sales to streaming.[\[4\]](#) Billboard's "multi-metric consumption" model added audio streaming to the chart's album-ranking in 2014.[\[5\]](#) Last month, the company announced that it would begin incorporating video streams ("official licensed video content uploaded by or on behalf of rights holders") into its charts on January 18, 2020.[\[6\]](#) Thus, it's easy to understand why artists have become heavily concerned with the number of streams their songs accrue. Artist Bazzi, for example, accredited streaming services for making him a household name in the pop music industry, saying, "[R]eal artists have actual shots at being successful...Back in the day, you could've been the most talented dude with the best songs, but if the gatekeepers didn't like you, you weren't going anywhere. Streaming has allowed people to come out, literally."[\[7\]](#) At the same time, however, Bazzi acknowledged the dark side of streaming, comparing it to an addiction: "If I do 3 million [streams] instead of 4 million, it's like, 'Oh, they don't like me.'... I choose to not pay attention to it like that, and feed my happiness with things that aren't numerical, rather than, did I stream the best today?"[\[8\]](#)

However, there has been a growing controversy surrounding fake Spotify streams, most recently with artists French Montana and Justin Bieber. A few weeks ago, it was alleged that French Montana's song "Writing on the Wall" began trending due to fake Spotify streams, and that Montana's label was purchasing these fake streams to match the song's popularity on Tik Tok.[\[9\]](#) The accuser noted the difference in the song's chart positions on Spotify and Apple Music, as it was positioned at #1192 on Apple Music and #21 on Spotify at the time.[\[10\]](#) Montana addressed the allegations, confirming he was aware of the fake streams, but claimed that he had no involvement.[\[11\]](#)

On the other hand, Justin Bieber openly and publicly asked his fans on an Instagram Live and in an Instagram post to produce fake Spotify streams, in an attempt to make his new single "Yummy" reach the number one spot on Billboard's Hot 100 chart.[\[12\]](#) In addition to asking them to buy the song multiple times on iTunes, Bieber instructed his fans to create a Spotify playlist consisting of only his song "Yummy" repeatedly, to play that playlist on a low volume (specifically, not on mute) consistently, and to use a US-based VPN (virtual private network—that is, by downloading a VPN app and setting it to the United States) if the listener was listening non-domestically (because the chart only considers streaming within the United States).[\[13\]](#) These two artists are not the only ones who have been involved in some sort of fake streaming story; in fact, Variety has reported that three to four percent of all officially counted audio and video streams are fraudulent.[\[14\]](#) In 2017, for example, Taylor Swift created "Taylor Swift Tix," which allowed her fans to increase their placement on the digital ticket queue for her Reputation Tour by streaming her music videos on repeat.[\[15\]](#) Moreover,

“stream farms” are another popular method which are commonly used.[\[16\]](#) This is where large groups of devices operate Spotify and continuously play the music of the artist who pays for the stream farm.[\[17\]](#) The idea is that, besides increasing chart position, higher streams can equate to increased market share, increased royalty payments, and increased overall popularity.[\[18\]](#) Bieber’s strategy was newsworthy because it was less discrete, with some calling the promotion “desperate” and “shameless.”[\[19\]](#)

Though stream fraud can benefit these artists, opponents of the process argue that it “is literally ripping off artists who deserve to earn more from these platforms,” with an estimated \$300 million being taken away from “deserving” artists and labels.[\[20\]](#) This is due to the “finite pot of [revenue]” in streaming, according to Bruce Houghton of the music industry news site, Hypebot.[\[21\]](#) Thus, “[i]f any of that that goes to an illegitimate source [due to streaming manipulation], that’s a problem for [members of the independent community].”[\[22\]](#) An investigation by Music Business Worldwide in 2018 accused a Bulgarian playlist-maker of amassing an estimated million dollars from the Spotify royalty pool—in other words, from deserving artists and labels—by creating playlists with music by unknown artists, creating roughly 1,200 Spotify accounts, and streaming the playlists on loop.[\[23\]](#) Helen Smith, the executive chair of IMPALA (the Independent Music Companies Association) has stated that “streaming manipulation is costing the independents [artists] a fortune,” urging the industry to “work together to ensure a fair and sustainable online world.”[\[24\]](#)

In addition to the potential economic disadvantage to these artists, there is also a legality concern. For example, using fake accounts to create fake streams is illegal, and while there hasn’t been any major lawsuit just yet, it has been suggested that affected artists may be able to use Section (a)(4) of the Computer Fraud and Abuse Act, which pertains to the offense of “accessing a computer to defraud and obtain value.”[\[25\]](#) Additionally, Spotify’s terms and conditions strictly prohibit artificial play count increases by bots, scripts, or other automated processes.[\[26\]](#) Although there hasn’t been significant legislation in the United States thus far, Norway conducted a major investigation last year involving the streaming service TIDAL. Okokrim, the Norwegian economic crime unit began the investigation after a report by Dagens Næringsliv, a Norwegian newspaper, accused the company, of manipulating the streaming statistics of Beyonce’s “Lemonade” and Kanye West’s “Life of Pablo” to increase royalty payments—albums to which Tidal owns the exclusive rights.[\[27\]](#)

Some in the music industry have attempted to challenge fake streams. In June 2019, major labels and publishing groups owned by Universal, Sony, and Warner created a “Code of Best Practices” to combat fake streams.[\[28\]](#) Through the code, these labels and publishing groups explain that fake streaming has the potential to “cause economic harm to streaming service providers, rights holders, artists, and advertisers,” as well as “distort the media’s and fans’ impressions and understanding of the popularity of particular recordings... by influencing algorithmic playback results.”[\[29\]](#) The code, though not legally binding, consists of twenty-one points, and Spotify and Amazon Music have both supported it.[\[30\]](#) Critics, however, have

contended that the pledge does not really do much; rather, it essentially amounts to promises by streaming services to monitor and mitigate any fake streaming they find and for labels to share any information related to suspicious activity they notice—both of which are actions the streaming services and labels already do.<sup>[31]</sup> These critics argue that stricter steps should be taken, such as: obliging the major record companies to invest in stream-farm investigations and any resulting litigation; implementing chart penalties for any artist that engages in stream fraud; and requiring major labels to implement employee penalties for any staff member that engages in stream fraud.<sup>[32]</sup> Another suggestion is for streaming services to change their royalty distribution method. Currently, streaming services utilize a per-stream model to distribute their royalties.<sup>[33]</sup> A different option could be to utilize a subscriber-share model, in which the streaming services take each user's subscription fee and dividing it proportionally based on what that user is listening to—that way, artists are compensated based on the fans they generate, rather than number of streams.<sup>[34]</sup>

As this is a relatively new concept, it's not entirely clear as to what will happen in this new decade. Following the arguably successful implementation of the Music Modernization Act by Congress in 2018, perhaps the next step Congress should take in its modernization effort is to combat fake streaming. Nonetheless, the music industry and streaming services must continuously adapt to these changes and be open to opposing this fraudulent process, protecting the underdogs in the music industry who don't have the resources or followers that artists like Justin Bieber have. Positions on charts should be based on the natural and authentic popularity of the artists and their songs; if we continue down this road where already-successful artists essentially purchase their spots on these charts, by the year 2030 we may be looking back nostalgically at charts as meaningless.

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<sup>[1]</sup> Elana Rubin, *11 ways the music industry has changed over the past decade*, Insider (Dec. 18, 2019, 2:34 PM), <https://www.insider.com/how-music-industry-changed-2010s-decade-2019-12>.

<sup>[2]</sup> *Total Album Equivalent Consumption in the U.S. Increased 23% in 2018*, Nielsen: Insights (Jan. 8, 2019), <https://www.nielsen.com/us/en/insights/article/2019/total-album-equivalent-consumption-in-the-us-increased-23-percent-in-2018/>.

<sup>[3]</sup> Rubin, *supra* note 1.

[4] Dani Deahl, *Billboard is changing its albums chart to count YouTube streams*, Verge (Dec. 13, 2019, 3:26 PM), <https://www.theverge.com/2019/12/13/21020836/billboard-albums-chart-youtube-vevo-apple-spotify-video-streams>.

[5] *Id.*

[6] *Id.*

[7] Allison Stewart, *What genres have benefited the most from the streaming era of music?*, Wash. Post: Lifestyle (Apr. 3, 2018, 4:40 PM), [https://www.washingtonpost.com/lifestyle/what-genres-have-benefited-the-most-from-the-streaming-era-of-music/2018/04/03/950e99a8-3695-11e8-9c0a-85d477d9a226\\_story.html](https://www.washingtonpost.com/lifestyle/what-genres-have-benefited-the-most-from-the-streaming-era-of-music/2018/04/03/950e99a8-3695-11e8-9c0a-85d477d9a226_story.html).

[8] *Id.*

[9] Ashley King, *French Montana Gets Busted for Fake Spotify Streams — Denies Any Involvement*, Dig. Music News (Jan. 6, 2020), <https://www.digitalmusicnews.com/2020/01/06/french-montana-fake-streams/>.

[10] *Id.*

[11] *Id.*

[12] Colin Cohen, *Justin Bieber Asks Fans To Generate Fake Spotify Plays So He Can Get a #1 Song*, Dig. Music News (Jan. 10, 2020), <https://www.digitalmusicnews.com/2020/01/10/justin-bieber-asks-fans-fake-spotify-itunes-plays/>. See also Bryan Rolli, *Justin Bieber's 'Yummy' Promotion Only Feels Desperate Because The Song Is Mediocre*, Forbes (Jan. 10, 2020, 8:00 PM), <https://www.forbes.com/sites/bryanrolli/2020/01/10/justin-biebers-yummy-promotion-only-feels-desperate-because-the-song-is-mediocre/#3ce308a63576>. The song debuted at number two on global Spotify behind artist Tones and I's "Dance Monkey." *Id.*

[13] Rolli, *supra* note 12. Bieber has now deleted this post.

[14] Zanda Wilson, *Music biz rallies against stream farming & streaming manipulation*, Music Network (June 21, 2019), <https://themusicnetwork.com/music-industry-fake-streams/>.

[15] *Id.*

[16] Tim Ingham, *How the Music Business Can Actually Crack Down on Streaming Fraud*, Rolling Stone (June 21, 2019, 12:04 PM), <https://www.rollingstone.com/music/music-features/how-to-fight-spotify-streaming-fraud-850990/>.

[17] *Id.*

[18] *Id.*

[19] Rolli, *supra* note 12.

[20] *Id.*

[21] Elias Leight, *Fake Streams Could Be Costing Artists \$300 Million a Year*, Rolling Stone (June 18, 2019, 5:25 PM), <https://www.rollingstone.com/music/music-features/fake-streams-indie-labels-spotify-tidal-846641/>.

[22] *Id.*

[23] Tim Ingham, *The Great Big Spotify Scam: Did a Bulgarian Playlister Swindle Their Way to a Fortune on Streaming Service?*, Music Bus. Worldwide (Feb. 20, 2018), <https://www.musicbusinessworldwide.com/great-big-spotify-scam-bulgarian-playlister-swindle-way-fortune-streaming-service/>. See also Bruce Houghton, *Spotify, Soundcloud Bot Farms Continue To Manipulate Streaming Numbers*, Hypebot (Nov. 28, 2018), <https://www.hypebot.com/hypebot/2018/11/spotify-soundcloud-bot-farms-continue-to-manipulate-streaming-numbers.html>.

[24] Wilson, *supra* note 14.

[25] Sean Rapela, *Legal Consequences Will NOT Deter Fraudulent Streaming*, Suffolk U. L. Sch.: J. of High Tech. L. (Oct. 17, 2019), <https://sites.suffolk.edu/jhtl/2019/10/17/legal-consequences-will-not-deter-fraudulent-streaming/>. See also *Computer Fraud and Abuse Act (CFAA)*, Nat'l Ass'n of Def. Law., <https://www.nacdl.org/Landing/ComputerFraudandAbuseAct> (last visited Jan. 17, 2020).

[26] Rapela, *supra* note 25.

[27] Marsha Silva, *TIDAL Threatens to Sue the Entire Country of Norway*, Dig. Music News (Aug. 22, 2019), <https://www.digitalmusicnews.com/2019/08/22/tidal-threatens-to-sue-the-entire-country-of-norway/>. TIDAL's Polish office has threatened to sue the country of Norway, arguing that Okokrim's investigation is "not sufficiently justified and excessively aggressive," violating an investment treaty between Norway and Poland. *Id.*

[28] Ingham, *supra* note 16.

[29] Wilson, *supra* note 14.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] Joseph Dumont, *Royalty Inequity: Why Music Streaming Services Should Switch to a Per-Subscriber Model*, 69 *Hastings L.J.* 675 (2017-2018).

[34] *Id.*